

Junior Rates Application (AM2024/24)

Final Submissions of Youth Law Australia

1. On 24 December 2024, Youth Law Australia was granted leave by President Hatcher to file a submission addressing the Shop, Distributive and Allied Employees' Association ("SDA") junior rates application (the "Application").
2. Youth Law Australia filed preliminary written submissions with the Fair Work Commission ("the Commission") in relation to this Application on 11 February 2025.
3. In these final submissions, we draw upon our expertise in international law and human rights, and upon our experience helping young people with employment law problems across Australia, to assist the Commission to consider the Application.

About Youth Law Australia

4. Youth Law Australia (formerly the National Children's and Youth Law Centre) is an accredited, national, community legal centre dedicated to helping children and young people under the age of 25 years and their supporters understand their legal rights and find solutions to their legal problems. We monitor and advocate for the rights of young people across Australia, and we are accredited by the United Nations Economic and Social Council as a specialist, national children's human rights civil society organisation.
5. Youth Law Australia operates a national, specialist employment law service for young people under 25 (the Young Workers' Rights Service). With over 4000 young worker client contacts in the past four years, the Young Workers' Rights Service has extensive experience advising young workers covered by the General Retail Industry Award 2020 (MA00004) ("GRIA"), Fast Food Industry Award 2020 (MA00003) ("FFIA"), and the Pharmacy Industry Award (MA00012) ("PIA") (collectively, "the Awards").

Introduction and summary

6. Under section 157 of the *Fair Work Act 2009* (Cth) ("the Act"), the Commission has the power to make the orders sought by the SDA in relation to the Awards, if satisfied that (a) it is justified by work value reasons; and (b) it is necessary to achieve the modern awards objective in section 134 of the Act. As the orders sought relate to

setting modern award minimum wages, the minimum wages objective in section 284 of the Act must also be considered.

7. When applying both the modern awards objective, and the minimum wages objective, the Commission is required to consider the objects of the Act.¹ The object of the Act is set out in section 3. It is to “provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by, among other things, “providing workplace relations laws that are fair to working Australians” and that “take into account Australia’s international labour obligations” (among other things).

8. In these submissions, we seek to assist the Commission by addressing the compliance of the “junior rates” in the Awards with Australia’s international labour obligations.

In summary, our submissions are that the Commission can be satisfied that:

- a. the provisions providing for lower wages for workers aged 18-20 (inclusive) in the Awards do not conform with Australia’s international labour obligations, and in particular, they violate Australia’s obligations to ensure:
 - i. equal pay for work of equal value;
 - ii. equality of treatment and non-discrimination (and they cannot be considered a special measure of protection or assistance);
 - iii. fair wages that provide an adequate standard of living.
- b. making the orders sought by the SDA would bring the Awards into closer conformity with Australia’s international labour obligations.

2. We also submit that:

- a. these considerations are relevant to the Commission’s consideration of the Application under section 157 of the Act; and

¹ This is made clear in notes in sections 134 and 284 of the Act.

- b. Australia’s international labour obligations provide a guide to the considerations in the modern awards objective and the minimum wages objective that are particularly important in the context of this Application.²
- 9. Our submissions are structured as follows:
 - a. in section 1.1, we outline the sources and content of Australia’s international labour obligations relevant to this Application;
 - b. in sections 1.2-1.5, we address each of these obligations in turn, and the evidence relevant to their evaluation.
- 10. We note that terminology is important in this Application, and that many young workers aged under 21 are not “juniors”, but may have extensive experience in the relevant industry, and may be supervising other, including older, workers. For this reason, we have adopted the following terminology for the purposes of these submissions:
 - a. ‘young adult workers’ for workers aged 18-20 (inclusive);
 - b. ‘young workers’ for workers aged under 21; and
 - c. ‘young workers aged under 18’.
- 11. We respectfully submit that the Commission should consider adopting similarly respectful nomenclature for the young people impacted by “junior” rates of pay under the Awards.

Australia’s International Labour Obligations

1.1 Sources of Australia’s International Labour Obligations relevant to this Application

- 12. Australia’s “international labour obligations” are not defined in the Act. The Explanatory Memorandum of the *Fair Work Bill 2008*,³ suggests that at a minimum, Australia’s international labour obligations include those falling under the following instruments (relevant to this Application):

² See *Decision of Full Bench in Application to vary the Real Estate Industry Award 2020* [2020] FWCFB 3946 (Hatcher VP, Asbury DP, Spencer C).

³ See *Fair Work Bill 2008*, Explanatory Memorandum, para 2251.

- a. *International Labour Organization Convention (No. 111) concerning Discrimination in respect of Employment and Occupation* (Geneva, 25 June 1958) [1974] ATS 12 (the "Discrimination Convention");⁴ and
- b. the *International Covenant on Economic, Social and Cultural Rights* (New York, 16 December 1966) [1976] ATS 5 (the "ICESCR").⁵

13. In addition to these, we submit that the following instruments are most relevant to determining the content of Australia's relevant international labour obligations:

- a. the *International Labour Organization Convention (No. 131) concerning Minimum Wage Fixing, with Special Reference to Developing Countries* (Geneva, 22 June 1970) [1974] ATS 13 (the "Minimum Wage Fixing Convention"); and
- b. the *Universal Declaration of Human Rights*, which contains fundamental human rights.

14. Australia has ratified both ILO Conventions (111 and 131), as well as the ICESCR.⁶

15. We submit that, read together, these instruments and relevant commentary by the International Labour Organization and the United Nations Committee on Economic, Social and Cultural Rights suggest Australia's international labour obligations most relevant to this Application are:

- a. to ensure equal pay for work of equal value;
- b. to promote equality of treatment and eliminate discrimination in the workplace, including through the implementation of special measures if required; and

⁴ Australia has ratified this convention, which has been incorporated into domestic law through the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (now the *Australian Human Rights Commission Act 1986* (Cth)). See Schedule 1.

⁵ Australia has ratified this treaty, which came into force for Australia on 10 March 1976. See *International Covenant on Economic, Social and Cultural Rights* [1976] ATS 5. It has been incorporated into domestic law through the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (now the *Australian Human Rights Commission Act 1986* (Cth)). See Schedule 2.

⁶ The *Universal Declaration of Human Rights* is not a treaty under international law, but it does express fundamental values of the international community.

- c. to ensure fair remuneration that provides for an adequate standard of living.⁷

16. We address each of these obligations in turn.

1.2 Equal pay for work of equal value

17. The obligation to ensure “equal pay for work of equal value” is embedded in a range of international labour instruments, including the preamble to the Constitution of the International Labour Organization, Article 7 of the ICESCR, and Article 23 of the *Universal Declaration of Human Rights*.⁸ This obligation has also been emphasised by the International Labour Organization’s Committee of Experts on the Application of Conventions and Recommendations (“Committee of Experts”), which is an independent supervisory committee comprised of legal experts of high national and international standing, in their general surveys.⁹

18. In 1945, the International Labour Conference, the highest decision-making body of the ILO, adopted a Resolution which states:

*Provisions with reference to wages paid to young workers should have the objective of assuring that they are paid wages commensurate with the work performed, observing wherever possible the principle of equal pay for comparable jobs. Provision should be made for inexperienced young workers through learners’ rates when substantial periods of learning are required and through apprenticeship programs.*¹⁰

⁷ See the International Labor Organization Constitution, preamble; Article 7 ICESCR; Art 23 UNDHR; Discrimination Convention, which is a fundamental ILO Convention; United Nations Committee on Economic, Social and Cultural Rights, ‘General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)’, 27 April 2016, para 9 on the ‘minimum criteria for remuneration’.

