

**Australian Catholic Council for Employment Relations**  
*After a century the minimum wage system abandons families*

**Briefing Paper**

**on**

**the Fair Work Commission's June 2014 decision which set wages on the basis of the needs of single workers, without taking into account the needs of workers with family responsibilities**

**10 September 2014**

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## Executive Summary

In its June 2014 Annual Wage Review decision the Fair Work Commission (FWC) decided that the "appropriate reference household for the purposes of setting minimum wages is the single person household"; *Annual Wage Review 2013-14*, [2014] FWCFB 3500, at paragraphs [38], [365] and [373].

This was the first time in more than a century of minimum wage setting in Australia that an industrial tribunal has decided that minimum wages should be set on that basis, thereby excluding considerations of the needs of workers with family responsibilities.

The FWC gave no indication to the parties that it was contemplating making a decision to adopt the single worker criteria and gave no reason for the change.

The purpose of this briefing paper is to show how the single person decision was:

- unfair to low paid workers and their families;
- contrary to law; and
- inconsistent with precedent.

Low paid workers and their families are entitled to ask, "Why has the minimum wage system abandoned us?"

### *Unfair to Low paid workers and their families*

The decision to adopt the single person test was made in the face of evidence that low paid workers and their children are living in poverty, even when the family is supported by a full time breadwinner. It followed an observation in the previous year's decision that:

"Low-paid employment appears to contribute more to the total numbers in poverty than does unemployment" (*Annual Wage Review 2012-13* [2013] FWCFB 4000, paragraph [408])

The declining relative living standards of low paid workers and their families have been known for more than a decade.

The major cause of the decline, and the fact that families are now living in poverty, has been the fall since the 1970s in the value of minimum wages relative to community wage levels. Despite that long term trend, until the turn of the century increases in family payments more than offset the decline in wages and lifted families out of poverty. Since then, and particularly over the past decade, family payments have only partially offset the decline in the relative wages, thereby reversing the earlier trend. Over the past decade the wage cuts have been too great and the increases in family payments have been insufficient.

The lowest minimum wage rates which carried much of the burden of family support in the past, have been reduced to a level where they are now regarded by the FWC as appropriate for the single worker without dependants.

The implication from the June 2014 decision is that the FWC believes that the sole responsibility for addressing poverty and disadvantage among low income families lies with government.

The FWC's decision came within a month of the introduction of the Federal Government's May 2014 Budget which has foreshadowed substantial cuts in family payments for low and middle income families. The Government does not, and will not, accept sole responsibility for the protection of working families against poverty. We are now confronted by a combination of wages and budgetary policies that will further entrench poverty and disadvantage in Australia.

The FWC has knowingly left families living in poverty with no prospect of improvement through the wages system. After having failed to protect families against poverty, the minimum wages system has abrogated any responsibility for the fact that many families are living in poverty.

#### *Contrary to law*

The FWC is required by the *Fair Work Act 2009* to set a “safety net of fair minimum wages” through the National Minimum Wage (NMW) and award rates of pay, taking into account economic and other factors, including "relative living standards and the needs of the low paid". One of the principal objects of the legislation is to promote "social inclusion for all Australians". The legislation is not to be limited to the promotion of the social inclusion of the single worker. A wage that is set on the basis of the single person does not promote social inclusion and is detrimental to the promotion of social inclusion for *all* Australians.

The term “safety net”, which is not defined, must be given its ordinary meaning. Its purpose is to protect workers in the ordinary and expected situations in which workers find themselves. ACCER argues that these situations will cover single persons, workers who are sole parents and workers with a partner and children. In the contemporary Australian context, having two children is within the scope of the ordinary and expected situation of workers. A safety net wage needs to be sufficient for each of these workers. A safety net designed for single workers cannot be a safety net for workers with family responsibilities.

Various sections of the *Fair Work Act* prohibit discrimination against an employee because of the employee's family responsibilities. The setting of wages on the basis of the single person

without family responsibilities excludes any consideration of workers with family responsibilities and cannot be consistent with the intent of the legislation.

ACCER argues that the legislation, if properly applied, complies with the terms of the International Labour Organisation's *Minimum Wage Fixing Convention, 1970*. This convention has been ratified by Australia, requires the recognition of the needs of workers and their families and economic factors. Article 3 of the convention provides:

“The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, 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.” (Emphasis added)

#### *Contrary to precedent*

The decision overturns a national practice that dates from 1907 when the judgment in the *Harvester Case* recognised that minimum wage rates should take into account the needs of workers with family responsibilities. The single person test is inconsistent with the decisions of the FWC and former national wage-setting tribunals, including decisions made under the widely criticised *Work Choices* legislation.

Minimum wages have continued to have a component, albeit decreasing, that recognises the position of workers with family responsibilities and assists them with the fulfilment of those responsibilities, in conjunction with government support.

In the last of its three passages concerning the adoption of the single person test (quoted above), the FWC referred to the written submission of the Australian Council of Social Services (ACOSS):

"[373] We note also that ACOSS adopted the position that the appropriate reference household for the purposes of setting minimum wages is the single person household [footnote] rather than couple households with children. This is also our view."

The footnote in this passage is "ACOSS submission at p. 6".

However, the ACOSS position was not as it was described by the FWC. The relevant passages in the ACOSS submission are:

"Decisions on the level of minimum wages should be informed by ‘benchmark’ estimates of the cost of attaining a ‘decent basic living standard’ for a single adult according to contemporary Australian standards.

The combined effect of the minimum wage and family payments on the extent of poverty among families should also be taken into account in setting minimum wages." (ACOSS submission page 6, emphasis added.)

The only occasion when the single person test was incorporated into a view on minimum wage-setting was in the dissent by Ross VP in *Safety Net Review – Wages - April 1997* in the Australian Industrial Relations Commission; but it was heavily qualified by a proviso that protected families against poverty. Vice President Ross, who is now President of the FWC, concluded:

“The objective of the award safety net should be to primarily provide a decent standard of living, significantly above poverty levels, for a single adult with no children. At the same time, along with the social security safety net, the award system should ensure that low wage earning families with children are at least lifted out of poverty” ((1997) 71 IR, 1, 147)

This view has not been advanced in any decision since that time, but, ACOSS has continued to urge it upon successive tribunals. The substance of the view is that the single person assessment does not prevent the setting of wages that will protect families against poverty. The single person rate does not provide a ceiling and permits the setting of a wage-rate that is above the minimum necessary for the single person to achieve a decent standard of living.

ACCER has argued that this approach is unacceptable because it leaves families with something short of a decent standard of living. However, it is much better than the position adopted by the FWC in 2014.

ACCER is opposed to a policy that would accept that families are not entitled to live at a decent standard of living. The mere avoidance of poverty is insufficient and unjust.

Nevertheless, the dissent and the ACOSS position recognise that poverty and poverty lines are useful concepts and measure as a step towards identifying the decent standard of living. In ACCER's view, their major shortcoming is that they do not answer the critical question "which families are to be protected against poverty?" Without an answer to this there is no guide to decision-making and no meaningful protection against poverty.

At the least, the FWC must keep families out of poverty in the ordinary and expected cases; and those cases must include families, whether couple parent or sole parent, with two dependent children. The FWC has an obligation to ensure that, in these ordinary circumstances, no child in a working family *need* live in poverty. This is a necessary, though insufficient, criterion by which to assess the decisions of the FWC. Even by this lesser standard, it has failed its statutory duty to provide a fair safety net of minimum wages and promote social inclusion.

## Chapter 1

### Overview

1. The June 2014 Annual Wage Review decision by the Fair Work Commission (FWC) will be known for its explicit rejection of a fundamental feature of more than a century of minimum wage setting in Australia.
2. For the first time, an Australian wage-setting body has decided that the "appropriate reference household for the purposes of setting minimum wages is the single person household"; *Annual Wage Review 2013-14*, [2014] FWCFB 3500, at paragraphs [38], [365] and [373].
3. The FWC's decision overturns a national practice that dates from 1907 when the judgment in the *Harvester Case* (1907) 2 CAR 1 (*Harvester*) recognised that minimum wage rates should take into account the needs of workers with family responsibilities.
4. The decision means that, unless it is overturned by a legal challenge or reversed by the FWC itself, the national wage-setting authority will no longer take into account the needs of workers with family responsibilities when setting the National Minimum Wage (NMW) and award rates of pay.
5. Two other extraordinary features of this decision are that the FWC gave no indication that it was contemplating the adoption of this policy and it gave no reasons for the decision. Neither the process nor the decision was transparent.
6. The FWC's decision, which was made in the context of evidence demonstrating unacceptable levels of child poverty among Australian working families, means that the welfare and needs of children will not be taken into account when setting minimum wages. After years of increasing social awareness of the need to make working arrangements more helpful to those with family responsibilities, the FWC has decided that family responsibilities will be irrelevant to the setting of minimum wages.
7. The exclusion of the interests of those who depend on a worker's wage is inconsistent with the objectives of various sections of the *Fair Work Act 2009* which provide protection for workers with families responsibilities. Section 153, for example, provides that the FWC "must not include terms that discriminate against an employee because of, or for reasons including, family...responsibilities".
8. The single person test is inconsistent with previous decisions of the FWC which have taken into account the economic circumstances of families. Further, it is inconsistent with decisions of the Australian Industrial Relations Commission

(AIRC) which also took into account the economic circumstances of families when setting minimum wage rates pursuant to similar legislation. In 2009, the Australian Fair Pay Commission (AFPC) confirmed that it would not set wages by reference to the needs of the single person.

9. The only occasion when the single person test was incorporated into a view on minimum wage-setting was in the dissent by Ross VP in *Safety Net Review – Wages - April 1997* (1997) 71 IR 1, when it was qualified by a proviso that protected families against poverty (at pages 141-7). Vice President Ross concluded:

“The objective of the award safety net should be to primarily provide a decent standard of living, significantly above poverty levels, for a single adult with no children. At the same time, along with the social security safety net, the award system should ensure that low wage earning families with children are at least lifted out of poverty” (Page 147)
10. The June 2014 decision leaves families in a worse position than that proposed in this dissent.
11. The implication from the June 2014 decision is that the FWC believes that it is the sole responsibility of government to address poverty and disadvantage among low income families and that the wages system has no role to play in that regard.
12. The decision came within a month of the introduction of the Federal Government's 2014 Budget which has foreshadowed substantial cuts in family payments for low and middle income families. The FWC's decision means that the budgetary impact on families will be ignored and only those that directly impact on the single worker, such as taxation rates or superannuation contributions, will be taken into account in future cases.
13. Within the space of a month we were confronted by a combination of wages and budgetary policies that will further entrench poverty and disadvantage in Australia. These changes will directly affect the working poor who rely on low paid employment and who, even with full-time work, are locked in poverty. They will have little effect on the majority of workers who have the capacity to bargain for higher wages, but for the more than 1.5 million workers and their families who are utterly dependent on the minimum wage rates set by an independent industrial umpire, the future is bleak.
14. The single person issue will be contested in the *Annual Wage Review 2014-15*. In the submission by the Australian Catholic Council for Employment Relations (ACCER) to the FWC in respect of the FWC's proposed Timetable for that review ACCER asked

that the issue be dealt with as a threshold preliminary issue. It sought the opportunity to argue a number of matters, in particular the following contentions:

- (a) the setting and adjusting of safety net wages under section 284(1) of the *Fair Work Act 2009* on the basis of the living standards and the needs of the single person household is contrary to law; and
- (b) the setting and adjusting of safety net wages under section 284(1) of the *Fair Work Act 2009* requires the Fair Work Commission to take into account the living standards and needs of workers with family responsibilities.

15. We said that the proposed process would give interested parties an opportunity to make submissions on this matter of major importance and provide an opportunity for the FWC to state its conclusions on the operation of the legislation and to give reasons for those conclusions. We also said that such a process would mean that any aggrieved party would have an opportunity to seek judicial review of the decision and that the reviewing court would be assisted by the clarification of matters that are relevant to a judicial review.
16. The FWC has rejected the proposal, but the issue will be considered:
  - "[3] We have decided not to add an early consultation process to the timetable. Instead, we intend to pose questions on notice to parties prior to the consultations scheduled for 19–20 May 2015. This may include, but not be limited to, questions on notice posed by the Expert Panel (Panel) before the close of submissions (initial submissions, reply submissions and post-Budget submissions).
  - [4] Together with the regular submissions process, we consider these questions will provide a reasonable opportunity for parties to discuss material and issues raised during the course of the review, including those questions posed by ACCER in its submission. Any questions posed by the Panel will be posted on the Annual Wage Review 2014–15 website as early as practicable." (FWC, *Statement*, 15 August 2014 [2014] FWCFB 5605)
17. It is our expectation that this process will achieve the objectives of our application for the earlier consultation.
18. This briefing paper has been prepared on the basis that it will assist those who have limited understanding of the important issues involved and be a resource for the submission that ACCER will make in its March 2015 written submission.



