

Fair Work Commission

Fair Work Act 2009

Annual Wage Review 2015-16

Submission in Reply by the

Australian Catholic Council for Employment Relations

15 April 2016

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A. Introduction

1. This submission by Australian Catholic Council for Employment Relations (ACCER) is made by way of reply to two of the initial submissions lodged with the Fair Work Commission (FWC) in the Annual Wage Review 2015-16.

B. United Voice

2. The United Voice submission is introduced by some commentary about a graph which plots changes in the relative levels of the National Minimum Wage (NMW), including its predecessors, and measures of average earnings since the early 1980s. The NMW's loss of relativity is stark. The submission continues:

“There is, in our submission, a clear and obvious trend. However this is a trend that has never been the subject of explicit decision nor an acknowledged policy, and has effectively continued under at least four different wage-fixing regimes.” (Paragraph (3))

3. In a later reference to this trend the union observed:

“A labour market economist who examined the data on the trajectory of Australia’s minimum wage but was unfamiliar with Australia’s policy settings, would likely conclude that in the early 1990’s a deliberate policy decision had been made to reduce the relative value of our minimum wage, to have a much lower minimum wage “bite”. She might further conclude and that such a policy had been reaffirmed, or at least not been significantly adjusted, in the subsequent 25 years. And yet, as we know, no such decision was ever explicitly made.” (Paragraph (26))

4. The submission proposes an inquiry:

“United Voice submits that the Panel should determine to conduct a separate process of submissions and hearings in the relation to the following sequential questions:

- (a) Is the Panel able to adopt a medium-term target (or target range) for the NMW in relation to its relative value or absolute quantum?
- (b) If the Panel can do so, should it adopt such a target (or target range) as a matter of discretion?
- (c) If the Panel should do so, then what is the appropriate target (or target range)?
- (d) What is the function and role of a target (or target range) in relation to the annual obligations of the Panel in respect of the NMW and broader modern award rates?
- (e) If the Panel adopts a target, how often should that target (or target range) itself be the subject of reconsideration and using what process?” (Paragraph 5)

5. United Voice has sought the opportunity to make the case for an inquiry and has not asked the FWC to form a concluded view on the matter at this stage.

“Importantly, we repeat our submission that the Panel is not required to form a concluded view as to its ability to set a target, or the utility of a target, in order to agree to our request. Our request is designed to allow us to have our substantive position heard and determined efficiently and fairly

As noted above, these submissions are not exhaustive, and questions such as the role of a target for the NMW within Australia’s broader system of Award minimum wages (and the role of the tax and transfer system) will need to be addressed in the substantive proceeding.” (Paragraphs (55)-(56))

6. ACCER supports the establishment of the kind of process proposed by United Voice. The inclusion of a consideration of the role of the tax and transfer system, as suggested by the union, would enable consideration to be given to outcomes, and relevant social goals, as well as pre-tax and transfer wage levels. The proposed process might be conducted in conjunction with the inquiry into the needs of the low paid proposed by ACCER at paragraph 11 of its March 2016 submission.

7. ACCER’s March 2016 submission includes substantial commentary on the Safety Net Review Case 1997, which established the predecessor to the NMW. The commentary concludes with a passage about observations made in that case on the inadequacies of the minimum wage setting system:

“We agree with the views expressed by Ross VP in these paragraphs. Unfortunately for the low paid, his fears have been realised:

- living standards have drifted below community standards;
- there are no clear objectives in recent wage decisions;
- inequality has increased; and
- childhood poverty, with all its damage to personal development and future prospects, has increased.” (Attachment to ACCER submission, March 2016, paragraph 234)

8. ACCER believes that these comments have more force today given the subsequent divergence between minimum rates and average wages and the persistence of childhood poverty in low paid working families. The proposal put forward by United Voice would assist in the consideration of the matters in this passage. However, we emphasise that the undertaking of this kind of process should not be a reason or excuse for inaction or limited action in the current wage review.

C. The Australian Government

C.1. Introduction

9. By way of an introduction to our response to the submission by the Australian Government (Commonwealth), we refer to the views expressed by the FWC in the *Annual Wage Review 2014-15, Decision* (June 2015 decision) about the setting of safety net wages that take into account relative living standards and the needs of the low paid.
10. In our March 2016 submission we referred to several passages in the June 2015 decision which showed that the FWC had concluded that full time workers have a reasonable expectation of a standard of living that would be in excess of poverty and one which would enable them to purchase the essentials for a decent standard of living and engage in community life, assessed in the context of contemporary norms. The decent standard of living identified by the FWC involves an understanding and measurement of poverty and the estimation of the further income required so that workers and their families can purchase the essentials for a decent standard of living and engage in community life, assessed in the context of contemporary norms. Therefore, we should find that the Commonwealth, in

dealing with the operation of its own legislation, would address the relative living standards and needs of low paid workers and their families in the context of the FWC's views. Its submissions should consider those needs, and the degree to which they are unmet, and the living standards of the low paid relative to community living standards and relevant comparators within the community.