⁸ See also Sustainable Development Goal 8.5 which seeks by 2030 to ‘achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value’.

⁹ See Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), General Survey on Minimum Wages (1992), para 176; Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), (2014), para 177.

¹⁰ International Labour Conference (27th, 1945: Paris, France), ‘Resolutions concerning the protection of children and young workers, submitted by the Committee on the protection of children and young workers’, para 30. *Emphasis added*.

19. The Resolution also provides that wages for young workers who are not apprentices “should be fixed in the light of educational requirements, experience, job content and the average output of young workers, with provision for successive increases in minimum wage rates commensurate with the average time needed to gain proficiency, and without prejudice to the principle of equal pay for equal work...”¹¹
20. The 1973 Minimum Age Recommendation (No.146), adopted by the General Conference of the International Labour Organisation, recommends that special attention be given to the provision of fair remuneration for young workers, “bearing in mind the principle of equal pay for equal work”.¹²
21. In General Comment No 23 (2016) on the right to just and favourable conditions of work (Article 7 of the ICESCR), the United Nations Committee on Economic, Social and Cultural Rights commented in relation to Article 7(a)(i) that all workers should receive equal remuneration when they perform the same or similar jobs, and observed that the focus should be on the “value” of the work and, as such, “evaluation factors should include skills, responsibilities and effort required by the worker, as well as working conditions”.¹³
22. We note that the Minimum Wage Convention does not provide for the fixing of different minimum wage rates on the basis of age.¹⁴ The ILO’s Committee of Experts has observed that this means “the general principles laid down in other instruments have to be observed, and particularly those contained in the Preamble of the Constitution of the ILO which specifically refers to the application of the principle of ‘equal remuneration for work of equal value’”,¹⁵ and that differential minimum wages

¹¹ International Labour Conference (27th, 1945: Paris, France), ‘Resolutions concerning the protection of children and young workers, submitted by the Committee on the protection of children and young workers’, para 30. *Emphasis added*.

¹² Clause 13(1)(a), referencing article 7(3) of the Minimum Age Convention 1973 (No. 138).

¹³ United Nations Committee on Economic, Social and Cultural Rights, ‘General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)’, 27 April 2016, para 12.

¹⁴ See commentary in Youcef Ghellab, ‘Minimum Wages and Youth Unemployment’, publication of the International Labour Office, Geneva, 1998, Employment and Training Paper 26.

¹⁵ Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), General Survey on Minimum Wages (1992), para 169.

on the basis of age should be regularly re-examined in light of this.¹⁶ The ILO Committee of Experts has emphasized that rather than age, the decisive factor in determining the wage paid should be the quantity and quality of work,¹⁷ and the qualifications and experience of the workers concerned.¹⁸

23. In Australia, Awards are structured in a way that means levels of pay are aligned with the inherent requirements of a role based on the duties, skills, and experience required for employees at each classification. In our submission, this means that the Fair Work Commission can be satisfied that young adult workers are being paid less for performing the same roles, with the same duties and responsibilities, as an older worker within the same classification. This is supported by the evidence, which includes:

- a. **That in general, young adult workers perform the same roles and duties as older workers in the same classification.** For example, Emma Bridges, General Manager Operations, Strategy Delivery and Capability within Central Operations at Coles Supermarkets Australia Pty Ltd, gave evidence that the formal duties or tasks performed by a team member pursuant to a particular classification do not formally differ depending on whether that team member is under 21 or over 21.¹⁹ Similarly, Nathan Charles Carrington, the Head of Corporate Operations Australia and New Zealand at Domino's Pizza Enterprises Ltd gave evidence that while delivery drivers might be as young as 17 in all states except Victoria (where they need to be 18), they are expected and required to perform their role in exactly the same way as would be

¹⁶ Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), General Survey on Minimum Wages (1992), para 176.

¹⁷ Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), General Survey on Minimum Wages (1992), para 171.

¹⁸ Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), (2014), para 178.

¹⁹ Statement of Emma Bridges at [47]. We note that this witness also gave evidence at [50]-[51] of her statement that informally, specific tasks maybe be allocated differently depending on the capability and age of the witness, but that the allocation of specific tasks is a matter of managerial discretion.

required of a 21 year old, driving motor vehicles, navigating to customer residences, delivering food and taking cash payments where required.²⁰

- b. **That when young workers have a birthday, their pay rate increases in accordance with the next age-based wage bracket, but there is no change in their role, responsibilities or training, and no reduction in their hours of work.**²¹

- c. **That young workers undergo the same level of training as older workers.** Young workers called by the SDA gave evidence that workers of all ages doing the same job undergo the same level of training.²² This evidence was unchallenged. These witnesses gave evidence that new employees may require additional training or guidance, but this is because they lack experience in the roles and duties they are performing, not because of their age.²³ They also gave evidence that people under 21 in these industries do not require extensive training or time for learning in order to perform their roles as capably as other workers.²⁴ Finally, these young witnesses with experience working in the fast-food industry gave evidence that in their experience initial training for junior employees is usually completed within two weeks.²⁵ This was supported by the evidence of industry witnesses. For example, the Commission heard evidence that at Coles, all team members are required to undergo the same formal onboarding training program. There is no distinction between onboarding training for young workers who are under 21, and onboarding

²⁰ Evidence of Nathan Charles Carrington (XXN) at [PN 2772- 2794](#).

²¹ Statement of Witness PB at [34]; Statement of Witness AB at [55]; Statement of Witness PF at [9]; Statement of Witness LG at [47]; Statement of Witness JG at [25]; Statement of Witness JH at [27]; Statement of Witness SH at [35]; Statement of Witness SL at [34]; Statement of Witness CM at [33]; Statement of Witness AT at [42]-[43]; Statement of Witness AW at [10]-[11]. This evidence was unchallenged.

²² Statement of Witness YH at [27]; Statement of CB at [49], Statement of SDA Organiser at [14] at page 1930 of the Digital Hearing book; SDA Outline of submissions at [79], referencing Statement of KP (pharmacy) at [20]-[24]; Statement of BB (fast food) at [15]-[20]; Statement of TC (retail) at [15].

²³ SDA reply submissions at [38] referencing Statement of BC at [20]-[21]; Statement of CH at [32]; Statement of MM at [38].

²⁴ SDA Outline of Submissions at [81], referencing Statement of MG (retail) at [13]; Statement of EL (fast food) at [9]-[10]; Statement of JK (retail) at [13].

²⁵ SDA Outline of Submissions at [81], referencing Statement of MG (retail) at [13]; Statement of EL (fast food) at [9]-[10]; Statement of JK (retail) at [13]; Statement of MO (fast food) at [12]-[14].

training for workers over this age (except where certain restrictions apply, such as training in relation to Coles Liquor or the sale of tobacco).²⁶

d. **That it takes young workers a maximum of 6 months to feel comfortable and develop competence in a new role, and often less time than this.**

Belinda Maree Cousens, NSW/ACT State Operations Manager for both K-Mart and Target, gave evidence that it is common for young people to start working at K-Mart and Target when they are around 15-16 years old, and that it takes them between 1-3 months to learn the job and develop confidence in their role.²⁷ A McDonalds crew trainer gave evidence that in their experience of working at McDonalds, the time it takes to learn varies from person to person, but employees under 18 are not any slower to learn than older people.²⁸ Some young workers gave evidence that most people under the age of 21 are comfortable working in their role within two months,²⁹ while others gave evidence that they felt comfortable and confident within 3-6 months of starting work.³⁰ The People Partner of McDonalds Australia Ltd gave evidence that it takes between 30-90 days for a new crew member aged 15 or 16 to be trained and acquire competency.³¹ Jessica Maria Knight, Human Resources Partner and an employee of Alive Pharmacy Warehouse gave evidence that a junior employee would generally be able to perform all duties within a Level 1 classification at a good level of competency within 6 months.³² The Head of Corporate Operations Australia and New Zealand at Domino's Pizza Enterprises Ltd gave evidence that it could take a person between three shifts and six months to become proficient in a crew-member

²⁶ Statement of Emma Bridges at [55].