## Chapter 2

### The FWC's June 2014 decision

19. The FWC's decision on the single person test for wage-setting appears at paragraphs [38], [364] and [373]. The first states:

"[38] We note that a number of the proposed changes to tax-transfer payments announced in the 2014–15 Budget will particularly impact on families, rather than individuals. The appropriate reference household for the purposes of setting minimum wages is the single person household, rather than the couple household with children. For this reason, it should not be assumed that the tax-transfer payments announced in the Budget will automatically be taken into account in determining the level of the increase in next year's Review."

20. This passage was reproduced at paragraph [365] in the context of a discussion of taxes and transfers and the proposed changes in the 2014 Budget.

21. In the third passage concerning the single person test the FWC referred to the written submission of the Australian Council of Social Services (ACOSS):

"[373] We note also that ACOSS adopted the position that the appropriate reference household for the purposes of setting minimum wages is the single person household [footnote] rather than couple households with children. This is also our view."

The footnote in this passage is "ACOSS submission at p. 6".

22. However, the ACOSS position was not as it was described by the FWC. The relevant passages are:

"Decisions on the level of minimum wages should be *informed* by 'benchmark' estimates of the cost of attaining a 'decent basic living standard' for a single adult according to contemporary Australian standards.

The combined effect of the minimum wage and family payments on the extent of poverty among families should also be taken into account in setting minimum wages." (ACOSS submission page 6, emphasis added.)

23. The ACOSS position did not support the application of the single person test because ACOSS had argued that poverty among families also had to be taken into account when setting minimum wages. ACOSS's substantial commissioned research and its submissions to the FWC demonstrate that it was very concerned about poverty among low income working families and that it saw minimum wages as having a role to play in the protection of families against poverty. The ACOSS report on poverty, *Poverty in Australia 2012* (to which we refer later), showed that 20.5% of those living in poverty were in a household where there was at least a full-time worker. It was not put forward for mere observation, but to impress upon the tribunal the need for the FWC to take action.

24. We should also add that, contrary to implication in the reference to couple household(s) in paragraphs [38], [365] and [373], no party argued that wages should be set by reference to couple households with children. The position argued by the Australian Catholic Council for Employment Relations (ACCER) was that, in the absence of transfers being sufficient to cover the needs of a worker's dependants, a wage safety net should be set by reference to couple parent *and* sole parent families, with the number of children being set at two. We return to this aspect later.
25. There is one specific matter that might be noted about the 2014 decision. When referring to the assessment of needs, the FWC stated:
- "[322] As (sic) assessment of needs is more difficult. There is no single contemporary measure available to assess either the needs of the low paid or the extent to which those needs are being met. A variety of proxy measures must be used.
- [323] In assessing the needs of the low paid, we accept that if the low paid are forced to live in poverty then their needs are not being met. We also accept that those in full-time employment can reasonably expect a standard of living that exceeds poverty levels. *In assessing the needs of the low paid we rely on a range of measures including comparisons of hypothetical low-wage families with customary measures of poverty, both before and after taking account of the impact of the tax-transfer system and survey evidence of financial stress and material deprivation among low-paid households.*" (Emphasis added)
26. The last sentence is inconsistent with the decision to adopt the single person test. There is nothing in the June 2014 decision that shows that the kind of assessment in this sentence operates in any way on the new single person test, so as to act as some kind of qualification on this new approach. Its appearance is perplexing, but there is an apparent explanation for it. Paragraphs [322] and [323] are almost identical to paragraph [367] of the decision of June 2013 in the *Annual Wage Review 2012-13*, which was consistent with past decisions that took into account family circumstances and written before the decision to adopt the single person test. The inclusion of this sentence appears to be the result of an oversight in a "copy and paste" preparation of the decision, using the 2013 decision as a resource.

## Chapter 3

### The FWC's policy is inconsistent with Australian wage-setting history

27. We noted earlier that the decision to adopt the single person test will overturn a national practice that dates from *Harvester* in 1907. *Harvester* was a case arising under the *Excise Tariff Act 1906* and concerned the capacity of employers to obtain exemptions from the imposition of excise duties on their goods if they paid their workers “fair and reasonable wages”. The wage set in *Harvester* took into account family responsibilities and was based on an assessment of the needs of a family of five supported by a male breadwinner. The decision flowed through to Federal and State jurisdictions by way of a Basic Wage in industrial awards.
28. The *Harvester Living Wage*, as it was sometimes called, became a central feature of employment regulation in Australia and became part of the fabric of Australian life. Its expression was a product of that society, ie the male breadwinner and the family of five, but its substance was fundamental and enduring. We should not confuse the formula of *Harvester* with the substance of *Harvester*. The Living Wage was important because it recognised the need to fix fair and reasonable wages, the need for workers to live in dignity and the need for the worker to be provided with a wage sufficient to support a family. *Harvester*, and the decisions that followed, recognised that the setting of minimum wages needed to take into account the interests of the children for whom workers are responsible.
29. *Harvester* embedded fairness into Australian wage-setting. The FWC's decision, which is unfair to workers with family responsibilities, has occurred in the context of recent history in which fairness was removed and then restored to the wage-setting system. Fairness was removed from wage-setting by the *Work Choices* legislation in 2005 and restored to it by the *Fair Work Act 2009*. The FWC's decision is inconsistent with the policy and provisions of the legislation under which it now operates.
30. When the Australian Catholic bishops stated their opposition to aspects of *Work Choices* in 2005 they expressed a view on wages that was widely held across the Australian community:

"Workers are entitled to a wage that allows them to live a fulfilling life and to meet their family obligations. We are concerned that the legislation does not give sufficient emphasis to the objective of fairness in the setting of wages; the provision of a fair safety net by reference to the living standards generally prevailing in Australia; the needs of employees and their families; and the proper assessment of the impact of taxes and welfare support payments." (*Workplace Relations: A Catholic Perspective*, page 10)

31. The *Work Choices* legislation was enacted without addressing these concerns. The significance of the wage-setting charter established for the Australian Fair Pay Commission (AFPC) and its departure from past wage-setting provisions were referred to in a paper by the former Chairman of the AFPC, Professor Ian Harper:

“Notwithstanding the name of the Commission, the words ‘fair’ and ‘fairness’ did not appear among the criteria governing the powers of the AFPC. The closest the law came to obliging the Commission to consider distributional aspects of minimum wage-setting (i.e. the ‘needs’ or living standards of low paid workers) was the requirement to have regard to the provision of a safety net for the low paid. This was in stark contrast to the wording of the prior legislation and to the current *Fair Work Act*, which explicitly directs the AFPC’s successor (the Minimum Wages Panel of Fair Work Australia) to establish ‘fair’ minimum wages. Nor was there any express reference to the living standards or needs of the low paid, as there had been in prior legislation, and as there is now, reflecting the influence of the original *Harvester Judgement* and Justice J.B.Higgins’ notion of the ‘basic living wage’.” (*Why Would an Economic Liberal Set Minimum Wages?*, *Policy*, Vol. 25 No. 4, 2009, page 4.)

32. The *Work Choices* system was rejected, in part, because of its impact on working families. The “working families” campaign of the 2007 federal election campaign had real bite because many families believed they were not being treated fairly, to the detriment of family life.
33. ACCER welcomed the proposal by the Labor Government to change the wage-setting system. In fine words that have not been fulfilled, the then Deputy Prime Minister, Ms Julia Gillard, launched the new legislation:

“The signature values of nations are often defined by the circumstances of their birth. This is as true for Australia as for other countries. And for us there’s one value above all others that we identify with as truly our own. It’s the value that emerged out of the circumstances of Federation, which coincided with the industrial turbulence of the late nineteenth and early twentieth centuries. That *value* is *fairness*. Or as we like to put it: ‘the *fair go*’. It inspired us to establish a society that aimed to give every citizen a *decent standard of living*. And it led us in 1907 to establish *the principle of the living wage*.” (*Introducing Australia's New Workplace Relations System*, National Press Club, 17 September 2008, emphasis added.)

34. The reference to the principle of the Living Wage is to the principle and practice established by *Harvester*. The *Fair Work Act 2009* promised the return to fairness in wage-setting, with the objective of providing workers, including those with family responsibilities, the opportunity of achieving a decent standard of living.
35. We expected that, in regard to the setting of wages, the Labor Government’s *Fair Work Act 2009* would operate as a contemporary expression of *Harvester*. Essential to the

principle of the Living Wage was an acknowledgement that wages need to be set with regard to family responsibilities and the interests of children. A contemporary expression of *Harvester* would not be the formula set in 1907, but it would recognise the underlying fundamental principle. It would be concerned with establishing a wage that is sufficient to cover couple parent and sole parent families, without gender distinctions.

36. The single person test denies the value of fairness that underpinned *Harvester* and its objective of setting wages that take into account the needs of workers with family responsibilities. The interests of the children of workers, once central to Australian wage-setting, are ignored in the FWC's decision, even when many of them are living in poverty because their parent's wages are insufficient.

## Chapter 4

### Human rights include the right to just wages

37. Before discussing the wage-setting provisions of the *Fair Work Act* it is important to put minimum wages into a human rights context.
38. The International Labour Organisation's *Minimum Wage Fixing Convention, 1970*, which has been ratified by Australia, requires the recognition of the needs of workers and their families and economic factors. Article 3 of the convention provides:

“The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include--

  - (c) 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;
  - (d) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.”
39. The need for wages to take into account the position of workers with family responsibilities is evident in other international instruments.
  - The *Universal Declaration of Human Rights* provides that everyone who works has “the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection” (Article 23(3)).
  - The United Nations' *International Covenant on Economic, Social and Cultural Rights*, recognises a universal right “...to the enjoyment of just and favourable conditions of work which ensure, in particular: ... Remuneration which provides all workers, as a minimum, with ... Fair wages and... A decent living for themselves and their families” (Article 7(a)).
40. While Australian discussion on minimum wages might focus on *Harvester*, the same kind of discussion could be framed by the terms of international conventions and the human rights that have been recognised since *Harvester*.
41. The conferral of rights on workers also confers rights on their dependants. When the *Universal Declaration of Human Rights* declares the right of workers to an existence worthy of human existence, it is recognising a right of those who depend on workers to share in that fundamental right. In 1945, when close attention was being given to the nature and articulation of human rights, the International Labour Organisation

conference adopted a resolution concerning the protection of children and young workers. The resolution provided that

“[all necessary measures should be taken] to assure the material well-being of children and young persons by ... the provision of a living wage for all employed persons sufficient to maintain the family at an adequate standard of living” (*Resolution concerning the Protection of children and young workers*, 4 November 1945, paragraph 5(b)).

42. Children who depend on a parent’s wage have the same kind of right as the working parent: an existence worthy of human dignity, which is to be achieved through just and favourable remuneration. Similarly, the worker’s spouse who stays at home to care for the children has the same fundamental right, emphasising again the importance of a fair and just wage.
43. These provisions contain two important considerations for wage-setting.
44. First, the primary responsibility for the care of children is with the parents, and it is to be achieved through work. States have an obligation to support all people, especially the vulnerable, but the primary obligation for the care and nurturing of children is not on the State. The State is obliged to support parents in the discharge of their family responsibilities and has an obligation to supplement the support given by parents where it is required.
45. Second, the State may provide for some or all of the needs of a worker’s dependants through a range of family support mechanisms. Governments spend very substantial amounts on family support, by cash transfers and other benefits, and the extent of that support will depend on a myriad of factors. The *Minimum Wage Fixing Convention* recognises that social security benefits need to be taken into account. If the State provided for all of the needs of the worker’s dependants, the rights of workers and their dependants would not be violated by a decision to set wages by reference to the needs of a single person.
46. There is, therefore, no primary obligation on the State to support dependants which relieves the wage-setting authority of the obligation to set wages by reference to, amongst other factors, the needs of the worker’s dependants. In Australia, at least, no Government has accepted that it has the primary obligation to provide for the full support of the worker’s dependants to the exclusion of an obligation within the wages system.
47. In an increasingly globalised world, where the wage rates of the low paid may have a significant impact on the position of trade-exposed and trade-oriented sectors, there

may be sound economic reasons for a change in the respective contributions of the wage packet and the public purse to the support of low paid workers and their families. Without significant support through family transfers and other measures, globalisation will threaten low paid employment and family living standards. The threat to the socio-economic position of the least skilled imposes heavy obligations on governments, with careful judgments to be made about equity, inequality and social justice. It has obvious implications for the level of taxation and the work required of national budgets. Higher transfer payments and lower income taxation rates will enable the setting of wage rates at a lower rate than they would otherwise need to be in order to achieve the same standard of living. That is a matter for the wages system, after taking into account the extent to which transfers have addressed needs.

