



Briefing Paper No 1 on the Commonwealth Government's Proposals to Reform Workplace Relations in Australia

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TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	1
A. INTRODUCTION	3
Preamble	3
The Commonwealth's Proposals	3
The Purpose Of This Briefing Paper	4
B. CATHOLIC SOCIAL TEACHING	6
Catholic Social Teaching On Work	6
The Nature And Purpose Of Work	6
Labour And Capital	8
The Role Of The Market And Enterprises	9
The Special Position Of The Poor And The Vulnerable	11
The Broader Context	12
The Rights Of The Worker	14
The Right To Just Wages And Support For The Family	14
Security Of Employment	17
Family Responsibilities And Work	18
The Right To Form And Belong To Unions	19
The Right To Strike And The Resolution Of Disputes	21
Mutual Responsibilities	22
The Role Of Governments	22
Employment And Globalization	25
The Church In The Modern World	27

C. THE PROPOSED LEGISLATION	30
A National System	30
Minimum Wage Setting	30
Minimum Conditions Of Employment	31
Award Matters	31
Australian Industrial Relations Commission	32
Agreement-Making	32
Unfair Dismissal Protection	32
Other Proposals	33
D. THE PRINCIPAL ISSUES	34
A National System	34
Wages 36	
Unfair Dismissals	45
Minimum Conditions, Awards And Agreement-Making	50
Australian Industrial Relations Commission	55
The National Debate	56
E. CONCLUSION	59

EXECUTIVE SUMMARY

Australia is now engaged in a discussion about employment law and industrial relations that is important to each and every one of us, to our families and to the future of our country. The discussion has arisen from the Commonwealth Government's ("the Government") recently announced proposals to reform workplace relations.

The Government proposes to make changes to the workplace relations system, which it claims are aimed at achieving a more flexible labour market, creating economic growth and more jobs. The Government seeks to:

- give greater scope for the making of direct agreements between employers and employees;
- have fewer mandatory matters and standards in employment agreements;
- change unfair dismissal laws; and
- reduce the capacity of the Australian Industrial Relations Commission and similar state tribunals to regulate aspects of employment.

The Catholic Church has developed teachings on work and the employment relationship over the past century. The Church's social teachings are essential aspects of the Catholic faith. Catholic teaching on the spiritual, economic and social aspects of work in modern industrial societies has its genesis in Pope Leo XIII's 1891 encyclical *Rerum Novarum*. Pope John Paul II reflected on the same issues in a contemporary setting in his encyclicals *Laborem Exercens* and *Centesimus Annus*.

Catholic Social Teaching on work starts from the nature and dignity of humanity and work. Employees cannot be treated as commodities, nor can their labour be treated in purely economic terms. Employees have the right to just minimum wages and to just and safe working conditions. Every family has the right to sufficient income through work.

The Australian Catholic Commission for Employment Relations ("ACCER"), an agency of the Australian Catholic Bishops Conference, has examined the Government's proposed changes within the context of this body of Catholic Social Teaching and the Church's collective and diverse experience as an employer.

ACCER has prepared this initial briefing paper on the proposals as they have been explained so far in order to assist the Church in its consideration of these matters and to contribute to the public discussion. A final assessment of the proposed changes must await the tabling of the legislation in the Parliament and the undertaking of further consultation. At that stage, a further briefing paper will be prepared.

On the basis of the current information provided by the Government, there are concerns about various aspects of its proposals: wage fixing, unfair dismissals, minimum conditions, awards and agreement making, and the functions of the Australian Industrial Relations Commission. In particular, these focus on the Government's current proposals to change the wage fixing system by introducing a minimum wage fixed by reference to the single adult employee; abolish unfair dismissal rights for employees of corporations employing 100 or less employees; and change the no-disadvantage test that is applied to the making of collective and individual agreements.

Part of the Government's proposals is the introduction of a national workplace relations system. ACCER is open to this kind of system provided that it is supportive of the essential values and principles necessary for cooperative employment relations.

The Catholic Church has a responsibility to be part of this important discussion. A healthy business sector is essential for providing employment, economic growth and national prosperity. Social justice is also an essential element of a good economic system. Importantly, the relationship between employers and employees must be balanced and be a genuine partnership to achieve economic and social goals. ACCER will work with all sides of politics, unions and employer groups to ensure that this balance is achieved in the proposed reform of Australia's workplace relations system.