²⁷ See evidence of Belinda Maree Cousens (XXN) at [PN 3762-3764](#).

²⁸ Statement of CB at [50].

²⁹ SDA Outline of Submissions at [83], referencing Statement of MG (retail) at [15], [17]-[18]; Statement of MW (fast food) at [13]-[16].

³⁰ See Statement of CB at [16]; Statement of KJ at [32]; Statement of SLU at [13]; Statement of KM at [25]; Statement of DM at [16].

³¹ See evidence of Mandy Sharp (XXN) at [PN 2700-2712](#).

³² Evidence of Jessica Maria Knight (XXN) at [PN 3926](#).

role, depending on their individual characteristics, and regardless of whether they are 16 or 22 years old.³³

- e. **That many young adult workers already have relevant work experience by the time they turn 18.** Many young workers who gave evidence in this case had held several previous jobs in fast food, retail, and pharmacy businesses, and in some cases worked simultaneously for more than one employer.³⁴
- f. **That young adult workers may supervise and train other workers, including those aged over 21.** There is evidence that employees aged between 18 and 20 can perform more senior roles than older workers, including supervisory roles and providing training for other workers, including those who are aged over 21.³⁵ Emma Bridges, General Manager Operations, Strategy Delivery and Capability within Central Operations at Coles Supermarkets Australia Pty Ltd, gave evidence that it is common for a person of 18,19, and 20 to be a supervisor, and the relevant question was whether their experience justified that person having a supervisory role – it was not about their age.³⁶
- g. **That young adult workers do not necessarily require greater supervision than older workers.** The Commission heard evidence that employees under

³³ See evidence of Nathan Carrington (XXN) at [PN 2810-2821](#).

³⁴ See for example Statement of Witness KB who worked at K-Mart, Coles, Krispy Kreme and then Big W; Statement of Witness RB, who worked at McDonalds and then K Mart; Statement of Witness RD, who worked at McDonalds and then in a retail dairy and deli; Statement of Witness AB who worked at Subway and then Coles; Statement of Witness PF who worked at KFC and then JB Hi-Fi; Statement of Witness JH who worked at both Coles and The Good Guys; Statement of Witness YH who worked at KFC and then Big W; Statement of Witness KJ who worked at McDonalds then Red Rooster and then at McDonalds again.

³⁵ SDA Outline of Submissions at [72], referencing Statement of SL (retail) at [29]; Statement of BB (fast food) at [15]; Statement of DM (fast food) at [27]; Statement of JM (fast food) at [43], [55].

³⁶ See evidence of Emma Bridges at PN 3664-3665. See also evidence of Christine Wallace-Hughes (XXN) at [PN 2560-2562](#).

21 work with limited supervision,³⁷ and are not supervised differently or more extensively than older workers.³⁸

- h. **That while in some cases employees who are under 21 may receive different specific tasks than their older colleagues in the same classification, this does not lower the value of their work.** The Commission heard evidence from various industry witnesses about what particular tasks might be assigned to workers under 21 by supervisors when exercising their managerial discretion.³⁹ We submit that whether a worker of a particular classification is assigned to stack toilet paper or stack toiletries,⁴⁰ or work in the deli or operate the cash register,⁴¹ they are still providing work of comparable value to their employer.

24. We submit that the Commission should carefully scrutinise general assertions that the value of the work of young people is inherently or inevitably of a lower quality or of less value than that of older workers.⁴² While the Commission heard evidence from industry witnesses about their opinions of the maturity of employees relative to their age, on cross examination it was generally agreed that an individual's unique characteristics had a greater bearing on aptitude, attitude, and performance than age.⁴³ Further, the evidence of industry witnesses was inconclusive on the question of

³⁷ SDA Outline of submissions at [38], referencing Statement of TC at [16]-[18]; Statement of KD at [18].

³⁸ SDA Outline of submissions at [38], referencing Statement of JM at [54]; Statement of EM at [30]. See also evidence of Belinda Maree Cousens (XXN) at [PN3773-3778](#); evidence of Nathan Charles Carrington (XXN) at [PN2795](#).

³⁹ Statement of Emma Bridges at [50]-[52].

⁴⁰ See Statement of Emma Bridges at [51].

⁴¹ Evidence of Bruce Luchterhand (XXN) at [PN 4403](#).

⁴² We note the SDA's submissions that the respondents' evidence seeks to portray young employees as universally inexperienced, unsafe, unreliable with cash, slow, unable to problem-solve, prone to panic, frequently absent for mental health reasons, highly distractable, and dependent on constant supervision.

⁴³ For example, Robyn-Anne Johnston, State People & Culture Partner SANTAS (South Australia, Northern Territory, and Tasmania) at Hungry Jack's Pty Ltd, agreed that there are some employees aged 21 and over who might be pretty immature compared to a more sensible 17-year-old, and that it depends on the individual (see [PN 2332-2333](#)). Mandy-Jane Sharp, People Director – Restaurant People Partner at McDonalds Australia Limited, gave evidence that even though an 18-year-old is an "adult", "their behaviours don't necessarily always demonstrate that" but conceded that some adults behave in a "childish" way too (see [PN 2714 to 2716](#)).

whether an individual could be considered to progressively "mature" in linear fashion with their age, and how this translated to the value of their work.⁴⁴

25. We submit that the maturity, diligence, and professional competence of the four young witnesses who gave oral evidence, and who were cross-examined by the Pharmacy Guild, demonstrates the significant value of the work performed by employees under 21 in the pharmacy industry, both in terms of their employers and the general community they serve.⁴⁵ We submit that their evidence compellingly illustrates that discriminatory generalisations about young workers are not fair, accurate or relevant in determining the value of their work.

26. Indeed, we submit that there is evidence that young workers are inherently valuable to the businesses covered by these Awards. This includes evidence that:

- a. businesses in these industries actively recruit young workers who form a vital part of their workforce, and not only because of lower rates of pay;⁴⁶
- b. young people are generally prepared and available to work in these industries during evenings and weekends, which are times of peak trade, and when it is harder for businesses to fill shifts with older staff;⁴⁷
- c. young people are more available during busy trading times such as Christmas peak trade and during the school holiday period;⁴⁸

⁴⁴ For example, Vaneeta Kelly, a Pharmacy Guild witness, agreed that a junior employee generally gets better with age and experience, and as such there is a progressive difference between an employee aged 15 and an employee aged 20 (see [PN 4320-4322](#)). Emma Bridges, a Coles manager, would not agree that there would be a difference in average performance or output between a 15-year-old and an 18-year-old but did agree that it would depend on previous experience at the business (see [PN 3641-3653](#)). Belinda Maree Cousens (K-Mart/Target manager) would not agree that an 18-year-old would be more mature than a 15-year-old, but said that maturity depended on the individual, and agreed this would also be the case for an adult (see [PN3737-3738](#)). We note there was some evidence of industry policy and practice of only employing workers aged 18 or over but only for a small number of roles. See the evidence of Nathan Charles Carrington that shift runners at Dominos (who carry responsibility for the running of the store when they are on shift) tend to be over 18 because of their maturity and experience (see [PN 2797-2809](#)); and the evidence that at Coles, only workers who are over 18 can work as services drivers for online delivery (see Statement of Emma Bridges at [41]).