11. The Commonwealth submission is, however, bereft of any attempt to cast light on the costs of the essentials for a decent standard of living or any attempt to identify the standard of living that should be afforded to low paid workers and their families by the wages safety net required by the Commonwealth's own legislation. It does not address the statutory criteria of relative living standards and the needs of the low paid in any meaningful way. To illustrate our point, we invite the FWC to search the Commonwealth's submissions for the terms "relative living standards" and "needs of the low paid". The four references for each term, and the context in which they appear, show no serious consideration of these vital elements in the wage setting process.
12. The Commonwealth's submission makes no practical contribution to these matters and does not add anything to the jurisprudence regarding its own legislation. The submission presents, for example, substantial material on the spread of low paid workers across households, without turning to the question of needs of those in low income households. That material, at paragraphs 54 to 64 of the submission, is based on research data in the Household, Income and Labour Dynamics in Australia Survey (HILDA). The Commonwealth calculated that there were 1.3 million low paid employees, or 13.3% of the workforce. It estimates that 18.8%, or some 244,400 workers, have dependent children, yet provides no attempt to consider whether those low paid workers and their families are able to purchase the essentials for a decent standard of living or whether they are living in poverty. It does not advert to the question of whether or not hundreds of thousands of children in wage-dependent households have the resources for a decent standard of living. There is no consideration of poverty: the word poverty does not appear in the Commonwealth's submission. It ignores the issue of child poverty. Yet the Commonwealth knows of the research about the extent of poverty in families even where there is a full time worker within the family. The material referred to in Chapter 8G of the Attachment to ACCER's submission is well known to the Commonwealth.
13. The Commonwealth also knows from the FWC's own research that a wage at the C10 level

still leaves a family of a couple and two children 5.0% below the conventional poverty line; see *Statistical Report*, Table 8.2. The FWC's research also shows (at Table 8.2) that this family can barely escape poverty if the primary carer applies for the Newstart allowance while seeking employment. The definition for low paid used by the Commonwealth, which has a cut-off point below the C10 wage level, is, we submit, too limited.

14. The Commonwealth has data in the Australian Bureau of Statistics, for example, that would be relevant to these matters: see, Chapter 8A of the Attachment to ACCER's March 2016 submission and the conclusion that "... there is great expertise and substantial data in Canberra on economic wellbeing, living standards and poverty that has not been accessed for wage setting purposes." Furthermore, if the Commonwealth had wanted to give a comprehensive guide to the familial and household circumstances of low paid workers it could have gone to its own 2011 Census, rather than limiting its consideration to the HILDA material. The value of the Census material for understanding the circumstances of the low paid is illustrated by Tables 35 and 36 in the Attachment to ACCER's submission of March 2016.
15. Nor does the Commonwealth engage in important issues in the setting of minimum wages. For example, the Commonwealth does not address the question of whether or not the FWC should set wages on the basis that a breadwinner in a couple parent family should seek overtime or another job and/or the primary carer in that family should seek employment in order for the family to escape poverty and achieve a decent standard of living.
16. The Commonwealth's submission on the estimated 1.3 million low paid workers shows that, in addition to parents with children, 58.9% are single and 22.4% are a member of a couple without children. Of the total, 26.0% were full time students, presumably found mostly among singles without children and to a lesser extent among couples. 15.9% of low paid workers were aged between 15 and 19, with their wages being based on junior rates of pay.
17. The Commonwealth points to, for example, the high number of full time students who are on low wage rates while working part time, many of whom would be living with their families in high income households, yet remains silent on whether this is relevant to the setting of a wage rate that can provide workers with family responsibilities with a standard of living which is in excess of poverty and enables them to purchase the essentials for a decent standard of living and engage in community life, assessed in the context of contemporary norms. It avoids the issue of whether or not the expectation and entitlement of

workers with family responsibilities to a decent standard of living in excess of poverty should be compromised by the proportion of adults without children and by the proportion of full time students working part time on junior rates of pay.