48. The rights that are recognised in these international instruments and the right that was recognised in *Harvester* have to be applied in the real world. The setting of wages on the basis of what is needed to provide a decent living (or any other criteria of adequacy) can have no arithmetical certainty. How do you provide for families by a generally applicable law when families may have between, say, one and six children? This will be the kind of question to address in particular contexts and there may be some serious dispute about the response made. However, the exclusion of a worker's dependants from the wage-setting process is a basic breach of the rights of workers with family responsibilities and of those family members who depend on workers.



## Chapter 5

### The FWC's policy is contrary to precedent

#### 5.A. The Safety Net Review Case 1997

49. The Australian system of wage-setting during the 20<sup>th</sup> century was essentially based on the conciliation and arbitration power in the *Australian Constitution*, under which the national tribunal was obliged to prevent and settle industrial disputes by conciliation and arbitration. Successive tribunals established principles and precedents for wage-setting within that jurisdictional framework.
50. In 1996 there was a significant change in the regulation of the minimum wage-setting process, although in a way that was broadly consistent with custom and practice. The 1996 amendments to the *Workplace Relations Act 1996* (previously known as the *Industrial Relations Act 1988*) contained provisions that established, for the first time, detailed enterprise bargaining provisions, both collective and individual. The bargaining system operated on a “safety net” of award provisions. The pre-existing awards became safety net awards.
51. The 1996 wage-setting provisions were similar to those now in the *Fair Work Act 2009*. The central provision was section 88B(2), which provided that the Australian Industrial Relations Commission (AIRC):
- “...must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following:
- (a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
  - (b) economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;
  - (c) when adjusting the safety net, the needs of the low paid.”
52. The first wage review and decision under this new system was in early 1997: the *Safety Net Review- Wages - April 1997* (SNR Case 1997), (1997) 70 IR 1. The decision introduced the Federal Minimum Wage (FMW), although it was not required by, or even mentioned in, the legislation.
53. The bench in the SNR Case 1997 was split, with Vice President Ross, now President of the FWC, dissenting on a number of issues.

#### *The majority decision in 1997*

54. In its consideration of the meaning and scope of “the needs of the low paid”, the majority referred to the “formidable problems” in estimating needs in the diversity of

circumstances in which low paid workers live. This led them to the conclusion that a benchmark approach was impracticable. They thought it was undesirable “to identify any family unit as appropriate for a benchmark” and did not accept the single person test (page 52). The majority held that “the needs of the low paid” was not a reference to the living costs of low paid workers. They took the view that “needs” should be “construed simply as an adjunct to ‘low paid’ without any further attempt to specify or quantify them” (see pages 51-3). This meant, in effect, that the legislation’s reference to the needs of the low paid was regarded as the need to protect the relative position of low paid workers in the new wages system. Significantly, this view was not repeated in subsequent decisions, where “needs” were treated as relating to the costs of living.

*Ross VP’s dissent in 1997*

55. Much of the discussion in the majority and dissenting decisions concerned the submissions on behalf of the Australian Council of Social Services (ACOSS), which proposed an “integrated approach” to the protection of the relative living standards of the low paid. It submitted:

“...[I]t would be inappropriate to use a family with children as the *primary* benchmark for a ‘living wage’ in the 1990s. Rather, the above evidence suggests that it should be *primarily* designed to provide an adequate standard of living for a single adult without children. However, consideration should also be given to the impact of the ‘living wage’ claim, in conjunction with income support payments and tax concessions, on low income families with children.” (Quoted at page 46, emphasis in the original)

56. Ross VP's dissent includes a substantial consideration of the ACOSS submissions. For present purposes the consideration falls into two parts.
57. The first concerns the standard of living to be attained through the minimum wage. ACOSS argued that the single adult living alone should be “able to attain a standard of living that would be generally regarded as ‘decent’ by the Australian community and can participate fully in the life of the community” (Ross VP, page 126). The Henderson Poverty Line (HPL) was rejected as the primary benchmark for setting minimum wage rates “as the primary benchmark for setting minimum wage rates, as the community expects full-time wages, together with income support payments, where appropriate, to provide a standard of living significantly above ‘poverty’ levels” (Ross VP, page 128). Ross VP went on to say:

“However I agree with the submission by ACOSS that as the proportion of wage earning families with children that is actually living in poverty has increased in recent years there is a role for the HPL or similar poverty benchmark in checking

whether minimum wages, together with income support payments, are at least sufficient to prevent poverty in these households.” (Page 128)

58. Ross VP rejected the HPL as the reference point for the level of income appropriate for a single person, adopting instead the “consensual poverty line” based on research undertaken by the Social Policy Research Centre at the University of New South Wales in 1989 and published in 1992. Applying that research he concluded that “persons employed at or below the rate prescribed for classification level C7 in the Metal Industry Award 1984 –Part I (ie \$503.80 per week) are below the *consensual poverty line*” (page 131, italics in original). Later the Vice President stated:

“In my view the minimum safety net wage should, over time, and consistent with prevailing economic conditions, be increased to the level of the *consensual poverty line* with consequent adjustments through the award structure to retain existing relativities.” (Page 177, italics in original)

59. The proposal for implementation over time, with consequential changes in award rates is significant. If the NMW, like the FMW in 1997, is to be adjusted to alleviate poverty, either some award classifications will be overtaken by the NMW and become redundant, or all classifications would be pushed up, as proposed by Ross VP.
60. The consensual poverty line was well above the rate adopted by the majority for the FMW: \$530.80 per week compared to \$359.40 per week. On 1 July 2014 the C7 rate in the successor award (the *Manufacturing and Associated Industries and Occupations Award 2010*) had increased to \$814.20 per week, \$173.30 per week more than the NMW of \$640.90 per week. Had the consensual poverty line increased by the Consumer Price Index percentage (57.8% from March 1997 to June 2014), it would have then been \$836.30 per week, \$195.40 higher than the NMW. If the original estimate of the consensual poverty line were to be adjusted to reflect changes in average incomes, the gap would have been substantially greater. It is doubtful that these adjustments to the consensual poverty line would get wide support as a measure of poverty for a single person in 2014.
61. The second relevant aspect of Ross VP’s decision concerns the protection to be afforded to families. In further reference to the ACOSS submissions, and its “integrated approach”, Ross VP noted that:

[Under the ACOSS] approach, wage regulation would be based on more explicit objectives and targets, which are designed:

- *primarily*, to provide a decent standard of living, significantly above poverty levels, for a single adult with no children;
- at the same time, *along with the income support system*, to ensure that low wage earning families with children are at least lifted out of poverty;....

In my opinion the *integrated approach* proposed by ACOSS is an appropriate way of conceptualising the relationship between the award safety net and the broader social safety net.” (Page 143, italics in original)

62. Ross VP added the observation that “one consequence of the relationship between these two concepts is that adjustments in the social safety net may have a bearing on the determination of the level of the award safety net” (page 143). Changes in the social safety net included changes in family transfers and taxation rates. This meant that a budgetary change might increase or reduce the work to be done by the wage packet in the support of families. It is to the contrary of the 2014 decision, which disconnects the wage-setting system from changes in the social safety net insofar as they affect families.

63. The Vice President’s summary of his conclusions on the social safety net includes the following:

“The objective of the award safety net should be to primarily provide a decent standard of living, significantly above poverty levels, for a single adult with no children. At the same time, along with the social security safety net, the award system should ensure that low wage earning families with children are *at least lifted out of poverty*.” (Page 147, emphasis added)

64. The second sentence of this formulation was critical to the integrated approach to wage-setting and demonstrated that a single person rate would not be set in a way that would keep families in poverty. The position of low income families and their protection was a major concern of Ross VP, which was evident in the following passages:

“Low income can lead to a substantial reduction in equality of opportunity for large numbers of people. There is strong evidence that both health status and educational attainment is influenced by socio-economic status, with children in low income families more likely to have lower educational outcomes, and with people on lower incomes more likely to experience serious health problems. Given the importance of both health status and educational attainment in influencing a person’s economic future, the impact of growing up in a low income family can be a substantial compounding of disadvantage in the longer term.” (Pages 140-1)

“I agree [with Bishop Challen of the Brotherhood of St Laurence] that wage fixation in Australia has reached a ‘fork in the road’. We can allow the living standards of low paid workers and their families to drift further below community

standards, or we can set clear objectives for maintain and improving them.” (Page 187)

“If we are to begin to address the problems confronting low paid employees and the widening gap between award and market wages we must do more than simply maintain the real wages of the low paid. Such a response simply preserves the status quo. A status quo in which income inequality is increasing and many low paid workers and their families have to go without food or clothing, is neither fair nor acceptable.” (Page 188)

65. We can see from the foregoing paragraphs that it was intended that the modified single person test would not permit the setting of the minimum wage that would leave families in poverty. The evident concern about the position of low income families is absent from the 2014 decision.
66. The June 2014 decision is inconsistent with the decision of Ross VP in 1997 because the June 2014 decision does not protect families against poverty.
67. There were two matters left in doubt by the ACOSS submissions and Ross VP’s decision. Even after the intervening years they remain unanswered.
68. First, there is no description of the way in which the protections for “families” and “children” are to be achieved. The major shortcoming is that the submissions and the dissent do not answer the critical question "which families are to be protected against poverty?" Without an answer to this question there is no guide to decision-making and no meaningful protection against poverty. To be meaningful, it would be necessary to specify the kinds of families covered and the number of children in those families. If this were done, we would expect that the families to be protected would be both sole parent and couple parent families. Because the number of children within families varies, we would need to know how far the protection extends. How many children are in the families to be protected? Clearly, a policy based on the protection of families would not require that the wage rate be based on the needs of families with eight children. Couple and sole parent families with two children would be within the ordinary and expected cases in contemporary Australia.
69. The second matter that is unresolved by the approach is the identification of a measure of poverty, which is necessary if we are to have decisions based on the objective of having families “at least lifted out of poverty”. We need a measure of poverty so that we will know what is required of wages, net of tax and supplemented by family payments. This also means that we need to consider the margin, if any, which these families would have above poverty should be identified. In 1997, Ross VP appeared to

accept the HPLs as a measure, as his comments at page 128 (quoted above) indicated. However, the FWC has since rejected the utility of the HPLs as a measure of poverty and now refers to the 60% relative poverty line, which demonstrates that many families who are supported by full time low paid work are living in poverty.

70. Furthermore, ACCER has had a substantial reservation about the approach adopted by ACOSS and Ross VP. It has opposed the view that the FMW/NMW should merely be set to ensure that families will not fall into poverty. Families need to be supported at a decent standard of living. A wage that leaves families on the poverty line and unable to participate in community life with a realistic opportunity for the children to achieve a better life requires something more than a life on or near the poverty line.
71. ACCER has argued that something above poverty is required so that the wage safety net delivers a decent standard of living to families in the "ordinary cases". The ordinary cases include couple and sole parent families, as well as single workers. A safety net wage should be sufficient for these groups. A safety net wage that is sufficient for one or two, but not all three, would be inadequate. Given the inadequacy of family payments, this objective will mean that the wage of a single person will be more than that needed to provide him or her with a decent standard of living and, with the NMW being based on "needs", that there will be a degree of over-compensation. If this over-compensation of needs is unacceptable from an economic point of view, then it is the function of government to increase transfers to a point where there will be no over-compensation of single workers.
72. ACCER's concerns about the approach by ACOSS and Ross VP position are minor compared to its concerns about a single person test that fails to take into account the position of families, even when they are living in poverty. The approach of Ross VP in 1997 is to be much preferred to a single person test taken in June 2014 that excludes consideration of families.

#### **5.B. AIRC Cases 1998 to 2005**

73. The dissent of Ross VP in 1997 was the last dissent in national wage-setting decisions. In the period between 1997 and 2005 (after which the AIRC lost its capacity to set minimum wages) the AIRC's Safety Net Review decisions on were unanimous decisions. Subsequent decisions by the AFPC and the FWC have also been unanimous.