⁴⁵ This was the evidence of witnesses CM, KM, BC and KP on 28 October 2025.

⁴⁶ See evidence of Emma Bridges (XXN) at [PN3633-3638](#); evidence of Belinda Maree Cousens (XXN) at [PN 3750-3757](#).

⁴⁷ Evidence of Jessica Maria Knight (XXN) at [PN3882-3884](#); evidence of Amanda Jane Chisholm (XXN) at [PN4266-PN4278](#).

⁴⁸ See evidence of Belinda Maree Cousens (XXN) at [PN 3750-3757](#).

- d. hiring young people under 18 provides a pathway for hiring talent and progressing workers to more senior roles in the business;⁴⁹
- e. young people are generally enthusiastic about entering the work force, and they display initiative⁵⁰ and passion for their work;⁵¹ and
- f. an employee's value to a business is generally based on their experience with that business (a person under 21 who has experience working in a business is generally more valuable than an older adult without experience).⁵²

27. There is evidence that workers under 21 are a "vital part"⁵³ and "essential part"⁵⁴ of businesses covered by these Awards, and also that decisions to hire and retain young adults are made on the basis of commercial considerations (not altruistic motivations).⁵⁵ We submit that the value of young workers is also reflected in the evidence on staffing demographics,⁵⁶ and the high number of employees under 21 working in supervisory roles.⁵⁷

1.3 Equality of treatment and the elimination of discrimination in employment

28. One of the five fundamental obligations recognised by the International Labour Conference in 1998 is "the elimination of discrimination in respect of employment

⁴⁹ See evidence of Christine Wallace-Hughes (XXN) at [PN2517-2521](#); evidence of Bruce Luchterhand (XXN) at PN 4392-97. Mr Luchterhand's evidence was that his general practice is to employ some 14- and 15-year-olds and train them up, that he rarely employs a 16 or 17 year old with no experience, and never employs anyone 18 years or older with no experience – "it would be extremely rare".

⁵⁰ Evidence of Wisam Zoghbi (XXN) at [PN4025](#); evidence of Jessica Maria Knight (XXN) at [PN3880](#).

⁵¹ Statement of CB at [50].

⁵² Evidence Wisam Zoghbi (XXN) at PN 4438; evidence of Robyn-Anne Johnstone (XXN) at PN 2325; evidence of Jessica Maria Knight (XXN) at [PN 3931](#); evidence of Bruce Luchterhand (XXN) at [PN 4438](#). Bruce Luchterhand, an independent grocery owner, expressed that he would not hire a school-leaver at 17 or 18 without previous experience as they are "no good to me because they've been at school and they've done no work and not dealt with public ... they've not dealt with managers and interacted with other people at a work level so ... they're the ones who are going to miss out".

⁵³ Evidence of Emma Bridges (XXN) at [PN 3636](#).

⁵⁴ Statement of Amanda Jane Chisholm at [18] and evidence (XXN) at [PN 4278](#).

⁵⁵ The Commission heard evidence that businesses covered by these Awards do not hire young people altruistically, and do not staff businesses with employees on junior rates surplus to their business requirements. See evidence of Emma Bridges (XXN) at [PN3635-3638](#); Evidence of Belinda Maree Cousens (XXN) at [PN3804](#) and [PN3808](#); evidence of Robyn Anne Johnston (XXN) at [PN2328-2330](#) and [PN2346-2347](#).

⁵⁶ Expert report of Professor Martin O'Brien, Preliminary Employee and Industry Data, pp 138-142 of FWC Digital Hearing Book.

⁵⁷ See Statement of Christopher John Turner at [7]; Statement of Jennifer de Witte at [8] to [15].

and occupation”.⁵⁸ The ICESCR and the *Universal Declaration of Human Rights* also expressly refer to the right to equal pay for equal work without discrimination.⁵⁹ The United Nations Committee on Economic, Social and Cultural Rights has observed that equality applies to all workers without distinction based on, among other things, “age”, and observed in relation to young workers:

*All workers should be protected against age discrimination. Young workers should not suffer wage discrimination, for example, being forced to accept low wages that do not reflect their skills.*⁶⁰

29. Australia is a party to the Discrimination Convention, which is one of the eleven Fundamental ILO Convention instruments, meaning it includes “specific rights and obligations” which are “recognized as fundamental both inside and outside the [International Labour] Organization”.⁶¹ While age is not one of the grounds of discrimination listed in Article 1(a) of the Discrimination Convention, Article 1(b) includes “such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organisations, where such exist, and with appropriate bodies”. In 1989, Australia added various further grounds to the definition of discrimination for the purposes of this Convention, including “age”.⁶²

⁵⁸ See the *Declaration on Fundamental Principles and Rights at Work*, adopted by the International Labour Conference at its Eighty-Sixth Session, Geneva, 18 June 1998, cl 1 and 2.

⁵⁹ See Article 7(a)(i), and Article 2 of the ICESCR. While ‘age’ is not a specific ground in Article 2, it is covered by the inclusive reference to ‘other status’. See for example CESCR General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons, adopted 8 December 1995, para.12 (discussion of age discrimination as coming under ‘other status’); *Universal Declaration of Human Rights*, Art. 23. See also Sustainable Development Goal 8.5 which seeks by 2030 to ‘achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value’.

⁶⁰ United Nations Committee on Economic, Social and Cultural Rights, ‘General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)’, 27 April 2016, para 47(b).

⁶¹ See the *Declaration on Fundamental Principles and Rights at Work*, adopted by the International Labour Conference at its Eighty-Sixth Session, Geneva, 18 June 1998, cl 1.

⁶² Through the Human Rights and Equal Opportunity Commission Regulations 1989 (Cth), reg 4. These regulations were replaced in 2019 by the Australian Human Rights Commission Regulations 2019 (Cth), but age remained a ground of declared discrimination. See reg 6. See International Labour Organisation, ‘Observation

30. Article 2 of the Discrimination Convention requires Australia “to pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof”. Under Article 3(c), Australia is required to, among other things, “repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy”.
31. Under Article 1(2), distinction “in respect of a particular job based on the inherent requirements” shall not be considered discrimination. The only other exception to the general obligations in the Discrimination Convention is found in Article 5 which concerns special measures, which we address below.
32. In a paper prepared for and published by the International Labour Organization in 1998, Youcef Ghellab distinguished between the situation of young workers involved in training or apprenticeship, and other young workers. In terms of the latter, Ghellab observed:
- Like other workers, not benefiting from any training in exchange for the work to be performed, they are entitled only to their pay. The lowering of the wage paid to young workers performing work comparable to that performed by an adult seems unwarranted, unless the age of the worker is considered as a valid criterion for discrimination.*⁶³
33. We submit that the current “junior rates” in these Awards are a form of wage discrimination affecting young workers who are otherwise performing the inherent requirements of a particular job, as prescribed by relevant Award classifications and levels.
34. This was effectively conceded by the parties opposed to the Application. The Australian Industry Group noted that the witness statements tendered by the SDA show that junior workers are being paid less for performing identical duties to older workers, undergo the same training, and require the same supervision as older

(CEACR) – adopted 1993, published 80th ILC session (1993)’ on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Australia.