18. If the Commonwealth were to argue that that the proportion of singles and couples without children and the proportion of full time students who are working part time (whether on adult or junior rates) are relevant to wage setting, it would need to argue how this is relevant to human rights considerations and the formulation provided by the FWC. In regard to the FWC's formulation, it would need to show how the proportion of workers without family responsibilities would constrain the reasonable expectation of workers with family responsibilities of a standard of living that would be in excess of poverty and one which would enable them to purchase the essentials for a decent standard of living and engage in community life, assessed in the context of contemporary norms.
19. We should note that the data that is presented by the Commonwealth on the domestic and familial aspects of workers is by reference to "low paid" workers, rather than to "award-reliant" workers. Workers can be low paid even when they are paid a margin above the award. Data on the family responsibilities of low paid workers is to be preferred to data on the family responsibilities of award-reliant workers; see Chapter 8E of the Attachment to ACCER's March 2016 submission. By contrast, in regard to the economic impact of wage decisions the Commonwealth focuses on the minimum rates of pay for award-reliant workers; see, for example, its submissions dealing with productivity and employment in small businesses.
20. We should also note an error in the Chapter 8E of the Attachment to ACCER's March 2016 submission. The concluding paragraph in that section, paragraph 723 concerns a passage in the June 2015 decision about the expected publication by the FWC of data on the households of award-reliant workers. The final sentence of paragraph 723 states that "none of this kind of material has been included in the FWC's *Statistical Report*, the latest edition being dated 18 March 2016". That was wrong because Table 8.4 covered the kind of material referred to in the June 2015 decision.
21. We wish to make it clear that ACCER has made these kinds of criticisms under successive Governments. For example, there was a similar commentary in ACCER's April 2011 Reply:

“We are particularly concerned that the Commonwealth does not attempt to deal with the vital issue of the needs of the low paid. By way of introduction to this matter, we set out two paragraphs from its submissions to last year’s inaugural wage review under the *Fair Work Act 2009*:

“There is little up-to-date data currently available that enables in-depth analysis of the adequacy of minimum wages in providing for the needs of the low paid. In this regard, the Government supports the research currently being undertaken by FWA for the 2010-11 Annual Wage Review looking at approaches to defining and measuring relative living standards and the needs of the low paid.”(Paragraph 5.2)

“In submissions to future FWA wage reviews the Government will provide a more detailed analysis of the needs of the low paid. The Government will also investigate whether there is a need to undertake further research in this area to compliment (sic) the work of FWA.” (Paragraph 5.3)

We complained in our Reply Submission in 2010 about this failure to present material and said that the Commonwealth had access to considerable data on the needs of low income groups, including the costs of children and the costs of pensioners, as a result of the Commonwealth’s inquiry into pension rates. The pension rates were increased to provide “a basic acceptable standard of living”. We said:

"The outcome of this work, the current pension rates, can be taken as a *guide* to the costs of a *basic acceptable standard of living* for low income working families, by applying the equivalence scales used by the ABS (and by the AFPC when calculating relative poverty lines) and by estimates of the costs of working for the working family." (Paragraph 23, emphasis in original.)

The Commonwealth has again failed to make any submissions on the needs of the low paid, despite its advice last year. The FWA research was finished and released early this year (*Relative living standards and needs of the low paid: definitions and measurement*) and there could be no excuse for inaction by the Commonwealth.

14. Before going to the Commonwealth’s brief submissions in the current review, we need to refer to the background and context of the "needs" issue.

....

The *Fair Work Act 2009* saw the reintroduction of fairness in decision-making and the requirement to take into account relative living standards and the needs of the low paid. ACCER welcomed the reforms:

“We have welcomed the Commonwealth's *Fair Work* reforms to the framework of national wage-setting because they provide an enhanced *opportunity* to address the inadequacies in the wages safety net.

As we said in our 2010 submissions, our judgment on the effectiveness of these *Fair Work* reforms will depend in large part on the capacity of the new wages system to establish a process to address questions such as, "how much income does the worker and his or her family need to live a decent life?" It is a question that defies a precise answer, but it is a question that must be answered if FWA is to discharge its overriding statutory duty to provide a fair safety net. We did not expect it to be answered in last year's wage review, but urged significant action be taken towards dealing with this issue. To our disappointment, we saw little effort by the parties to the assist FWA to answer the question. In our view, a

precondition for real progress in this matter is a pro-active approach by FWA. (Executive Summary, 19 March 2011)” (Paragraphs 11-13 and 18)

22. The FWC will see from these passages that the Commonwealth told the tribunal in 2010 that in future reviews it would “provide a more detailed analysis of the needs of the low paid” and would “investigate whether there is a need to undertake further research in this area”. It has failed to do so in the six years that have followed and, moreover, has showed no sign that it was prepared to act on that advice.