74. In the *Safety Net Review Case 1998* (Print Q1998, (1998) 79 IR 37), presided over by a new President, Justice Giudice, the division of the previous year was overcome and Ross VP joined in the unanimous decision. The decision noted that in the previous year the tribunal had “decided not to establish a federal minimum wage by reference to a defined benchmark of needs and not to undertake an inquiry to develop a benchmark of wage adequacy” (at Chapter 9.3) and refused to depart from that approach. However, the AIRC implicitly rejected the majority view in 1997 regarding the meaning of the term “the needs of the low paid”. This is apparent from the recitation of submissions and the AIRC’s conclusions in Chapter 7, entitled “Needs and the low paid”. The needs of the low paid were treated as the living costs of the low paid.
75. It should be noted that the term "benchmarks" was used in two ways: as a defined benchmark of needs, such as a single person or family of four benchmark, and as a benchmark of wage adequacy, such as the poverty line.
76. It appears that the 1997 controversy between Ross VP and the other members of the bench was resolved in 1998 by needs being treated as living costs, the abandonment of the modified single person test and the rejection of any particular benchmark of needs. This shaped subsequent annual reviews by the AIRC.
77. Over the period to 2005 the impact of the tax-transfer system was part of the safety net review process and changes in the impact of the social wage on families were taken into account by the AIRC. Safety net increases were seen as providing for the needs of low paid workers and their families, along with the social wage. For example, in May 2002 the AIRC said:
- “**[144]** It appears to us that there is general agreement amongst the major parties that minimum award wages and the social wage are complementary and inter-related mechanisms for addressing the needs of the low paid.
- [145]** Inevitably the wages system interacts with both the social security and taxation systems. Safety net adjustments will be, to a certain extent, offset by higher taxes and/or lower social security payments. . . .
- [147]** We agree with the proposition that the tax-transfer system can provide more targeted assistance.” (*Safety Net Review Case 2002*, decision Print PR002002)
78. The 2014 decision is inconsistent with this earlier approach because it has disconnected the wages system from the social security system.

79. However, the single person test, in its unqualified form, had not gone away. For example, in the Safety Net Review of 2001 the Australian Industry Group unsuccessfully submitted that:

“...the responsibility for addressing any social problem for low paid workers should not rest with employers but that Governments should ensure that social welfare systems are adequate to address the social security needs of constituents.”  
(*Safety Net Review Case, 2001*, PR002001, paragraph [110])

80. In the 2003 and 2004 Safety Net Review Cases ACCER’s written and oral submissions argued for an inquiry into the needs of the low paid and opposed the single person approach. ACCER was represented by Frank Costigan QC and Paul O’Grady in both years.

81. In 2003 ACCER’s written submission referred to suggestions that a single person test be adopted. It referred to *Harvester* and the *Safety Net Review Case, 1997* and said:

“If the AIRC were to formally adopt the single person criteria for the establishment of the Federal Minimum Wage it should only do so if it is satisfied that there are adequate mechanisms in place, by way of the taxation and welfare systems, that would guarantee the proper financial needs of the wage earner’s dependants. Moreover, unless and until governments make commitments to the continuation and further implementation of policies for the support of dependants, *the AIRC should not abandon the principle that a minimum wage should take into account the needs of dependants.*” (ACCER submission, 25 February 2003, paragraph 28, emphasis added.)

82. The claim that there was an observed principle that the minimum wage should take into account the needs of dependants was well-founded. The fact that the AIRC had not adopted a benchmark or benchmarks of needs did not contradict or qualify that fact.

83. The AIRC did not specifically address the single person test in the 2003 decision. However, the position of families was discussed in the context of submissions on the relevance of the social wage. The AIRC said:

“[224] The role of the tax-transfer system (generally referred to as the social wage) in reducing inequality and assisting the low paid was also a feature of a number of the submissions in these proceedings, as was the case in last year’s proceedings. In this context the social wage encompasses the system of cash transfer payments, the taxation system and the provisions of indirect benefits such as Medicare and the education system.”

84. The AIRC then referred to its view on this aspect in the 2002 decision and said:

“[226] Nothing in the material presented on this occasion leads us to alter the views expressed in last year’s decision. We acknowledge that safety net increases are an imperfect and partial mechanism for addressing the needs of the low paid.”



85. ACOSS, like ACCER, asked the 2003 wage bench to establish an inquiry into the needs of the low paid. The requests were not supported by any party to the proceedings. Under the legal framework at the time, ACOSS and ACCER were interveners in an industrial dispute between employers and unions about minimum wages. The absence of any support from a party, especially the Australian Council of Trade Unions (ACTU), meant that the request had little chance of success. The AIRC rejected the claims for an inquiry:

“[221] We have given consideration to the proposals by ACCER and ACOSS that the Commission conduct an inquiry into the needs of the low paid in order to ascertain an appropriate benchmark for the adequacy of the federal minimum wage, but we have decided not to take this course. We note that the call for an inquiry of the type proposed by ACCER and ACOSS was not supported by any party in the proceedings.

[222] Our rejection of the proposals for an inquiry should not be taken as a rejection of the utility of empirically determined "benchmarks" such as the poverty line. Indeed, it seems to us that the use of such measures is relevant to an assessment of the needs of the low paid. In this context we also note that in their oral submissions ACCER argued that the Commission must ensure the minimum rates it sets (and in particular the federal minimum wage) do not fall below the poverty line. It was put that this task involved determining questions such as *"what are needs, who are the low paid, what is the poverty line, what is living in poverty and how does the federal minimum wage compare to the poverty line?"* We acknowledge the relevance of the questions posed by ACCER and would be assisted by submissions and material directed to them. As we have already noted empirical studies dealing with these matters would be of more assistance to the Commission in addressing the specific matters mentioned in the Act than the type of illustrative evidence adduced by the ACTU in these proceedings. There is no impediment to ACOSS and ACCER, or any other party, bringing forward such material in any future safety net review. It is not, however, desirable for the Commission to establish a separate inquiry for that purpose particularly in view of the absence of any support for the proposal from any other party or intervener.

86. The questions noted in this passage had been posed by Mr Costigan, who said:

“We say in order to satisfy its statutory obligation to have regard to the needs of the low paid the Commission must ensure that the minimum rates it sets, most particular the Federal minimum wage, do not fall below the poverty line. And we would say simply, and stress, that it is a fundamental need of the low paid not to live below the poverty line. Now, in one sense, that is a statement that is easily made, but there are a number of complex issues involved in it. There is a question of determining, what are needs, who are the low paid, what is the poverty line, what is living in poverty, and how does the federal minimum wage compare to the poverty line?” (Transcript, 1 April 2003, PN694.)

87. In 2004 ACCER returned to the same kind of issues raised in 2003. The 2004 submissions had a more specific focus on needs because the ACTU had commissioned

substantial Budget Standards research from the Social Policy Research Centre (SPRC) at the University of New South Wales regarding the living costs of low paid workers and their families. The SPRC data on the living costs of families included single breadwinner couple families with two children. The relevance of this material was contested by the Australian Chamber of Commerce and Industry (ACCI), which pointed to the number of dual income families. The AIRC responded:

“[275] One of ACCI's criticisms of the SPRC budget standards relates to the allegedly unrepresentative nature of the "household types" utilised by the ACTU for the purpose of comparison with the SPRC budget standards. In particular, ACCI noted that less than a quarter of couple families have a single wage earner *"the only scenario the ACTU brings forward to the Commission"*. It submitted that *"this selective approach renders [the ACTU's] material unrepresentative"*. We do not accept the premise implicit in that submission, namely, that only dual income couples are relevant in connection with any consideration of budget standards. Whilst a significant proportion of Australian families continue to rely upon a single wage as their sole source of income, the needs of single income families will continue to be relevant in connection with a consideration of the needs of the low paid.” (*Safety Net Review Case, 2004, PR002004, italics in original*)

88. The concluding sentence of this paragraph is significant. Not only did it reinforce the position that the needs of families would be taken into account when setting wages, but that the AIRC would take into account the position of single breadwinner families.
89. It might be noted in this context that in the *Annual Wage Review 2013-14*, ACCER produced data from the national Census of August 2011 which showed the employment profile of low income couple parent families with two children. The data included families with a reported disposable income that would have been below the 60% relative poverty line. Within this group the percentage of single breadwinner families was greater than the number of families with two breadwinners by a margin of almost two to one; see ACCER submission, March 2014, Table 32.
90. ACCER has also argued that, as a matter of principle, safety net wages should not be reduced by the fact that economic pressures force some families to have a second breadwinner. It has argued that the decline in minimum wages has placed economic pressure on families for the second parent to obtain employment and that a second parent should not be placed in a position where employment is needed just to avoid poverty. These are broader issues that are covered in Chapter 7B.
91. The connection between poverty lines and the needs of the low paid were addressed in the 2004 decision in the following terms:

[287] The Act makes no reference to a "poverty line" but rather focuses on the issue of the needs of the low paid. To the extent that the poverty line is a relevant consideration, ACCI noted that the concept remains "highly contested" and submitted that this precludes it as a measure to guide the Commission's action. The evidence before the Commission in the present application is inconclusive. However, we do not accept that the Commission could not rely upon a poverty line as a tool to assist it in determining the needs of the low paid if it had probative evidence by which a poverty line could be accurately identified.

92. In the *Safety Net Review Case 2005* we see a continuation of the consideration of families, again without any benchmark family or families:

[353] We also acknowledge that some of the changes to the income tax and tax transfer system identified by AiG [the Australian Industry Group] have had a beneficial impact on the disposable income of some low-paid employees. We have taken these changes into account in deciding the amount of the safety net adjustment....Consistent with AiG's submission we have not taken a mechanistic approach to this issue. Rather, *the social safety net changes have formed part of the broad exercise of judgment we have undertaken to determine the quantum of the safety net adjustment....*" (Emphasis added)

93. This passage evidences a feature of the AIRC's decisions through to 2005: a remarkable lack of explicit detail about how it has assessed the needs of the low paid. Rather than spell out its assessments of needs of one or more kinds of households, it adopted the "taking everything into account" approach to wage setting.
94. It is true, of course, that the AIRC had to take into account a range of economic and social factors when setting wages. The *Fair Work Act* requires that decisions be made, and wages set, upon a consideration of a range of factors.
95. However, the requirement to take into account a range of factors has been used, in effect, to avoid the detail of how the tribunal has assessed the needs of the low paid and what it has taken into account in forming an opinion about the levels of need. It is a practice not unique to the FWC: it is a practice sometimes found in courts and tribunals. This can be a particularly frustrating approach because it denies the parties and the public at large any indication as to how evidence has been assessed and how any shortcomings in the evidence may be addressed in the future.
96. This broad and imprecise way of explaining decision-making is inconsistent with the legal obligations which are imposed on authorities that are required to take into account a range of statutory criteria. In *Minister for Immigration and Citizenship v Khadgi* [2010] FCAFC 145 (at paragraph 63) a Full Court of the Federal Court reviewed various authorities dealing with the giving of reasons for a conclusion on a matter that involved a statutory obligation to have regard to a range of matters:

“In *Lafu v Minister for Immigration and Citizenship* (2009) 112 ALD 1, at [47]–[54] (pp 7–8), the Full Court held:

(a) In circumstances where a decision-maker is required to have regard to several specified or prescribed mandatory considerations, he or she must genuinely have regard to each and every one of those considerations and must engage actively and intellectually with each and every one of those considerations by thinking about each of them and by determining how and to what extent (if at all) each of those criteria might feed into the deliberative process and the ultimate decision; and

(b) The reasons for decision published by a decision-maker who is obliged to have regard to mandatory considerations should show such an active intellectual engagement with all mandatory criteria although such reasons are:

'... meant to inform and [are] not to be scrutinised by over-zealous judicial review by seeking to discern whether some inadequacy may be gleaned from the way in which the reasons are expressed [see *Minister for Immigration and Ethnic Affairs v Liang* [1996] HCA 6; (1996) 185 CLR 259 at 272].' ” (Additions in square brackets by the Full Court)

97. The obligation to engage in a transparent and active intellectual process in regard to ascertaining the needs of the low paid has received insufficient attention by successive wage-setting tribunals. This can be tested by asking “is there any estimation by a tribunal of the living costs of one or more kinds of households in order to achieve a decent standard of living (or some other measure)?” The answer is that there is none, despite a statutory obligation to take into account living standards and the needs of the low paid going back to 1997. A transparent and active inquiry into relative living standards and the needs of the low paid would enable the public to know the extent to which economic and other factors have operated as a constraint ability of the tribunal to provide a decent or acceptable standard of living.

