

# Alert

Employment, Workplace Relations & Safety

## Fair Work Commission Annual Wage Review: Minimum Wage Increase Less Than Expected

By Ben Duggan & Nicholas De Pasquale

On Monday, 3 June 2024, the Fair Work Commission (**FWC**) handed down its Annual Wage Review decision for 2023-2024.

A summary of the key wage increases that will apply from 1 July 2024 is as follows:

- the minimum modern award wage rates of pay will increase by 3.75%;
- the national minimum hourly rate will be \$24.10, an increase of \$0.87 per hour; and
- the national minimum weekly wage will be \$915.91 per week.

Many industrial participants and commentators expected a higher wage increase of at least 4%.

Below, we discuss some of the key aspects of the Annual Wage Review.

### I. The statutory framework of the FWC's Annual Wage Review

The Fair Work laws require the FWC to conduct and complete a review of the national minimum wage and modern award minimum wages each financial year, which is done by a review panel.

Each year, the main consideration for the FWC review panel is to determine 2 matters, namely, the amount of

the national minimum wage and modern award minimum wages for the future.

The FWC conducts its Annual Wage Review within the statutory framework of the Fair Work laws, which includes consideration of the following:

- the objects of the Fair Work laws (section 3);
- the modern award objective (section 134); and
- the minimum wages objective (section 284).

In late 2022, the Albanese Labor Government, through its *Secure Jobs, Better Pay* reforms, changed the objectives of the Fair Work laws to include:

- the promotion of job security; and
- the promotion of gender equality.

This means that the FWC needs to take these objectives into account when performing its functions, including its Annual Wage Review.

In the context of the Annual Wage Review, both the modern award objective and the minimum wage objective also require the FWC to take into account a range of specific considerations, including:

- various economic considerations, including productivity;

- relative living standards and the needs of the low-paid; and
- promoting social inclusion through increased workforce participation.

Importantly, the Fair Work laws also establish procedural fairness requirements for the minimum wage review to ensure that all interested parties are provided with a reasonable opportunity to contribute by making submissions to the Annual Wage Review.

## II. The submissions as to the proposed minimum wage adjustment that should be made in the FWC's Annual Wage Review for 2023-24

A number of parties that represent the interests of employers and employees, including the Albanese Federal Government, Australian Council of Trade Unions (**ACTU**) and the Australian Chamber of Commerce and Industry (**ACCI**), made submissions to the review panel of the FWC.

Overwhelmingly the submissions from these parties proposed an increase to the national minimum wage and the modern award minimum wage.

In its submission, the ACTU and other unions, including the Shop Distributive and Allied Employees Association and the United Workers Union, proposed a 5% increase to the national minimum wage and modern award minimum wage.

The ACCI and several other employer bodies proposed more moderate increases to minimum wages, predominantly in the range of between 2% and 3%.

Other submissions suggested separate increases to address gender equality for award-reliant workers.

## III. The FWC's Annual Wage Review decision for 2023-24

The review panel of the FWC determined that it was appropriate to increase both the national minimum wage rate and the minimum modern award wage rate.

An important consideration for the FWC in its determination that 3.75% was an appropriate increase was the moderation of inflation since the Annual Wage Review last year.

In its decision, the FWC's review panel identified that a primary consideration was the cost-of-living pressures that modern award-reliant employees, particularly those who are low-paid and live in low-income households, continue to experience despite this moderation of inflation.

The increase of 3.75% is slightly higher than the future % forecast inflation rate for 2025 of 3%.

A factor that the FWC review panel indicated mitigated against the determination of an increase beyond this future forecast inflation rate of 3% was that 'labour productivity is no higher than it was 4 years ago' and productivity has only recently returned to positive territory.

The FWC review panel's comments about the influence of productivity on its determination are instructive. They may moderate expectations of significant future increases, as occurred in last year's Annual Wage Review, where the review panel determined to increase wages by 5.75%.