⁶³ Youcef Ghellab, ‘Minimum wages and youth unemployment’, paper prepared for and published by the International Labour Office, 1998, page 21.

workers, but maintain that the Act effectively permits this.⁶⁴ Whatever the validity of this submission, this is of course a separate question to whether the lower rates in this Application are consistent with Australia's international labour obligations, and whether they should be retained in particular awards.

35. In our submission, the lower rates of pay for young adult workers which are the subject of the SDA's Application can only be a permitted form of discrimination under Australia's international labour obligations if they meet the requirements of a special measure.

1.4 Special measures of protection and assistance

36. Special measures of protection and assistance are permitted under Article 5 of the Discrimination Convention, and other international instruments concerned with equal treatment and discrimination. The International Labour Office has explained:

*Article 5 of the Convention envisages two kinds of special measures of protection and assistance: measures of protection and assistance provided for in international labour Conventions and Recommendations; and measures taken after consultation with employers' and workers' organizations and designed to meet the particular requirements of persons who require special protection or assistance.*⁶⁵

37. In relation to the first kind, which is permitted by Article 5(1), we are not aware of any international labour Conventions or Recommendations that expressly provide for lower wages for young workers.⁶⁶ Indeed, we note that the resolution and conclusions of the International Labour Conference in 2012 on "The youth employment crisis: A call for action" do not contemplate lower wages merely on the basis of age, but recognise that, "Recent national experience demonstrates that, during economic

⁶⁴ See AIG opening submissions at [PN1185-1186](#).

⁶⁵ International Labour Office, 'Fundamental Rights at Work and International Labour Standards' (Geneva, 2003), p76.

⁶⁶ Measures that are recognised for the purposes of Article 5(1) include things like maternity protection measures. See International Labour Office, 'Fundamental Rights at Work and International Labour Standards' (Geneva, 2003), pp76-77.

downturns, well-designed and targeted wage subsidies can facilitate the entry of young workers into the labour market and moderate the depreciation of skills.”⁶⁷

38. The second kind of special measure is provided for in Article 5(2), which reads:

Any member may, after consultation with representative employers’ and workers’ organisations, where such exist, determine that other special measures designed to meet the particular requirement of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

39. Commentary of the ILO Committee of Experts and the International Labour Office on Article 5(2) establishes that to be permitted as a special measure of protection or assistance, a policy must:

- a. in fact pursue the objective of offering protection or assistance, and ensure equality of opportunity and treatment in practice, taking into account the diversity of situations of certain persons;⁶⁸
- b. be proportional to the nature and scope of the protection needed or of the existing discrimination;⁶⁹
- c. once adopted, be re-examined periodically, in order to ascertain whether it is still needed and remains effective, bearing in mind that such measures are clearly of a temporary nature.⁷⁰

⁶⁷ ‘The youth employment crisis: A call for action’, Resolution and conclusions of the 101st Session of the International Labour Conference, Geneva, 2012, paras 47, and 48(j).

⁶⁸ International Labour Office, ‘Fundamental Rights at Work and International Labour Standards’ (Geneva, 2003), p77; General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ‘Equality in Employment and Occupation’, International Labour Conference 75th Session 1988, para 147.

⁶⁹ International Labour Office, ‘Fundamental Rights at Work and International Labour Standards’ (Geneva, 2003), pp77-78; General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ‘Equality in Employment and Occupation’, International Labour Conference 75th Session 1988, para 147.

⁷⁰ International Labour Office, ‘Fundamental Rights at Work and International Labour Standards’ (Geneva, 2003), p78; General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ‘Equality in Employment and Occupation’, International Labour Conference 75th Session 1988, para 147.

40. Special measures are permitted in other international human rights instruments relevant to Australia's international labour obligations, if they meet similar requirements. Article 10(3) of the ICESCR recognises that "Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination", and that "Children and young persons should be protected from economic and social exploitation." In General Comment 23 on the right to just and favourable conditions of work, the United Nations Committee on Economic, Social and Cultural Rights observed: "In order to accelerate de facto equality, temporary special measures might be necessary. They should be regularly reviewed and appropriate sanctions applied in the event of non-compliance."⁷¹
41. Similarly, in General Comment 20 (2009) on non-discrimination in economic, social and cultural rights, the Committee commented that in order to eliminate substantive discrimination "States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination".⁷² The Committee observed that such special measures are legitimate only to the extent they "represent reasonable, objective, and proportional means to redress de facto discrimination and are discontinued when substantive equality has been achieved".⁷³

Can lower wages for young people be considered a special measure of protection or assistance?

42. The International Labour Office has emphasised that special measures under Article 5(2) are a type of "preferential treatment...designed to restore a balance and are or should be part of a broader effort to eliminate all inequalities", and that they "may

⁷¹ United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)', 27 April 2016, para 32.

⁷² United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No. 20 (2009) on non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)', 2 July 2009, para 9.

⁷³ United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No. 20 (2009) on non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)', 2 July 2009, para 9.

take the form of positive or affirmative action for disadvantaged groups”.⁷⁴ Wage subsidies for young workers would be an example of such a measure of preferential treatment to provide protection or assistance.

43. The rationale for permitting lower pay for young people aged under 21 is not apparent in the Act, or in the explanatory memorandum for this legislation. However, Australia has advised the International Labour Organization, in the context of a direct request in relation to the Minimum Wage Fixing Convention, that lower rates for young workers are “necessary for securing employment for young people”.⁷⁵ Similarly, in *Re Modern Awards Review 2012 – General Retail Industry Award 2010 – Junior Rates* [2014] FWCFB 1846, the Commission stated, “Junior rates reflect the general lack of experience of young employees and can act as an incentive or encouragement to employers to engage young persons, thereby allowing young persons to get a start or foothold in employment when they might otherwise struggle to compete against older applicants.”⁷⁶
44. While the “junior rates” in these Awards may assist some young people to gain employment initially, they also actively disadvantage all people aged under 21 employed in relevant classifications in these industries. This is because they subject these workers to lower wages for many years from when they may feasibly gain employment (from around age 14, but potentially younger). This includes up to three years from when they reach the age of majority and are considered an adult for most other purposes (age 18).
45. As outlined in Part 1.5 of these submissions, these lower rates at best restrict various life choices young adult workers can make and hamper their ability to prepare for their futures, and at worst lead to severe disadvantage and hardship, and the undermining of other fundamental rights, such as rights to health, housing, education,

⁷⁴ International Labour Office, ‘Fundamental Rights at Work and International Labour Standards’ (Geneva, 2003), p77.

⁷⁵ Direct Request (CEACR) – adopted 2006, published 96th ILC session (2007) – *Minimum Wage Fixing Convention, 1970 (No 131) – Australia (Ratification: 1973)*.

⁷⁶ [2014] FWCFB 1846 at [104], cited in submissions of Master Grocers Association at [10]; submissions of the Australian Retailers Association at [37]; submissions of Business NSW-Australian Business Industrial at [20]. Similar rationales were also put forward in AIG opening submissions at [PN1191](#); and ARA opening submissions at [PN 1205-1208](#) and PN 1216.

basic food and clothes. They therefore are not a form of preferential treatment for young people, and cannot, in our submission, be considered a special measure of protection or assistance for young people under international labour law.