### **5.C. Work Choices and the Australian Fair Pay Commission, 2006-2009**

98. The *Work Choices* amendments of late 2005 introduced a different statutory basis for setting wages. The AFPC was not obliged to take into account relative living standards and the needs of the low paid, but it was required to “have regard to...providing a safety net for the low paid” (section 23(c)).

99. In its 2006 decision the AFPC concluded:

“The income support and family assistance safety net, and its continued improvement over recent years, allows people with family responsibilities

to rely solely on a single wage to support their families.” (*Wage-Setting Decision No. 2/2006*, page 96.)

100. That conclusion was partly based on a calculation that the single breadwinner family of four, estimated at July 2006, was 31% above the Henderson Poverty Line (HPL) for that kind of family (Table 5.2). Significantly, the margin that the single worker had over his or her HPL was also 31%. The AFPC returned to the position of working families in the following year’s decision:

“Continued improvements over many years in the extent and coverage of income transfers for working families have resulted in families now having disposable incomes well in excess of relevant HPLs.” (*Wage-Setting Decision No. 3/2007*, page 70.)

101. These conclusions appeared to sit well with ACCER’s argument that minimum wage rates, and the FMW in particular, should be sufficient to provide an acceptable standard of living for workers and their families. But they were erroneous conclusions.
102. The AFPC’s assessment of the disposable income of the single breadwinner family of two adults and two children was based on the inclusion of the unemployment benefit, the Newstart allowance, that was payable to the second parent only if that parent sought paid employment. A parent who chooses to stay at home to care for the children was not entitled to that benefit.
103. Following ACCER’s submissions in 2007 and 2008 regarding the inclusion of the Newstart allowance, a separate calculation in respect of this family, as at December 2007, was made in Table 4.4 of the 2008 decision: *Wage-Setting Decision and Reasons for Decision, July 2008*. The difference between the two calculations, ie with and without the Newstart allowance, was substantial. In a FMW-dependent household the difference was \$98.96 per week. Rather than this family being 22% above the HPL (which was calculated on the basis of the unemployment benefit) the family with the stay at home parent was only 8% above the HPL. The substantial decline from July 2006, from 31% to 22%, was unremarked.
104. The optimistic assessments in 2006 and 2007 were not only qualified by the proper exclusion of the Newstart allowance, but also by the decline of minimum wages relative to the rising HPLs. In its final decision in 2009 the AFPC recorded that, by December 2008, the family of four in receipt of Newstart had fallen to a margin of only 15% above the poverty line; *Wage-Setting Decision and Reasons for Decision, July*

2009, Table 6. This contrasted with the 31% assessment for July 2006. Excluding Newstart, the family was only 2% above the HPL at December 2008, according to the 2009 decision.

105. In 2008 the AFPC calculated the 60% relative poverty lines for the same families, as at December 2007. They showed that the family of four with Newstart was 5% above the poverty line, but without Newstart the family was 7% below the poverty line (Table 4.5). In the 2009 decision, the calculations for December 2008 showed 2% above and 10% below, respectively (Table 5). This substantial decline was not commented on in the 2009 decision.

*The single person test rejected by the AFPC*

106. In the course of these declining fortunes for all households, the AFPC made the following comments in its July 2008 decision about the position of the single person household:

“Of the household types whose disposable incomes the Commission has modelled, a single person without children is the only one whose disposable income does not depend on income transfers. These wage-earners have disposable income that is 25 per cent above the relevant HPL and 21 per cent above a poverty line based on 60 per cent of median equivalised disposable income. In the Commission’s view, *this is a reasonable margin above poverty for a person earning the lowest adult full time wage in the regulated labour market.*” (*Wage-Setting Decision and Reasons for Decision, July 2008*, page 68, emphasis added.)

107. AFPC found that the FMW produced a reasonable margin above poverty for a person earning the FMW. The AFPC’s assessment of the single person having a reasonable margin above poverty was based on those two measures (the HPL and the relative poverty line), and not on any other empirical research.
108. ACCER saw the quoted passage in the AFPC’s 2008 decision regarding the reasonableness of the single person’s living standard as necessarily implying the establishment of the single person test for wage-setting.
109. ACCER raised its concerns about the single person issue in its submissions to the AFPC in the 2009 wage review. The submissions included the claim that the single person test was contrary to the terms of the *Minimum Wage Fixing Convention 1970*. Under the heading “Providing a safety net for the low paid” in its July 2009 decision, the AFPC’s opening paragraph addressed that claim:

“The Commission maintains its view that the income safety net is provided by the combination of minimum wages and the tax/transfer system, with the Australian

Government responsible for the latter. This is consistent with Article 3 of the International Labour Organisation (ILO) C131 *Minimum Wage Fixing Convention, 1970* (ratified by Australia in 1973), which lists social security benefits in the range of factors to be considered in determining minimum wage levels.” (*Wage-Setting Decision and Reasons for Decision, July 2009*, page 50)

110. This passage makes it clear that the AFPC was not intending to adopt the single person test. This was reinforced in the following paragraphs where the AFPC discussed the submissions put to it and the need for it to set wages having regard to the impact of changes in the tax/transfer system. It stated that “information on recent trends in the disposable incomes of households reliant on minimum wages, either solely or in combination with income transfers, is relevant to its deliberations” (page 52).
111. These passages in the 2009 decision reinforced the position that the AFPC had first taken in 2006: family responsibilities were relevant to the setting of wage rates and the wages safety net, in conjunction with family payments, played a role in supporting the living standards of low paid workers and their families.

#### **5.D. Wage-setting under the *Fair Work Act, 2010-13***

112. In regard to families and the position of workers with family responsibilities, the AFPC continued the approach taken by the AIRC from 1998 to 2005. So too did Fair Work Australia, later re-named the FWC, when it made its initial decision following the enactment of the *Fair Work Act 2009*:

“[242] We agree that minimum wages and the tax/transfer system are both relevant to the maintenance of an effective safety net for the low paid: each has its part to play. Wages play a particularly important role in the maintenance of disposable incomes for households not receiving income support payments.” (*Annual Wage Review 2009-10*, [2010] FWAFB 4000)

113. This approach was repeated in the next three decisions, but not in 2014. ACCER's concern over this time was that, despite mounting evidence of increased wage inequality and rising poverty among low income working families, inequality and poverty were not targeted. We return to this aspect in Chapter 10.

## Chapter 6

### The FWC's policy is contrary to law

114. Our principal objective in this chapter is to discuss the terms of the *Fair Work Act 2009* in order to demonstrate that the decision to adopt the single person test is, in our view, contrary to Australian law.
115. The general and overarching object of the *Fair Work Act* is in section 3: the object of the Act is "...to provide a balanced framework for cooperative workplace relations that promotes national economic prosperity and *social inclusion for all Australians...*" (emphasis added). The legislation is not to be limited to the promotion of the social inclusion of the single worker. A wage that is set on the basis of the single person does not promote social inclusion and is detrimental to the promotion of social inclusion for *all* Australians.
116. The FWC, when setting minimum wages, has to take into account various social and economic factors. The "minimum wages objective" is set out in section 284(1), which provides:
- "The FWC must establish and maintain a safety net of fair minimum wages, taking into account:
- (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and
  - (b) promoting social inclusion through increased workforce participation; and
  - (c) *relative living standards and the needs of the low paid*; and
  - (d) the principle of equal remuneration for work of equal or comparable value; and
  - (e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability." (Emphasis added)

#### *The safety net*

117. The fundamental purpose of the subsection is the setting of a safety net wage. The term "safety net" is not defined and it must be given its ordinary meaning. It is concerned with providing living standards that are set in a social and economic context. The living standards provided must take into account the needs of the low paid and relative living standards in Australian society. There is a diversity of situations in and across society that may enter into this process. The safety net has to be *fair* and the balancing of a range of factors is fundamental to that task. Short term economic factors may



provide a constraint on the capacity of a tribunal to provide what it might regard as a desirable wage rate.

118. This duty has to be exercised in the context of a minimum wage rate having different outcomes across the workforce as a whole. The legislation must be taken to be based on that expectation and on the objective of the setting of a fair wage in that context. It should be accepted that the safety net provided by a minimum wage rate is not intended to be cover extraordinary or unusual cases. A safety net for the benefit of workers has to take into account the ordinary and expected situations in which workers find themselves, but not the exceptional.
119. Having children and family responsibilities is within the scope of the ordinary and expected circumstances to be addressed by a wages safety net. The safety net need not be based on the needs of, for example, the position of the family with nine children. In the contemporary Australian context, having two children is within the scope of the ordinary and expected situation of workers.
120. A safety net designed for single workers cannot be a safety net for workers with family responsibilities because it excludes any consideration of those ordinary and expected circumstances.
121. The legislation has a stated beneficial purpose of promoting “social inclusion for all Australians” with particular emphasis on the needs of the low paid. The term “low paid” is not defined in the legislation. The FWC has adopted a working definition of “low paid”: “...a threshold of two-thirds of median full-time wages provides a suitable and operational benchmark for identifying who is low paid”; *Annual Wage Review 2013-14*, decision, paragraph [310]. The state of the data does not provide a precise figure for this threshold. At May 2012 the two measures used by the FWC showed \$766.67 and \$808.00 per week; paragraph [316]. At mid-2014 the mid-point between the two measures would be a little over \$800.00 per week, or \$41,600 per year. These are pre-tax figures. For the 2014-15 year the net income would be \$693.79 per week, or \$36,077.00 per year.

*The needs include the needs of workers with family responsibilities.*

122. The term “needs” is not defined in the legislation. The identification and measurement of needs has been the subject of submissions in successive wage reviews, with little specification being provided in the decisions. No decision of the FWC provides any finding or guidance about the disposable income needed to achieve a “decent” or an “acceptable” standard of living for one or more kinds of households in which workers

might live. There has been no approximation of that figure, save that the FWC now appears to accept that the single worker's current margin over poverty is acceptable.

123. A striking feature of the Australian wage-setting system, which is required to take into account the needs of the low paid, has been the marked reluctance of the FWC to seek out data on living costs that might better inform its decisions, despite requests from ACCER and ACOSS for it to do so. Symptomatic of that reluctance is the fact that poverty was not even mentioned in the June 2012 decision, even though there was substantial evidence on the extent of poverty among low paid workers and their families.

124. The connection between needs and poverty was first articulated by the FWC in the 2013 decision, when it stated:

“[367] An assessment of the needs of the low paid is more challenging [than the identification of the low paid]. There is no single contemporary measure available to assess either the needs of the low paid or the extent to which those needs are being met. *We accept the point that if the low paid are forced to live in poverty then their needs are not being met.* We also accept that our consideration of the needs of the low paid is not limited to those in poverty, as conventionally measured. Those in full-time employment can reasonably expect a standard of living that exceeds poverty levels. In assessing the needs of the low paid we rely on a range of measures including comparisons of hypothetical low wage families with customary measures of poverty, both before and after taking account of the impact of the tax-transfer system, and survey evidence of financial stress and material deprivation among low-paid households.” (Emphasis added)

125. The point that is accepted in the emphasised sentence is the one made by Frank Costigan QC, who appeared for ACCER in the *Safety Net Review Case 2003*, when he argued that, in order for the AIRC to satisfy its statutory obligation to have regard to the needs of the low paid when setting wages, it must ensure that wage rates do not fall below the poverty line. We have already quoted part of that submission, which included:

“And we would say simply, and stress, that it is a fundamental need of the low paid not to live below the poverty line. Now, in one sense, that is a statement that is easily made, but there are a number of complex issues in it.”

126. This passage and Mr Costigan's questions “*what are needs, who are the low paid, what is the poverty line, what is living in poverty and how does the federal minimum wage compare to the poverty line?*” have been central to ACCER's submissions over the past decade, with primary emphasis being given to the position of low paid workers with family responsibilities.

127. The passage from the 2013 decision is important because it appeared that the FWC had accepted that the needs to which the legislation refers include the extra needs of workers with family responsibilities. It appeared to suggest that the FWC was prepared to target poverty among families, even though this did not occur in 2013. The last sentence of the FWC's paragraph [367], in particular, cannot be reconciled with a single person minimum wage adopted in the June 2014 decision. As we discussed earlier (at paragraphs 25-6), this sentence was reproduced in the 2014 decision in what appears to be an erroneous "copy and paste" from the 2013 decision.
128. The practice of the tribunals until 2013 to treat the specific needs of the worker's dependants as part of the needs of the worker is consistent with the terms of the legislation. In its ordinary meaning, the "needs of the low paid", would include the needs of workers with family responsibilities.