C.2. The relevance of the tax-transfer system to wage setting

23. As in previous years the Commonwealth’s submission argues that wage increases are a less effective and efficient means of supporting the low paid than taxation and transfer measures; for example:

- “there are better ways to address inequality than increases in the minimum wage and award classification wages” (paragraph 33); and
- “... the tax-transfer system is the primary means of redistributing income in Australia. It can provide better targeted and more effective assistance to maintain living standards, including the living standards of the employed, than increases in the national minimum wage and award classification wages.” (paragraph 284)

24. These kinds of points are not of any practical relevance given that the Commonwealth has no intention of increasing family and other payments to wage-dependent working families, including those who are most in need and living in poverty. In fact, a major objective since the May 2014 Budget has been to cut transfer payments to families. The Schoolkids Bonus, for example, will end in December 2016. The Commonwealth is using rhetoric which is inconsistent with the reality of its policies. It is presenting the FWC with a charade which it uses as a means of avoiding important issues in the setting of minimum wages. The increase in family payments over the past few decades has operated to constrain wage increases and the reversal of that change will require more work to be done by minimum wages.
25. The Commonwealth claims that “the Australian tax-transfer system is highly targeted towards low-income households, particularly families with children” and that “only part of an increase to the minimum wage and award classification wages flows through to employees when taxes and transfers are taken into account. The Government shares the view of the Panel’s 2014 decision, which stated that ‘*increases in minimum wages are a blunt*

instrument for addressing the needs of the low-paid (Paragraph 360).” (Paragraphs 31-2, italics in original.)

26. The “blunt instrument” passage in the 2014 decision was a repetition of a passage in the 2013 decision ([2013] FWCFB 4000, 57). The passage in the 2013 decision had a footnote 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. We accept that a significant number of households with minimum wage earners lie in the middle or high income bands. Moreover, we recognise that adjustments to award wages are a relatively inefficient means of increasing the disposable income of the low paid. On-costs mean that for every dollar awarded by the Commission, employers must spend more than \$1, whereas the impact of tax and tax transfer arrangements means that, in many cases, the employee receives substantially less than \$1 as additional disposable income. 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)

27. The inefficiency or bluntness relates to the fact that some low paid workers live in higher income households and that part of a wage increase does not end up in the wage packets of workers. That some workers have fewer financial needs than those who most need minimum wages and are, therefore, “overcompensated” by a wage that takes into the position of workers with family responsibilities has been known and appreciated since minimum wages were first set more than a century ago. Parliaments have enacted this kind of legislation, most recently in 2005 and 2009 by the Australian Parliament, because of the need for an effective safety net for those workers and families who need it.
28. The common good of Australian society is promoted by a wage system that provides an adequate standard of living for workers with family responsibilities, even when those wages are paid to workers who do not have the same level of need, such as singles or workers who have grown children.
29. The more specific targeting of needs through increased transfer payments has been a feature of Australian budgetary policy over the last four decades, so that the work that is required of the ‘blunt instrument’ is much reduced. As a result of the changes, minimum wage increases are less blunt and less inefficient than they once were. If the Government

was sufficiently concerned about this issue, it could, for example, seek the progressive reduction in the income tax payable on the NMW, which is currently 8.9% of the gross wage.

C.3. Increasing inequality

30. At paragraph 30 the Commonwealth claims:

“Inequality has risen across the developed world in recent decades, driven in large part by strong growth in wages for high skilled jobs. But the minimum wage and award classification wage rates have not been a key factor driving higher inequality, either in Australia or internationally.”

31. At paragraphs 261 and 262 the Commonwealth acknowledges changes in the minimum wage bite, but then moves to a comparison of *all* households, without any regard for how the wage rates are set; see paragraphs 263 to 267, which deal with income before and after taxes and transfers. This latter part of the submission avoids the pertinent question: have *minimum wage-dependent households* become less equal as a result of the cut in the relative value of their earnings? Clearly, the answer is yes. This fact will be hidden within deciles for the whole population. Where a household is not minimum wage-dependent (eg where a student is working four hours a week in a supermarket on the minimum casual rate and is living with his or her wealthy parents) the impact of limited wage increases will have no significant effect on national measures of inequality, but where a sole breadwinner is relying on, for example, the C10 rate, the family, and others like them will become less equal as a result of the decisions of wage tribunals. The extent of increased inequality is discussed in ACCER’s submission at Chapter 5E of the Attachment in regard to pre-tax and transfer inequality. Post-tax and transfer inequality is reflected in the comparisons with median equivalised disposable household income in Chapter 8B and C of the Attachment.