Are these measures proportionate to the nature and scope of the discrimination faced by young people in entering employment?

46. The International Labour Office has stated:

Because of the aim of protection and assistance which they are to pursue, these special measures must be proportional to the nature and scope of the protection needed or of the existing discrimination. A careful reexamination of certain measures may reveal that they are conducive to establishing or permitting actual distinctions, exclusions or preferences falling under Article 1 of the Convention.⁷⁷

47. To assess proportionality, there must be evidence of the “nature and scope of the protection needed or of the pre-existent discrimination”.⁷⁸ In the following section (from paragraph 50), we discuss some of the difficulties in reliably determining the nature and scope of alleged discrimination in the context of this Application.

48. In any event, we submit that the Commission can be satisfied on the evidence presented in this case, that “junior rates” of pay under these Awards are not a proportionate policy response, because:

- a. **They are overly broad in scope, and not sufficiently targeted to those young people who need assistance securing (or retaining) work.** These lower rates apply to all young workers aged up to 21 in the relevant classifications irrespective of their educational attainment, experience, skills, performance, or financial needs or situation.⁷⁹ They also apply to young

⁷⁷ International Labour Office, ‘Fundamental Rights at Work and International Labour Standards’ (Geneva, 2003), p77-78. See also General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ‘Equality in Employment and Occupation’, International Labour Conference 75th Session 1988, para 147.

⁷⁸ Equality in Employment and Occupation, International Labour Conference 75th Session 1988, para 147.

⁷⁹ GRIA junior rates only apply to employees at levels 1, 2 and 3. The Fast Food Award has only three levels of classification. Junior rates apply to all three levels. In the Pharmacy Award, junior rates are only applicable in respect of pharmacy assistants at levels 1 and 2.

workers who supervise other employees, including those who are older than them.⁸⁰

- b. **They are overly lengthy in duration.** These lower wages can apply to a young worker for many years, notwithstanding that the roles covered by junior wages in the Awards are generally low-skilled, and do not require extensive time (more than a few months) for most young people to develop capability.⁸¹
- c. **The evidence in this case suggests they are likely to have little impact in assisting young adult workers to secure (or retain) employment.** Many young people in these industries are already in employment by the time they reach 18 years of age.⁸² Many have relevant experience by the time they reach 18 years of age, and the evidence suggests that experience in a business or industry is more valuable to employers than age.⁸³

49. We submit that this evidence establishes that lower rates of pay for young workers in the Awards are not a proportionate response to any purported policy objective of assisting young adults aged 18-20 (inclusive) to secure (and/or retain) employment.

Are these measures temporary, are they still needed, and do they remain effective?

50. The ILO Committee of Experts has emphasised that special measures must be “justified by the aim of protection and assistance which they are to pursue”.⁸⁴ We submit therefore that the objectives of permitting “junior wages” in the Awards should be articulated explicitly and precisely. In our submission, the evidence in this

⁸⁰ General Retail Industry Award Schedule B.3; Fast Food Industry Award Schedule A.3; Pharmacy Industry Award, clause 16.2.

⁸¹ See Statement of Christopher John Turner at [7]; Statement of Jennifer de Witte at [8] to [15].

⁸² See for example Statement of Witness KB who worked at K-Mart, Coles, Krispy Kreme and then Big W; Statement of Witness RB, who worked at McDonalds and then K Mart; Statement of Witness RD, who worked at McDonalds and then in a retail dairy and deli; Statement of Witness AB who worked at Subway and then Coles; Statement of Witness PF who worked at KFC and then JB Hi-Fi; Statement of Witness JH who worked at both Coles and The Good Guys; Statement of Witness YH who worked at KFC and then Big W; Statement of Witness KJ who worked at McDonalds then Red Rooster and then at McDonalds again.

⁸³ Evidence Wisan Zoghbi (XXN) at PN 4438; evidence of Robyn-Anne Johnstone at PN 2325; evidence of Jessica Maria Knight (XXN) at PN 3931; evidence of Bruce Luchterhand (XXN) at PN 4438.

⁸⁴ General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ‘Equality in Employment and Occupation’, International Labour Conference 75th Session 1988, para 147.

case does not satisfactorily establish a clear and precise aim, beyond a general (and sometimes implied) assertion that they help young people secure employment.⁸⁵

51. Further, under international law, special measures are intended to be short-term measures to address discrimination, that will be discontinued once that has occurred.⁸⁶ Assessment of whether special measures are still needed, and whether they remain effective, requires evidence of the nature and scope of discrimination, noting that these things are not static and may change over time. Indeed, the ILO Committee of Experts has observed:

*measures taken in application of Article 5, paragraph 2, of the Convention, should be re-examined periodically, in order to ascertain whether they are still needed. A careful re-examination of certain measures may reveal that with the passing of time, with changes in production techniques and new attitudes, these measures may be found to establish or permit distinctions, exclusions or preferences falling under Article 1 of the Convention.*⁸⁷

52. This need to carefully re-examine special measures from time to time is, we respectfully submit, the role of the Commission in this case. This re-examination requires careful scrutiny of the evidence put forward by those parties opposing the Application about the current nature and scope of discrimination faced by young adults in securing (or retaining) employment, and about whether and if so how “junior wages” effectively protect young adult workers from this.

53. While the evidence of the expert economist witnesses in this hearing suggests that altering “junior rates” in the Awards would have some effect on the hiring practices of employers in these industries, we submit that the evidence was inconclusive about what that effect would be, and how it would impact the ability of young people to

⁸⁵ See, for example Statement of Nathan Charles Carrington at [19]; Statement of Robyn Anne Johnston at [30] and [57], [59-60]; Statement of Emma Bridges at [63] and [72]; Statement of Amanda Chisholm at [45]; Statement of Quinn On at [22].

⁸⁶ See for example Direct Request (CEACR) – adopted 2006, published 96th ILC session (2007) – *Minimum Wage Fixing Convention, 1970 (No 131) – Australia (Ratification: 1973)*.

⁸⁷ General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ‘Equality in Employment and Occupation’, International Labour Conference 75th Session 1988, para 147.

secure (and retain) employment, and their hours once in employment.⁸⁸ Similarly, while the evidence of some industry witnesses suggests that discriminatory attitudes about the value of young workers persist, the evidence was not conclusive on the nature and scope of these sorts of discriminatory attitudes, or how they impact hiring practices. Indeed, it could be argued that the high proportion of employees in these industries, and particularly in fast food, who are aged under 21 indicates lower rates of pay for this group are no longer needed, or are no longer an effective way to shift industry attitudes and practice.

54. In any event, we note that lower wages for young adult workers have been in place in Australia for over a century.⁸⁹ “Junior rates” have been part of the fast-food industry since its advent in the 1970s, and their operation in this industry has not been comprehensively reviewed until now.⁹⁰ If issues relating to the discrimination faced by young people in entering employment remain, and have not been substantially reduced as a result of these lower wages over this period of time, then we submit it is doubtful that they can be considered an effective measure. It is plain from both ILO commentary,⁹¹ and other submissions made in this case,⁹² that there are alternative policy options open to the Australian Government to address discrimination against young people in gaining and retaining work that would be more consistent with Australia’s international labour obligations.⁹³

55. Further, while “junior rates” may provide an incentive to some employers to employ some young people, we submit that evidence in this case suggests that they have little

⁸⁸ See Expert Report by Professor Philip Lewis 25 June 2025 at [13], [20],[50],[54][70]-[74]; Expert Report of Professor Jeff Borland 6 November 2024 at [34]-[44]; Reply report of Professor Jeff Borland at [24]; evidence of Professor Lewis (XXN) at PN1453 and PN1527; evidence of Professor Martin O'Brien (XXN) at PN658.