*The families responsibilities provisions of the Fair Work Act*

129. Section 153 of the *Fair Work Act* provides that an award made by the FWC "must not include terms that discriminate against an employee because of, or for reasons including, the employee's ...family...responsibilities...". A similar obligation is found in section 578 which provides:

“In performing functions or exercising powers under this Act..., the FWC must take into account...(c) the need to respect and value the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of...family or carer's responsibilities...”

130. Similar provisions are also found in respect of the making of enterprise agreements (section 195) and in regard to the taking of adverse action (section 351).
131. This is a legislative scheme in which, for example, rostering arrangements or leave arrangements which do not take account of the position of workers with family responsibilities would be discriminatory. More so, the setting of wages based on the worker having no family responsibilities. A wages policy or practice that is based on the needs of the single person without family responsibilities and excludes any consideration of workers with family responsibilities cannot be consistent with the legislation's protection of workers with family responsibilities.

## Chapter 7

### The FWC's decision is inconsistent with good public policy

#### 7.A. Introduction

132. If government transfers to a worker's dependants were sufficient to meet their needs the determination of wages by reference to the single person household would not be in breach of the *Fair Work Act*. This is not the case because government transfers, substantial as they are, do not cover the costs of the worker's dependants. ACCER has demonstrated in successive submissions that the government transfers are not sufficient to meet the needs of dependants and that low income working families rely on the wage packet to a significant degree.
133. The economic and social support of families has changed dramatically since the *Harvester* decision in 1907 which laid the foundation for the Australian Living Wage, under which wages were set by reference to the needs of the family. In 1907 workers and their families relied on wages, or other work income, without government support. The wage packet alone bore the burden of family support. Those workers who did not have families to support inevitably benefited from the wage-setting system. The "overcompensation" of single workers was the cost that the community was prepared to pay in order to support families. The scheme was in the interests of families and society as a whole.
134. The latter half of the twentieth century we saw the substantial provision of Australian Government support to a variety of groups who were unable to support themselves or who needed supplementary assistance. This interacted with the wages system, which, at the lowest wage rates, was increasingly unable to provide for the full support of families. In the middle of the century child endowment and taxation rebates for dependants were modest and insufficient to bridge the gap between the lowest wage rates and the income needed to support a family at a decent standard of living.
135. In their 1954 Social Justice Statement the Australian Catholic Bishops identified this as raising serious social issues and proposed a radical overhaul: the introduction of family payments that would meet all of the needs of dependants, with the minimum wage rate being based on the needs of the single person, and the same rate applying to men and women. The equal pay issue was important because the minimum wage rate for women was 75% of the male rate on the basis that women did not have families to support. Catholic social doctrine on work and the rights of workers states that a just wage requires that it be able to support the worker's family, but accepts

that wages may be reduced where social measures meet the costs of the worker's dependants; see, for example, St John Paul II in *Laborem Exercens*, 1981, n.19.

### **7.B. The Poverty Commission on family policies**

136. By the late 1960s the economic plight of low income families became part of mainstream community discussion, largely as a result of the research work of Professor Ronald Henderson and his colleagues at what is now known as the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute) at the University of Melbourne. Professor Henderson's public advocacy was reinforced by the Brotherhood of St Laurence and other organisations around the country. It had an effect. In August 1972 the McMahon Government established the Commonwealth Commission of Inquiry into Poverty (Poverty Commission) with Professor Henderson as its sole member. In March 1973 it was expanded by the Whitlam Government to include four extra Commissioners, with Professor Henderson becoming Chairman. The Commission delivered its *First Main Report* in April 1975 (Poverty Report). The *benchmark household* used by the Poverty Commission was the single breadwinner family of four, but it dealt with a range of individuals, families and households.
137. The Poverty Commission is a significant reference point for any discussion about wages policy. At about this time the equal pay decisions of the national wage-setting tribunal, the Commonwealth Conciliation and Arbitration Commission, put an emphatic end to the formula used by *Harvester*, but not to its underlying objective of setting a wage that provided support for the dependants of workers. Wages were still needed for the support of families, as we show later.
138. The Poverty Commission made an important contribution to family policy in Australia and the articulation of the values that underpin good family policy. Providing parents with a choice about how they care for their children is of fundamental importance. The issue was usefully summarised in one of the Poverty Commission's reports in the context of its discussion of the extent of poverty among couple parent families in which there was a full time breadwinner:

“A further way in which many low income families are often placed under great stress is in relation to the freedom parents have to decide how they will divide their time between working, looking after children, and other activities. Because of financial pressures some parents are confronted with the choice of spending

more time earning money and less time at home or struggling on an income below the poverty line....

Some fathers compensate for their low wages by working more hours or working two jobs. In many instances this may create considerable pressure on parents and their children....

Inadequate wages and pensions place considerable pressure on mothers to work...The mere fact of a mother working is not necessarily detrimental to the family. The relationship between a mother working and child development has been hotly debated in recent years, but the research on the subject has been inconclusive. *The pertinent issue is the freedom of mothers to choose whether or not to work, so that each family can reach a solution which is satisfactory for its members. The pressure to work created by an inadequate income means that some mothers are less free to choose.*" (First Main Report, April 1975, volume 1, page 204, footnote omitted, emphasis added.)

139. This passage was written in the context of a higher proportion of stay-at-home mothers in two parent families than is presently the case. Whether the changes since that time in workforce participation by mothers are the result of free choice or economic pressure is a matter of debate. However, the substantive point made in the passage remains true: parents should have the ability to choose that one of them will stay at home and care for the children and not engage in employment. The passage is just as relevant today as it was 39 years ago.
140. The Poverty Commission proposed substantial changes to government policies to lift these families above the poverty line. It proposed substantial increases in family payments. The policy objective was to have an acceptable disposable income for families, from wages and transfers, without the need for the second parent to undertake, or apply for, paid employment.
141. This policy objective, which was central to the work of the Poverty Commission, remains a valid objective. The objective is to provide a minimum wage which, together with family payments, will enable families to rely *solely* on that wage.

*A note on Family Tax Benefit, Part B*

142. In Chapter 8 we describe the increases in family payments over the last few decades and their impact on living standards and wage-setting. A significant component of this family support is Family Tax Benefit, Part B (FTB B). It has various antecedents, including the Home Child Care Allowance (HCCA) which was introduced in 1994. The underlying policy objective in the introduction of this allowance affirms and implemented the kind of family policy referred to in the Poverty Commission report.
143. From 1934 Federal taxation law provided a rebate for taxpayers supporting a dependent spouse and children. By 1993 the rebate was worth up to \$27.40 per week. In the 1993

Federal election the Labor Party proposed the abolition of the rebate and its replacement by the HCCA. The policy included support for out-of-home and at-home child care. In regard to the latter, the policy stated:

“But child care assistance is not just about providing necessary support for mothers in the paid workforce or who undergo training or education, Recognition should also be given for the important role and contribution of women caring for children at home. These women also need support as they deal with the additional expense of children, often in a situation where the family has only one income earner.

Accordingly, a Keating Government will increase the dependent spouse rebate and pay it directly to the spouse at home caring for children. The new Home Child Care Allowance will be \$30 a week and will provide some source of independent income for women at home caring full time for children. Fee relief will also be increased for occasional child care.”

144. In his Policy Speech on 24 February 1993 Prime Minister Paul Keating said:

"Our recently announced child care policy recognises that the future growth of the Australian economy and the living standards of Australians need women's participation in the workforce.

We recognise that child care is essential if women are to take a job, undertake training or study or look for work....

It is not good enough to say that a woman is either in the paid workforce or in the home. Chances are these days, in the course of their lifetimes, most women will spend periods of time doing both.

The needs of mothers caring for children at home are often overlooked in the child care debate.

But we have not forgotten them.

I recognise and appreciate the important role played by women who choose to stay at home while their children are growing up.

We propose to introduce a new cash payment of \$60 each fortnight to be called the Home Child Care Allowance.

This allowance is more generous than the Dependent Spouse Rebate it will replace, and has the added advantage of being paid directly to the mother at home. This will provide a source of independent income for women while they are out of the paid workforce caring for children.

In a further measure to meet the needs of women at home caring for children, we will extend fee relief to occasional care. This is in addition to my earlier announcement that we will double the funding for playgroups.

Labor's child care policies recognise the reality that different families choose to deal with the responsibilities of work and family in different ways."

145. Later that year, in a speech on 6 December 1993 to launch the International Year of the Family, Prime Minister Keating said:

"Our policies must address the diverse nature of Australian families, and the diverse nature of their employment and assistance needs.

A major issue to address in this context is how families balance the responsibilities of work and family life.

Governments should, I believe, promote policies which recognise and support choices families are making in combining paid work and family care. We have to make these aspects of peoples' lives fit more harmoniously together. We have to keep pressing for more "family-friendly" workplaces.... We recognise that childcare needs are neither uniform or identical. We recognise that women, throughout their lives, have a range of equally legitimate choices about being in the workforce or being at home. We appreciate the value of caring and nurturing provided by women who do choose to stay at borne while their children are growing up, and the value of the unpaid work they carry out both in the household and in the community. That is why we have introduced the Home Care Child Allowance for supporting parents caring for their children full time at home. By paying the allowance directly to the caring parent, usually the mother, we have provided many women at home with a source of independent income which otherwise they would not have.”

146. The Second Reading of the *Social Security (Home Child Care And Partner Allowances) Legislation Amendment Bill 1993* occurred shortly afterwards, on 15 December 1993. The Second Reading speech included:

"The home child-care allowance reform consolidates the government's provisions that assist families with children. It provides more direct recognition of the considerable time, energy and personal support devoted to children by parents, generally mothers, who decide to stay at home to raise their children. For the first time, this support will be provided directly to the parent caring for children, rather than to the other partner as a tax concession. (Hansard, House of Representatives, pages 4090-1)

147. In July 1995 the HCCA was amalgamated with the Partner Allowance to become the Parenting Allowance. In May 1998, the Howard Government rolled the Parenting Allowance into the Parenting Payment. FTB B emerged from the Parenting Payment in the package of the reforms associated with the introduction of the Goods and Services Tax. It was the successor to the HCCA and the earlier dependent spouse, with children, rebate, and extended to sole parents.
148. The initiatives and changes in 1993-4 have been accepted by both sides of politics. The Howard Government and the Labor Governments had a common policy in regard to family support. The policy and the payments made under it were significant because they recognised the value of the work done in the home, and usually done by women, and because the payments were targeted in a way that reduced the need for wages to meet family needs. The proposal in the May 2014 Budget to remove FTB B weekly payments from single breadwinner families who do not have a child under six years of age would mean weekly losses of more than \$50.00 per week for couple parent families.



## *Conclusion*

149. Many Australian families can, and do, choose to live on a single income. Many couples chose to live on a single income for the benefit of their children and many couples find that the best interests of their children can be best served by both of them working, often with one parent working part time. That is a choice that they are entitled to make. But it is harder for lower income families as a result of low wages and limited government support. So much so, that it requires many of them to live in or near poverty.
150. There are three important points to make about a family-based wage.
- First, parents should have the effective right to choose that one of them will stay out of the employed workforce in order to care for their children. A corollary of this principle is that parents may decide that the interests of the family, and those of the children in particular, would be best served by both of them being employed. Whether the second parent takes a job will depend on a variety of factors, including the availability and cost of good child care.
  - Second, the principle applies whether the breadwinner, or principal breadwinner, is male or female. Parents should be able to choose which one of them will be the breadwinner and which one of them will stay out of the employed workforce in order to care for their children.
  - Third, where parents are out of the employed workforce for a substantial period of time in order to raise children there should be various kinds of training programs and other educational support to assist them to return to the workforce when they choose to do so.
151. Wages and social security policies also have to ensure that sole parent families have similar opportunities to those of couple parent families. This means focussing on the position of children. That in turn requires close attention to the costs and quality of child care arrangements. High child care costs can force sole parents into poverty and/or unsatisfactory latch key arrangements. The costs of child care will impact on the ability of many sole parents to undertake full time employment. An assessment of the living standards of sole parent families should not be limited by the assumption that sole parents are employed in full time work. Because of limited work opportunities and/or the high costs of child care, many sole parents are only able to work on a part

time or casual basis and in doing so run a very real risk of being locked into insecure employment with limited opportunities for advancement.

152. Parents and children, whether in couple or sole parent families, are equally entitled to a decent standard of living so that they can live in dignity. A wages safety net has to take into account both kinds of families. A safety net that is sufficient for one kind of family, but not the other, is not a fair or just safety net. In both cases, ACCER has argued that the assessment of needs in contemporary Australia should be based on two children.