Other factors that the FWC's review panel took into account in making its decision to increase wages by 3.75% were that modern award-reliant employees will soon receive the benefit of stage 3 tax cuts, the cost-of-living measures under the recent Federal Budget and the upcoming increase to superannuation.

## IV. Impact of the changes to the objectives of the Fair Work laws brought about by the Secure Jobs, Better Pay reforms on the FWC's Annual Wage Review decision for 2023-2024

The FWC's Annual Wage Review decision was only the second time that the review panel was required to consider the new objectives of promoting job security and gender equality as part of its deliberations during the Annual Wage Review.

We consider the impact of these new objectives on the Annual Wage Review below.

### **Promotion of job security**

In the context of the FWC's Annual Wage Review, the review panel explained that the relevance of this consideration is primarily whether the outcome of the review might affect the capacity of employers to continue to offer permanent employment.

The review panel noted that although there has not been a move towards the further casualisation of the workforce, there has been a "significant" increase in the proportion of award-reliant employees who are casuals in the last two years.

A disproportionate number of award-reliant casual employees did require 'sensitivity' to the possibility that a higher level of increase to minimum award wage rates arising from the review may<sup>1</sup> affect the number of hours that such casuals are assigned and thus 'diminish their income security.'

The review panel's view was that the main factor bearing upon the strength of the labour market and 'job security' was the direction of monetary policy and its consequence for economic growth.

Ultimately, for this reason, the new objective of 'job security' did not impact the review panel's decision in its deliberations as part of its Annual Wage Review.

### **Promotion of gender equality**

The same cannot be said for the new objective of gender equality.

In last year's Annual Wage Review, the review panel identified a series of broad potential gender-related difficulties in the way in which award wages had historically been set and foreshadowed a two-stage research project to further investigate these issues.

As part of this year's Annual Wage Review, the panel provided an update on the research project and, in doing so, confirmed that the research undertaken has enabled "priority areas" to be identified in relation to gender undervaluation.

<sup>1</sup> In the context of a weakening labour market.

The review panel has confirmed that the following areas, where there is a high proportion of female participation, are of priority:

- child carers in preschool education and child care services;
- disability workers covered by the SCHADS Award;
- medical technicians, dental technicians and psychologists covered by the HPSS Award; and
- dental assistants covered by the Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020.

To take action, the review panel will initiate proceedings under the Fair Work laws to consider whether the minimum wage rates for the relevant classifications in the identified priority areas should be increased on work value grounds in order to remedy potential gender undervaluation.

The review panel is aiming to initiate and complete these proceedings prior to next year's Annual Wage Review decision.

In short, as discussed, the new objective of 'gender equality' has had much more of an impact than that for 'job security' in this year's Annual Wage Review.

### **V. Key takeaways for business**

The FWC has determined to increase the national minimum wage rate and the minimum modern award wage rate from 1 July 2024.

In response, businesses will need to review the current remuneration arrangements of their employees to ensure that they continue to comply with their obligations to pay minimum rates of pay.

Group	Obligation
Award free employees	All full-time employees not covered by a modern award or enterprise agreement will, from the first full pay period on or after 1 July 2024, be entitled to a minimum weekly wage for 38 hours of work equal to \$915.91
Modern Award employees	From 1 July 2024, any employees covered by a modern award are paid no less than the new modern award wage in respect of the employee's classification under the modern award (this change also includes casual loading and other loadings, penalties, allowances or overtime, which are calculated by reference to the modern award minimum pay rates).
Annualised salary employee	The increase may impact whether the annualised salary remains adequate enough to compensate for all of the award entitlements covered by the salary. Businesses should review the annual salary packages of employees who receive "annualised salaries".

Businesses also need to bear in mind the increase in the Superannuation Guarantee rate to 11.5%.

If you require assistance to prepare for the wage variations that will apply to your business from the start of the new financial year, please get in touch with one of our employment law experts.



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