⁸⁹ See SDA Outline of Submissions at [34, [40], [50]-[51].

⁹⁰ See SDA Outline of Submissions at [59]-[63].

⁹¹ See for example ‘The youth employment crisis: A call for action’, Resolution and conclusions of the 101st Session of the International Labour Conference, Geneva, 2012; Youcef Ghellab, ‘Minimum wages and youth unemployment’, paper prepared for and published by the International Labour Office, 1998.

⁹² For example see RAFFWU submissions at [24].

⁹³ Indeed we note that in Australia’s sixth report under the International Covenant on Economic, Social and Cultural Rights submitted in 2023, Australia listed the policy measures it has in place to increase job opportunities for certain groups that face unique barriers to economic participation, including young people. Lower wages was not mentioned here. See United Nations Committee on Economic, Social and Cultural Rights, ‘Sixth periodic report submitted by Australia under articles 16 and 17 of the Covenant, due in 2022’, 17 October 2023, paras 170-175.

positive impact in assisting young *adult* workers to secure (or retain) employment in these industries. For example, the Commission heard evidence that:

- a. many young people in these industries already have relevant work experience by the time they reach 18 years of age;⁹⁴
- b. experience in a business or industry is more valuable to employers than age, and some employers would be unlikely to hire a young adult worker without any experience even with the option of paying “junior rates”;⁹⁵
- c. there are a high number of employees aged under 21 working in supervisory roles;⁹⁶
- d. young workers are inherently valuable to employers for a variety of reasons.⁹⁷

56. For these reasons, we submit that the Commission should carefully scrutinise general assertions that lower wages for young people are necessary to protect against youth unemployment, or to help young adults “get a foot in the door”.

57. In summary, we submit that lower rates of pay for young adult workers under the Awards cannot be considered a special measure of protection or assistance, and thus a permitted form of discrimination, under international labour law because:

- a. they do not provide preferential treatment, but instead actively discriminate against and disadvantage young workers – the group they purport to protect or assist;

⁹⁴ See for example Statement of Witness KB who worked at K-Mart, Coles, Krispy Kreme and then Big W; Statement of Witness RB, who worked at McDonalds and then K Mart; Statement of Witness RD, who worked at McDonalds and then in a retail dairy and deli; Statement of Witness AB who worked at Subway and then Coles; Statement of Witness PF who worked at KFC and then JB Hi-Fi; Statement of Witness JH who worked at both Coles and The Good Guys; Statement of Witness YH who worked at KFC and then Big W; Statement of Witness KJ who worked at McDonalds then Red Rooster and then at McDonalds again.

⁹⁵ Evidence Wisam Zoghbi (XXN) at PN 4438; evidence of Robyn-Anne Johnstone at PN 2325; evidence of Jessica Maria Knight (XXN) at PN 3931; evidence of Bruce Luchterhand (XXN) at PN 4438.

⁹⁶ See Statement of Christopher John Turner at [7]; Statement of Jennifer de Witte at [8] to [15].

⁹⁷ See paragraphs [26]-[27] above. See evidence of Emma Bridges (XXN) at PN3633-3638; evidence of Belinda Maree Cousens (XXN) at PN 3750-3757; evidence of Jessica Maria Knight (XXN) at PN 3931; and at PN3880 and PN3882-3884; evidence of Amanda Jane Chisholm (XXN) at PN4266-PN4278; evidence of Christine Wallace-Hughes (XXN) at PN2517-2521; evidence of Bruce Luchterhand (XXN) at PN 4392-97. And at PN 4438. See also evidence of Wisam Zoghbi (XXN) at PN4025 and at PN 4438; Statement of CB at [50]; evidence of Robyn-Anne Johnstone at PN 2325.

- b. they are not a necessary, effective or proportionate means of protecting or assisting young adults to secure (or retain) employment; and
- c. there is insufficient evidence before the Commission to justify their retention as a policy measure needed to assist young adult workers to secure (or retain) work.

1.5 Fair wages that provide an adequate standard of living

58. Australia is party to the ILO's 1970 *Minimum Wage Fixing Convention* (No. 131), which requires the setting of minimum wages. Under Article 3 of this Convention, the considerations in determining the setting of minimum wages include:

(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

59. The preamble to the ILO Constitution, and other ILO instruments, also recognise the importance of both “the provision of an adequate living wage”, and “the prevention of unemployment”.⁹⁸ A 2012 Resolution of the International Labour Conference on the youth unemployment crisis observed in relation to the connection between these two obligations that:

*Tackling youth unemployment should not disregard and weaken the protection to which young workers are entitled. Reflecting the universal strong support for core international labour standards, policies facilitating access to jobs should not lead to discrimination at work. Young workers have the same rights as all other workers.*⁹⁹

⁹⁸ See Preamble to the Employment Policy Convention 1964 (No. 122). See also International Labour Organization, *Minimum Wage Fixing Convention 1970* (No. 131), Article 3. Australia is a party to this convention. See also International Labour Organization, ‘R135 – Minimum Wage Fixing Recommendation, 1970 (No. 135)’, clause 1.

⁹⁹ ‘The youth employment crisis: A call for action’, Resolution and conclusions of the 101st Session of the International Labour Conference, Geneva, 2012, para 46.

60. In the 2014 General Survey, the ILO Committee of Experts explained:

While there is no universally accepted definition of a living wage, the idea behind it is that workers and their families should at least be able to lead a simple but decent life considered acceptable by society, in light of its level of economic development. They should be able to live above the poverty line and participate in social and cultural life.

The concept of a living wage, therefore, refers both to the existence of a minimum level of remuneration and to an acceptable standard of living.¹⁰⁰

61. The ILO Committee of Experts has explained that the concept of “fair wages” is a broader one that encompasses the notions of minimum wage and living wage.¹⁰¹

Article 7 of the ICESCR also recognises the right of everyone to “fair wages”, and remuneration which provides all workers with “A decent living for themselves and their families”. Article 23 of the *Universal Declaration of Human Rights* similarly refers to the right of all workers to “just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity”.¹⁰²

62. In General Comment No 23 (2016) on the right to just and favourable conditions of work, the United Nations Committee on Economic, Social and Cultural Rights observed that “All workers have the right to a fair wage”. The Committee explained:

The notion of a fair wage is not static, since it depends on a range of non-exhaustive objective criteria, reflecting not only the output of the work but also the responsibilities of the worker, the level of skill and education required to perform the work, the impact of the work on the health and safety of the

¹⁰⁰ Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), (2014), paras 52-53.

¹⁰¹ Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), (2014), para 58.

¹⁰² Referring to the right of all to ‘just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity’.

*worker, specific hardships related to the work and the impact on the worker's personal and family life.*¹⁰³

63. The Committee emphasised that notions of fairness and equality are closely linked to, and interdependent with, the right to remuneration that provides a “decent living” for workers and their families:¹⁰⁴

*While fair wages and equal remuneration are determined by reference to the work performed by an individual worker, as well as in comparison with other workers, remuneration that provides a decent living must be determined by reference to outside factors such as the cost of living and other prevailing economic and social conditions. Thus, remuneration must be sufficient to enable the worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing and additional expenses such as commuting costs.*¹⁰⁵

64. The Committee also explained: “The requirements of economic and social development and achievement of a high level of employment also need to be considered, but the Committee underlines that such factors should not be used to justify a minimum wage that does not ensure a decent living for workers and their families.”¹⁰⁶

65. In this case, the Fair Work Commission was presented with evidence from 60 young workers, around 40 of whom gave evidence of their financial circumstances. Of these witnesses, most are still living at home with their parents or guardians. Several

¹⁰³ United Nations Committee on Economic, Social and Cultural Rights, 'General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)', 27 April 2016, para 10.