### **7.C. The public purse strings are loosened**

153. The Poverty Commission's report shows that in 1973 single breadwinner families of two adults and two children who depended on the lowest adult wage rate received 7.7% of their disposable income from government transfers, through tax rebates and child endowment. The basis of this calculation is in Table 23 of *Working Australia, 2014: wages, families and poverty* (Working Australia, 2014). This was a relatively small supplement to the breadwinner's wage. The greater part of the income needed to support dependants came through the wage packet.
154. A guide to the significance of this assistance is provided by the use of the equivalence scales used by the Australian Bureau of Statistics (ABS) to compare living standards across household types; see *Working Australia, 2014*, at paragraphs 410-25. The family of four requires a disposable income of 2.1 times the income of the single person in order to achieve a similar standard of living. This means that 52.4% of the costs of the family of four are attributable to the worker's dependants. In 1973 about one-seventh of the costs of the dependants were provided by transfer payments and six-sevenths by the wage packet. The figures demonstrate that the wage packet was extremely important 40 years ago in the support of families. The minimum wage was a family wage, but, as the Poverty Commission found, an inadequate one.
155. The Poverty Commission made recommendations for substantial increases in family payments. The Fraser and Hawke Governments made substantial changes to the family payments system. As discussed earlier, the Keating Government converted the family taxation rebate, which mostly operated as a tax concession for men, into the Home Child Care Allowance, and paid it to the carers, who were mostly women. It is now known as Family Tax Benefit, Part B. Rent assistance, which had been first introduced in 1958 to assist single aged pensioners, was expanded to cover a wider range of

groups, including low income working families in 1987. Further improvements in family payments were made as part of the compensatory package to accompany the introduction of the Goods and Services Tax on 1 July 2000.

156. By January 2001 the family of four received 37.5% of its income from the public purse if it was eligible for maximum rental assistance; and 30.0% otherwise; see *Working Australia, 2014*, at Table 28. This represented a very substantial increase from the 7.7% contribution in 1973, but still substantially short of the point where the wage packet would not be required to support the worker's dependants.
157. We digress to explain the basis of these figures. Because the amount of family payments depend on the age of the children it is necessary to make comparisons on the basis of the ages of the children. In this and the following calculations, the children are assumed to be in the range of 6 to 12 years. The FWC, like the AFPC, has adopted the practice of including maximum rental assistance in the calculations of transfers. ACCER has opposed this for reasons which are not necessary to canvass here, but, following the practice of the tribunals, has generally included maximum rental assistance in its calculations. It should also be noted that at present the sole parent family and the couple parent family receive the same level of family payments, so that, for example, the NMW-dependent sole parent with two children has the same disposable income as the NMW-dependent couple with two children of the same ages. On the face of it, this would provide a higher standard of living for the sole parent family. In practice, however, the sole parent's relative advantage is removed by the high costs of child care and/or the difficulty of obtaining full time employment.
158. By January 2014 the same kind of family received 39.3% of their income from government transfers; *Working Australia, 2014*, at Table 28. This figure is calculated on the assumption that, for the purpose of calculating the benefits from the Schoolkids Bonus, one child is in primary education and the other in secondary education, with a combined payment of \$23.57 per week. The removal of the Schoolkids Bonus, as proposed in the 2014 Budget, would reduce this figure to 37.7% of a lower disposable income. The removal of Family Tax Benefit, Part B (FTB B), which has also been proposed in the 2014 Budget, would reduce the figure to 34.2% of an even lower disposable income. In the case of sole parents, the proposed loss would not be as great as the Budget proposes an allowance of substantially less value than FTB B.
159. Critically important to the single person issue is the fact that government transfers are not intended to cover the costs of a worker's dependants. No Federal Government has

committed to providing that level of benefits or, to our knowledge, seriously considered it. Leaving aside the Schoolkids Bonus and the FTB B, it is likely that family benefits will fall in real terms as a result of the freezing of a range of family payments, some of which occurred under the Labor Government (in the case of the annual supplements to the family tax benefits).

## Chapter 8

### Changes in wages and family transfers 1973-2014

#### 8.A. The falling value of the minimum wage

160. An obvious consequence of the increase in family payments has been the capacity for wage-setting tribunals to provide smaller increases than they otherwise might have without reducing the standard of living of those who most need safety net protection, ie families. This has relieved pressure on the wages system. Of course, this trend has had an impact on single workers who, since *Harvester*, have been over-compensated for their needs.
161. Changes in disposable incomes for a single minimum wage worker since 1973 can be measured by reference to calculations by the Melbourne Institute's estimate of per capita, seasonally adjusted, Household Disposable Income (HDI). These calculations are made quarterly in *Poverty Lines, Australia*, a newsletter published by the Melbourne Institute that updates the poverty lines adopted by the Poverty Commission in the 1970s. The FWC has rejected these poverty lines (usually known as the Henderson Poverty Lines) as a guide to the level of need, but that does not deny the utility of the HDI calculations to indicate long term trends. HDI calculations are used by the FWC to supplement ABS estimates of household income and income distribution, which are referred to below. The figures in the following paragraphs are calculated from figures in *Poverty Lines, Australia, December 2013* and Table 28 of *Working Australia, 2014*.
162. From the September quarter 1973 to the December quarter 2013, HDI rose from \$53.07 to \$800.83 per week, a ratio of 15.1 to 1; see *Poverty Lines, Australia, December 2013*, Table 2. Over the period August 1973 to December 2013 the disposable income of the single minimum wage worker rose from \$54.00 to \$569.44 per week, a ratio of 10.55 to 1. This means that about 30% of the gap between the minimum wage and HDI in 1973 has been lost.
163. In August 1973 the disposable income of a single worker on the lowest minimum wage was 1.8% above HDI. By January 2001 the minimum wage (then called the Federal Minimum Wage) was 82.8% of HDI. In January 2014 the disposable income of the single worker on the NMW was on 71.1% of HDI. In both January 2005 and January 2006 the minimum wage was 76.3% of HDI. Some caution is needed when dealing with individual years, but the trend is clear: the figures show that the loss of relativity since the turn of the century has been substantial.

164. This does not mean that real wages have been reduced. Table 3 of *Poverty Lines, Australia, December 2013* shows the maintenance of real wages, as measured by the CPI, would require a minimum wage 8.0 times the 1973 figure. The change in the minimum wage has been 10.55 times the 1973 figure and shows a real wage increase, but one that was substantially less than the increase in national income.
165. The figures demonstrate that much of the real wage and income growth over the past four decades has not been distributed to low income wage earners.
166. In the case of families, the loss in the wage packet has been partially offset by increased transfer payments. However, families are in a much worse position than they were in 2001, and earlier. This is demonstrated by a comparison between the family's disposable income and HDI in August 1973, January 2001 and January 2014. In August 1973 the family's disposable income of \$58.50 was 10.2% above HDI. By January 2001 it had risen to 32.3% above HDI, but by January 2014 the margin had fallen to 17.2% above HDI. Absent the Schoolkids Bonus (which was introduced in the May 2012 Budget), the margin at January 2014 would have been 14.2%. These figures show that, by reference to the HDI measure of average community income, the family's position is now little better than it was in 1973, when the Poverty Commission was charged with examining poverty among families, and considerably worse than it was in 2001. The critical point about families is that when we look at more recent changes, families are substantially worse off than they were in 2001.
167. The minimum wage which carried so much of the burden of family support in 1973 has been reduced to a level where it is now regarded by the FWC as appropriate for the single worker without dependants.
168. The objective of transferring the costs of family support from the wage packet to the public is sound. Transfer payments can better target some kinds of needs. This can be equitable provided there is an appropriate balance between wage restraint and increased family support; and provided those without transfers, ie single workers, have a reasonable safety net. If the transition is equitable wages can be lower than they would otherwise have been in order to achieve the same living standards. Single workers would have their wages discounted without the benefit of transfer payments, but this would occur in the context of them having lower living costs than workers with family responsibilities.
169. However, it is clear that the process has not been a balanced and fair one. The relative wage cuts made by successive wage tribunals have been greater than the transfer

payments received by the workers who are most in need of support from a wages safety net. The wage cuts have been too great and the transfers have been insufficient. Families are worse off as a result of these wage cuts.

170. Opponents of minimum wage increases often claim that minimum wages are a “blunt instrument” for the provision of family support and that there are more “better ways” to target the needs of low income families. Less often (if ever) do they publicly advocate for the taxation revenue that is needed for the measures they propose. There is plenty of scope for this kind of initiative: in early 2014 the tax payable on the NMW of \$622.20 per week was \$52.76 per week: see Table 28 of *Working Australia*, 2014. It is fair to say that none of those who advocate an alternative to general wage increases made pre-Budget submissions proposing tax cuts for low paid workers in order to minimise wage increases. The working poor suffer from pressures to reduce wage increases because there are “better ways” to deal with their poverty and from pressures to reduce budget expenditures and taxation rates, with the added risk that cuts will favour the wealthier sections of the community.
171. The blunt instrument point is not new and is the kind of point that was made before *Harvester*. At paragraph [360] of the June 2014 decision the FWC acknowledged that “[i]ncreases in minimum wages are a blunt instrument for addressing the needs of the low paid” and referred to paragraph [57] in its June 2013 decision (*Annual Wage Review 2012-13*, [2013] FWCFB 4000). The footnote in the 2013 decision was to a passage in the *Safety Net Review Case, 2004*:

“As noted in the May 2003 decision, the Commission acknowledges that increases in award wages are a blunt instrument in addressing the needs of the low paid in employment.... Nevertheless, increasing award wages is the only instrument that the Parliament has conferred upon the Commission in order to discharge its statutory obligation to maintain a system of enforceable awards that act as a safety net of fair minimum wages and conditions of employment in the context of living standards generally prevailing in the Australian community.” (*Safety Net Review Case, 2004*, PR002004, paragraph [308])

172. As we have seen, the more specific targeting of needs has been a feature of Australian budgetary policy over the last four decades, with the result that the work that is required of the ‘blunt instrument’ is much reduced. Minimum wage increases are less blunt and less inefficient than they once were.
173. If the current balance between the wage packet and the public purse is regarded as unsatisfactory the answer should be found in increased family payments rather than

cuts in the living standards of families by way of reduced wage increases. Of course, the FWC's decision to adopt the single person test avoids this issue altogether by withdrawing wages as an instrument for the protection of families.

174. The trend makes economic sense, but it requires an equitable balance and a community consensus that taxes have to be raised to support the economic and social goal. This extraordinary change in the role of wages has attracted little community and political discussion in regard to its economic, budgetary and social implications. Without that discussion the consensus may be fragile.
175. The 2014 Budget shows that the consensus that built the modern wages system is fragile, at best. Not only are transfer payments currently inadequate to cover the needs of the worker's dependents, but the proportion coming from the public purse will reduce, with the size of the short term cuts being determined by the Senate in its response to the Budget. This has implications for the level of wages needed to support families. The FWC's decision to adopt the single person test seeks to deny those implications.

#### **8.B. Falling minimum wages relative to community wage levels**

176. The prime reason for the decline in the living standards of minimum wage workers has been the increasing disconnection between award wages and average and median wages. Minimum wage rates have declined relative to average and median wages. The following calculations on relativities are taken from Tables 1 and 10 of *Working Australia, 2014*.
177. Over the period January 2001 to January 2014, for example, Average Weekly Ordinary Time Earnings (AWOTE), as calculated by the measured by the ABS, increased by 80.0%. On the other hand, the NMW increased by 55.4%, falling from 50.1% to 43.3% of AWOTE. Over the same period the C10 rate for trade-qualified workers increased by only 47.2%, falling from 61.6% to 50.4% of AWOTE. This growing inequality between those who depend on minimum wages and the rest of the workforce must have substantial consequences for relative living standards. Because most of the wage increases awarded over the past couple of decades were money amounts, and not percentage-based increases, the NMW comparison understates the disconnection; ie the minimum rates set for higher paid work classifications have experienced greater disconnection.



178. This kind of growing inequality has been well known for some time. For example, in the *Safety Net Review Case 2005* the AIRC had evidence of the increasing disconnection between minimum wage rates and average and median wages.