C.4. Table 8.3 and the effectiveness of wage increases

32. Table 8.3 of the Commonwealth’s submission sets out the effect of the 2015 NMW increase on the disposable incomes of various kinds of households. It is introduced by:

“Government modelling finds that, even assuming no change in hours worked, minimum wage increases are not fully reflected in disposable income. This is a result of having a highly progressive and targeted tax-transfer system. Table 8.3 shows the change in disposable income for various household types following the 2015 minimum wage increase. Full-time workers without children retained the greatest fraction of the minimum wage increase after taxes and transfers, since they receive no transfer payments and therefore face no means tests. Part-time workers and workers with children kept less, since they are affected by the means tests on payments such as

Newstart and Family Tax Benefit. Childless couples with one full-time worker and an unemployed partner are the worst off of the modelled households, retaining only 16 per cent of the minimum wage increase.” (Paragraph 273)

33. The reference point for this argument is the increase in disposable income of singles and couples without children. These workers retained 79.0% of the increase awarded in 2015, or \$12.64 per week. Table 8.3 includes these two households and another 12 households, two of them being part time workers (one being a student) on 15 hours per week and the others families with one or two children. No information is given apart from a note that payments rates are at 1 July 2015. The source for the table is “Government modelling”. There is no information supplied regarding the relevant facts.
34. One of the households illustrated in Table 8.3 covers a couple, without children, where one partner is working full-time on the NMW and the other partner is on the Newstart allowance. It is claimed that this household only retains 15.8% (or \$2.53) of the \$16.00 increase in the NMW. This is because the Newstart allowance is means-tested and is affected by the earnings of an employed partner. It is apparent that the scenarios in nearly all of the other 12 households in Table 8.3 are also based on the Newstart allowance or some other income support arrangement, all of which are means tested, either by reference to the person’s own income (the part-timers) or the partner’s income. It is generally accepted that the Newstart allowance and other income support measures should be means-tested by reference to household income. The means-testing notionally returns \$10.11 to the public purse. It is a notional or short term return because the Newstart allowance is indexed, thereby restoring all or part of the initial loss suffered by the recipient.
35. Table 8.3 of the Commonwealth’s submission is misleading because it does not show the impact of the indexation of the government payments. That impact is apparent from Table 8.3 of the FWC’s *Statistical Report* of 18 March 2016, which sets out the changes in disposable incomes of various household types since 2008, and includes changes from July 2014 to July 2015. It records that for the single person the increase in disposable income resulting from the \$16.00 per week increase in the NMW was \$12.64 per week. This is the same figure used in the Commonwealth’s submission. The FWC’s table also shows that the couple who are claimed by the Commonwealth to have had an increase in disposable income of \$2.53 per week in fact had an increase of \$16.71 per week over the period July 2014 to July 2015. This is also a guide to the expected increases over the period July 2015 to June

2016. The value of the increase in the Newstart allowance is apparent from the comparison with the single income couple where the second parent does not receive the Newstart allowance. In that case the increase is \$12.96 per week. The sole parent with one child is said in the Commonwealth's submission to have had an increase of \$7.77 per week is recorded in the *Statistical Report* as having an increase of \$16.76 per week. Contrary to what the Commonwealth seeks to argue, in both couple parent and sole parent families the minimum wage increase is very effective in delivering a benefit to low paid workers and their families.

36. The FWC's figures in the *Statistical Report* are the preferred way of measuring change in disposable incomes from year to year. The matter cannot be judged by a "day one" change and must be looked at over a full year. The Commonwealth's claims are wrong and misleading. The adjustment to withdrawal rates is well-known to the Government and those drafting the submission should have addressed this as a matter of fairness. These kinds of points were made in ACCER's Reply of 2015 in respect of a similar table to Table 8.3 in the Commonwealth's 2015 submission, but the error has continued. To repeat what we said last in April 2015, this presentation is inconsistent with the well-accepted notion that the Commonwealth should act as a model litigant. The FWC, the parties to the Annual Wage Review and any member of the public reading the Government's submission, should be able to rely on the accuracy and fairness of the evidentiary matters presented by the Government.