¹⁰⁴ United Nations Committee on Economic, Social and Cultural Rights, 'General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)', 27 April 2016, para 18.

¹⁰⁵ United Nations Committee on Economic, Social and Cultural Rights, 'General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)', 27 April 2016, para 18.

¹⁰⁶ United Nations Committee on Economic, Social and Cultural Rights, 'General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)', 27 April 2016, para 22.

witnesses pay a contribution to board and lodging. Some witnesses describe how they spend their money, whether they are able to save, their future financial goals, their hopes of saving money to go to university, to travel, to move out of their parents' home or buy their own house, and to buy computers and vehicles.¹⁰⁷

66. We emphasise that it cannot be assumed that every person under 21 covered by these Awards receives financial support from their family or is able to live with family. Indeed, some witnesses who gave evidence in this case were in a position of having to financially support their families.¹⁰⁸ The evidence from young workers in this position underlines that “junior rates” are not fair, and are not enough to provide an adequate standard of living for all young people – particularly in a cost-of-living crisis. This impacts on the ability of young people to enjoy other rights, including rights to health, and education.
67. The Commission received unchallenged evidence from at least eight young witnesses who described how the hours they had to work due to these lower wages adversely affect their ability to lead a normal social life – such as spending time with family, friends, playing sport, music, and pursuing other hobbies.¹⁰⁹ Witness BW, a 15-year-old high-school student gave evidence that, "Prior to my employment with Hungry Jack's, I would participate in swimming on a Friday afternoon and cricket on a Sunday morning/afternoon. I had to sacrifice both sports due to my working hours."¹¹⁰
68. Young witnesses supporting themselves financially described the difficulties of studying while living on “junior wages”, and the adverse impact this had on their education.¹¹¹ Witness EM gave evidence that earning \$16/hour in her first casual job at K-Mart, was not enough to be able to support herself as a full-time university student, and she had to withdraw from university until she was old enough to earn an “adult” wage. She gave evidence that:

¹⁰⁷ Statements of AB at [58]; LW at [34]; DC at [28], BM at [40], MO at [35]-[36]; AT at [50], JT at [35], MW at [21], TW at [37], ZWL at [74], MMC at [38], IH at [137], KJ at [81], JK at [43], SL at [41], CM at [55], MM at [46].

¹⁰⁸ Statement of YH at [48]; Statement of AM at [52].

¹⁰⁹ Statement of EM at [32]; Statement of CH at [47]; Statement of EL at [60]; Statement of BW at [49]; Statement of ZWI at [73]-[74]; Statement of KJ at [83]; Statement of RD at [101]; Statement of JT at [36].

¹¹⁰ Statement of BW at [49].

¹¹¹ Statement of KB at [26]; Statement of EM at [31]-[36].

At this rate, I found it difficult to cover all my expenses while studying full-time at university. My wage barely covered my rent, groceries, and other necessities, and I was left with very little for any social activities or savings. At times, I felt I was simply working to get by. Ultimately, I dropped out of University after six months because I could not make ends meet whilst working 15-20 hours a week on junior rates. I did not want to further compromise the time I had to study by working longer hours, as I already felt that working 15-20 hours a week was doing that ... The increased wages [adult rates] ... made a significant difference in my ability to engage in my studies and life in general, compared to the financial limitations I faced while working at a junior rate.¹¹²

69. Indeed, due to limitations in the ability of young people under 22 to access social security benefits in Australia – irrespective of whether they are living with or receive support from their parents¹¹³ – many students rely entirely on work to fund themselves through undergraduate tertiary study.
70. Young witnesses who left school before finishing Year 12 also described the impact “junior rates” have had on their ability to afford food.¹¹⁴ Witness CH gave evidence that, “Some weeks I can only afford to eat instant noodles. I almost never have any money left over after purchasing food for the week. If I do, I use it to buy better food the week after. I get a staff discount at Woolworths, but it is so minimal it hardly makes a difference.”¹¹⁵
71. Of course, young adult workers covered by these Awards do not receive any discount on life's general expenses, despite being paid a lower wage. The cost of food, accommodation, clothing, transport, tertiary fees, vehicle registration, public transport, telecommunication services, sports membership and other fees and expenses are not reduced so as to compensate for the lower rates of pay they receive.

¹¹² Statement of EM at [31] to [34].

¹¹³ See Australian Government, Services Australia, Youth Allowance, ‘Dependent or Independent’ <<https://www.servicesaustralia.gov.au/dependent-or-independent-for-youth-allowance-student-or-australian-apprentice?context=43916>>.

¹¹⁴ Statement of KB at [24]-[30]; Statement of CH at [43]-[47].

¹¹⁵ Statement of CH at [46].

72. In our submission, the lower rates of pay for young workers in these Awards do not constitute a "fair wage" that guarantees an adequate standard of living, as required by international labour law. Further, for those young adults who have the least support, they negatively impact their ability to enjoy other human rights, such as rights to education, food and clothing, health and housing.¹¹⁶

Conclusion

73. In summary, we submit that in allowing employers in the relevant industries to pay young adult workers a proportion of the "adult wage", irrespective of their experience and performance, the Awards are inconsistent with Australia's international labour obligations. This is because they:

- a. violate the obligation to ensure equal pay for work of equal value;
- b. violate the obligation to ensure equality of treatment in employment, and instead discriminate against young adults on the basis of their age;
- c. cannot be considered a special measure of protection or assistance, including because they are not a necessary, effective or proportionate means of assisting young adults to enter (or remain in) the workforce;
- d. do not provide a fair wage that guarantees an adequate standard of living for all young adult workers.

74. We submit that the Commission should take these considerations into account when deciding whether to grant the SDA's Application, and in particular when weighing the various considerations set out in the minimum wages objective and the modern awards objective. We submit that granting the SDA's Application would bring Australia into closer alignment with its international labour obligations, while denying the Application would be a decision that is inconsistent with those obligations.

75. Beyond being a breach of Australia's international labour obligations, we submit that these lower rates actively disadvantage and harm young workers. For this reason, we submit that the Commission should carefully scrutinise any assertions that these lower

¹¹⁶ See United Nations Committee on Economic, Social and Cultural Rights, 'General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)', 27 April 2016, para 18.

wages are justified, necessary or effective. We submit that, in the face of evidence that they are causing harm to at least some young workers, the Commission would need cogent and compelling evidence to decide that they should be retained. We submit that this threshold has not been met on the evidence in this case.

76. Finally, as noted in section 1.5 of these submissions, international labour law provides guidance as to what is required for a wage to be considered ‘fair’. We submit that this should guide the Commission in its interpretation of the relevant provisions of the Act, and we note that it contradicts assertions that fairness in this context is subjective or something that is “in the eye of the beholder”.¹¹⁷

Anastasia Coroneo, Meredith Hagger, Matthew Keeley

Youth Law Australia

24 November 2025

¹¹⁷ See AIG opening submissions at [PN 1179](#).