“...the Commission is required by s.88B(2)(a) to have regard to living standards generally prevailing in the Australian community. This requirement invites a comparison between the rates of pay in the Commission’s awards and rates of pay generally. Between May 1996 and May 2004 average weekly earnings of full-time adults increased by \$277.10 per week or 41 per cent. In the same period the minimum wage, the rate for the C14 classification level, increased by \$118 per week or 34 per cent. The award wage for a tradesperson, the rate for the C10 classification, increased by \$120 per week or 27 per cent.” (Print PR002005, paragraph [400])

179. The same kind of information was before the FWC in the *Annual Wage Review 2013-14*. It published data that showed over the 10 years to August 2012, the ratio of the NMW to median earnings of full-time employees in their main job fell from 57.5% to 52.7% (Table 6.3). It also showed that over the period December 2008 to December 2013, the NMW fell from 47% to 43.3% of AWOTE and from 59.8% to 55.8% of Average Weekly Earnings (Table 6.4).

180. These kinds of changes in relative must have an impact on relative living standards of those who depend on safety net wage rates. Unless the increases in transfer payments to families are sufficient families will fall closer to, or further below, rising poverty lines; and that is what happened.

### **8.C. Falling relative living standards**

181. Assessments of relative living standards and needs must deal with more than gross wages. Wages should be set by reference to the level of, and changes in, minimum wages, income taxation and transfer payments.

182. Since the mid-1990s the ABS has been publishing research on household income and income distribution. Changes in methodology and data collection over the years have made this kind of research increasingly detailed and robust. The research is used internationally, with the ABS playing a major role in both theory and application. Although the Australian research dates from 1994-95, changes in data collection and analysis mean that the most useful comparisons are made over a shorter period. The data collected by the ABS, supplemented by the Melbourne Institute’s HDI calculations provides a useful comparison between January 2004 and January 2014. There is a review of these matters in *Working Australia, 2014*, at paragraphs 410-19.

183. Over the decade January 2004 to January 2014 median equivalised disposable household income (MEDHI) rose from \$500.17 to \$827.37 per week, or 65.4%; *Working Australia, 2014*, Table 26. The net wage of the NMW-dependent worker increased from \$377.93 to \$569.44 per week, or 50.7%; *Working Australia, 2014*, Table 28. This is a net wage increase of only 77.5% of the community-wide increase as reflected in MEDHI. The disposable incomes of NMW-dependent couples and sole parents with two children rose by 53.9%, or only 82.4% of the community measure. The families were in a slightly less disadvantaged position because of increases in family payments.
184. These figures represent very substantial reductions in the relative value of the incomes of these low paid workers and families and their relative living standards.

## Chapter 9

### Working families have fallen below rising poverty lines

185. The MEDHI calculations in Chapter 8C are also the basis upon which relative poverty lines are calculated. In 2008 the AFPC introduced the 60% of median relative poverty line into its research on living standards and this measure has been published since then. The FWC's poverty line calculations now extend to the position of households that depend on different wage levels, so that, for example, we can see the relative position of various kinds of households that rely on the C10 trade-qualified wage. The decision to adopt the single person test has, in effect, made the family household calculations redundant.
186. Over the period January 2004 to January 2014 the NMW-dependent single worker has fallen from 25.9% to 14.7% above the 60% relative poverty line; *Working Australia, 2014*, Tables 27 and 28. When the AFPC first calculated the 60% median poverty line in its July 2008 decision, it calculated that, at December 2007, the single person's margin over the poverty line was 21%; see *Wage-Setting Decision and Reasons for Decision, July 2008*, Table 4.5
187. This trend has been well-known by the FWC and submissions about the need to arrest it the slide have had no discernible effect. Although the FWC does not expressly say so, it appears that the FWC regards the current margin that the single worker has over his or her 60% relative poverty line is sufficient. The loss of close to a half of the worker's margin over poverty during the last decade has not attracted any comment from the FWC.
188. Over the same period, January 2004 to January 2014, the NMW-dependent family of four fell from 3.3% below to 10.0% below the 60% relative poverty line. This represents a poverty gap of \$104.25 per week. ACCER has done the calculations for two other significant wage groups. The C12 wage rate-dependent family of four (relying on a gross wage of \$664.80 per week) fell into poverty: from 1.7% above the poverty line to 6.7% below the poverty line. The C10 base trade-qualified-dependent family of four (relying on a gross wage of \$724.50 per week) also fell into poverty: from 7.6% above to 2.3% below the poverty line. These figures are from paragraph 435 of *Working Australia, 2014*.
189. These figures show that increased family payments in the past 10 years have only partially offset the decline in the relative wages. The major cause of the decline and the fact that families are now living in poverty is the fall in the relative value of wages.

190. Another way of presenting data on poverty among these families is to look at aggregate outcomes across society. The FWC referred in its June 2014 decision to evidence produced by ACOSS on the extent of poverty among families; *Poverty in Australia 2012*, revised in November 2013. At paragraph [366] of its decision the FWC stated:

“We accept that for many people their material standard of living is only partly determined by their own wage. The other main influences are the hours that they work, the earnings and needs of other members of their household, and the impact of the tax-transfer system. ACOSS provides one illustration of this point when it cited analysis of ABS data from 2009–10 that show that 30 per cent of people who live below the poverty line (defined as 60 per cent of median equivalent household disposable income) live in households where the main source of income is wages—20 per cent live in households that have a full-time wage earner [footnote]. Given that a single person who works full-time at the minimum wage has disposable income that is 14 per cent above the “60 per cent median” poverty line [footnote], it is family needs and hours of work that lie behind the number of “working poor” households” (The footnotes are to pages 29 and 27, respectively, of the ACOSS submission.)

191. The FWC referred to “working poor” households. It had substantial material on this aspect. A report by NATSEM/UnitingCare showed that 20% of those living in poverty live in a family where a person is employed full-time; *Poverty, Social Exclusion and Disadvantage in Australia*, Figure 8 (discussed at *Working Australia, 2014*, paragraphs 470-80). The ACOSS report, referred to in the foregoing quoted paragraph from the June 2014 decision, showed that 20.5% of people living below the poverty line were in households where a person was employed full-time. In commenting in its 2013 decision on an earlier report by ACOSS showing the same figure, the FWC stated:

“The data in *Poverty in Australia 2012* show that of all people with disposable incomes below 60 per cent of the median, 20.5 per cent were employed full-time, 13.5 per cent were employed part-time and 5.9 per cent were unemployed—the remainder were not in the labour force. *Low-paid employment appears to contribute more to total numbers in poverty than does unemployment*” (*Annual Wage Review 2012-13* decision, paragraph [408], emphasis added)

192. The evidence leads to this important conclusion: low-paid employment contributes more to total numbers in poverty than does unemployment. In its March 2014 submission, ACCER complained that in 2013 the FWC had “failed to target poverty despite compelling data on the presence of poverty among working families” (reproduced in *Working Australia, 2014*, at paragraph 277). In 2014 the FWC side-stepped this kind of criticism by adopting the single person test. It has abrogated any responsibility for the fact that many families are living in poverty; even where there is a full time breadwinner.

## Chapter 10

### **Conclusion: the FWC has failed low paid workers and their families**

193. The declining position of workers and their families have been known for more than a decade. Even before *Work Choices* it was clear that safety net wages were losing their relativity with community wage levels.
194. The recurring theme of ACCER's submissions to the FWC has been that “the wage-setting system has failed low income workers and their families”. It has been the title of a chapter in each written submission since 2010. In 2012, 2013 and 2014 ACCER proposed that the NMW be increased by a further increase of \$10.00 per week, over and above the amount generally applied by the FWC, so as to target poverty among these families. ACCER proposed that over a period of time the NMW should rise to the lowest award rate for cleaners, which in early 2014 was \$42.20 per week above the NMW.
195. When ACCER first claimed in 2010 that the wage-setting system has failed low income workers and their families, it was a claim made in respect of decisions under earlier legislation. It was made in the expectation that the post-*Work Choices* reforms provided an opportunity for the tribunal to address poverty among low income families.
196. Each year ACOSS and ACCER have put material to the FWC in the expectation that the FWC was prepared to act upon evidence of poverty among working families. The decision to adopt the single person test means that the FWC will not act on the evidence that children of parents who are in full time work are living in poverty.
197. Substantial evidence was put to the FWC on poverty among low paid families in the *Annual Wage Review 2011-12*, but poverty was not even mentioned in its June 2012 decision. In the following annual review similar evidence before the FWC and, although poverty among low paid families was canvassed in the 2013 decision, it had no impact on the outcome. In both 2012 and 2013 the same percentage increase was applied across all classifications. Poverty among low income families was not targeted: it was effectively ignored. In each of those years the FWC rejected requests for the undertaking of investigations into the needs of low income working families. With the benefit of hindsight, we might infer that the FWC may have been considering the adoption of the single person test.
198. The FWC may have been irritated by our repeated claims that it has failed low paid workers and their families, but the facts are there for all to see.

199. In its March 2014 submission ACCER summed up its concerns about the failure of wage-setting under the *Fair Work Act*:

“15. We argue in these submissions, as we argued in 2013, that the *Fair Work Act 2009* has failed to achieve fair outcomes for low paid workers and their families: the *Fair Work Act* has failed workers employed on or near the rate set by the NMW and it has not reformed the minimum wage-setting so as to overcome the systemic unfairness that has been evident since 2001 and earlier....

16. In our view, the Fair Work Commission (FWC), like its predecessors, has failed to give sufficient weight to the needs of low paid workers and their families and has failed to set a wage by reference to relative living standards across the Australian economy, including the living standards of those on age and disability pensions. The living standards of many full time low paid workers and their families are lower than those who depend on the pension safety net.

17. The FWC has been faced with compelling evidence of widespread poverty among low paid workers and their families. It has apparently accepted the substance of the evidence, but has failed to take any action to target poverty.”

....

29. The FWC has, we submit, an obligation to set the NMW at a level that will enable workers with family responsibilities to have a standard of living that is above poverty. It should provide for families and keep them out of poverty in the ordinary and expected cases; and those cases must include families, whether couple parent or sole parent, with two dependent children. The FWC has an obligation to ensure that, in these ordinary circumstances, no child in a working family need live in poverty. It therefore should ask itself, whether the wages that it sets are sufficient to keep the children out of poverty. Because of the undeniable importance of this issue, the FWC's reasons for decision should make clear the evidence and reasoning leading to its action or inaction on the matter. In 2013, the FWC had before it, and apparently accepted, evidence that working families, and a substantial number of children, were living in poverty, but did not make take any action to target and address those needs.

....

83. Taking a broad view of wage-setting over the past 13 years, and more, there has been little or no evident concern in the decisions of industrial tribunals about the daily struggles of ordinary working people, even in the face of evidence that something is wrong and the situation has been worsening. The wages set by tribunals have played a role in this process. Words, if they do occur, are of no comfort in the absence of results. Repeated proposals for an inquiry or some other process to gather evidence about the needs of the low paid have been ignored or denied.

....

86. We have not been asking tribunals to let their hearts override their heads, but we have been asking the FWC to search for and consider the evidence about poverty; and to act on it. If we are to achieve any sustainable outcome, it must be based on evidence. If the evidence is presented and

explained, the community will support a plan to attack in-work poverty. The way to achieve it is for the FWC to gather the evidence and act on it.” (ACCER submission, March, 2014)

200. The great bulk of ACCER's 2014 submission, as it had been in the past, was concerned with the position of workers with family responsibilities and poverty among working families. ACCER produced some data from the 2011 national Census that showed the large number of couple parent families living in poverty and other data that complemented and supported the ACOSS and NATSEM/UnitingCare research referred to in Chapter 9. The Census data covered the number of couple parent and sole parent families with two children who were living in poverty at August 2011. Among couple parent families over 110,000 children were living in poverty even though there was a full time worker in the home; see *Working Australia, 2014*, Table 32.
201. Our concern about families which we press from year to year is about the care and support of children. We all know that a full time job in Australia is not a means of escaping poverty and that many, many children are living in poverty because of that. Over the years ACOSS and ACCER we have emphasised the connection between poverty and various kinds of disadvantage that condemn children to living on the margins in their most formative years, with the likely consequence that the rest of their lives will be lived in a similar way.
202. We do not accept that the FWC is ignorant of the personal, family and social implications of poverty. If, as we believe, the FWC understands and appreciates these matters, why has it not taken action to raise, even modestly, the lowest wage rates? The adoption of the single person criteria for wage-setting might be seen as a way avoiding this issue. But it is inconsistent with the values and aspirations that have underpinned minimum wage-setting for more than a century. Furthermore, the single person decision is not required by (and, we believe, inconsistent with) the legislation that requires the FWC to promote social inclusion and set a safety net of fair minimum wages that takes into account relative living standards and the needs of the low paid.
203. We are left in a position where the FWC has made a decision that is very detrimental to the interests of children in working families without giving notice of its intention to consider this course of action and without giving reasons for its decision. The decision was unfair and the way in which it was announced was unacceptable.