A. INTRODUCTION

Preamble

1. Australia is now engaged in a debate about employment law and workplace relations that is of substantial importance to its social and economic future. It is a discussion that parallels debates in other countries, particularly advanced industrialised countries with a Christian heritage. There are different ways of expressing the discussion. In Europe, for example, the debate has been identified in terms of a choice between the “social model” and the “market model”. In substance, it is about the relationship between economic goals and social justice. It is a discussion in which the various protagonists claim that their position is an appropriate balance between each aspect.
2. How these issues are resolved in Australia and similar nations will have a major impact on their domestic affairs. Moreover, how they are resolved, and are seen to be resolved, and the values that underpin that resolution will have a significant impact on the relations between nations and cultures. Economic and personal freedom without social justice is not a beacon to others.
3. These are matters of significance to the Catholic Church, both in Australia and elsewhere. As we explain later, the Church has substantial and profound positions and principles that bear on these issues, while acknowledging that it does not always have at hand the solutions to particular problems.

The Commonwealth’s Proposals

4. On 26 May 2005 the Prime Minister and the Minister for Employment and Workplace Relations announced the principal features of the Government’s proposed reforms of the regulation of workplace relations in Australia and changes to the **Workplace Relations Act 1996** (“the Act”). The Act is the means by which there is Federal regulation of employment law and workplace relations throughout Australia. It is expected that proposed legislation will be introduced into Federal Parliament in October 2005.
5. The rationale for the amendments is summarised in the following passage in the Minister’s written statement:

"Australia needs a more flexible labour market to maximise economic growth and employment opportunities and to maintain and improve our standard of living in an increasingly globalized economy."

(<http://www.dewr.gov.au/ministersAndMediaCentre/andrews/documents/NewWorkplaceRelationsSystem26May2005.pdf>)

6. The objective of the amendments is to make changes to the national system of industrial relations and the regulation of employment throughout Australia. The Government seeks to override the current State regulation of employment, as far as it is able to do so under the "corporations power" in the Australian Constitution, and establish a national system that is substantially different from that currently operating under Federal and State legislation.
7. The principal ways in which the objective is to be pursued is by:
 - giving greater scope for the making of direct agreements between employers and employees;
 - having fewer mandatory matters and standards for inclusion in employment agreements;
 - changing unfair dismissal laws; and
 - reducing the capacity of the Australian Industrial Relations Commission ("the AIRC") and similar State tribunals to regulate aspects of employment.
8. The proposals are intended to change the bargaining relationship between employers and employees because it is claimed the current arrangements inhibit economic growth, employment prospects and international competitiveness.

The Purpose Of This Briefing Paper

9. The Australian Catholic Commission for Employment Relations ("ACCER") is an agency of the Australian Catholic Bishops Conference ("the Conference"). ACCER provides the Conference, and Catholic employers, with advice, research and advocacy on matters affecting the employment relationship in Australian workplaces, within the context of Catholic Social Teaching. It does this at both the practical and public policy levels.
10. This initial briefing paper considers the principal features of the proposals for the reform of workplace relations announced by the Government on 26 May 2005. It does this in the light of Catholic Social Teaching and with the benefit of the Catholic Church's collective and diverse experience as an employer. A final

assessment of the proposed changes must await the tabling of the legislation in the Parliament and the undertaking of further consultation. The essential task of this briefing paper is to provide information, identify the key issues for further consideration and stimulate discussion.

11. It is important to understand that the Catholic Church has an established body of teaching on work and the employment relationship. The Church's standing and expertise to comment on the Government's proposals is also based on the fact that the Church, through its many agencies, is one of the largest employers in Australia. Many Catholics - clergy, religious and lay - have considerable expertise in managing enterprises where issues concerning workplace organization, co-operation, productivity and efficiency are central to their work. They are required to do this in accordance with Catholic Social Teaching.
12. There will be further briefing papers prepared as detail of the proposed legislation and associated matters becomes available, so as to assist the Church in its consideration of these matters and to make a contribution to the broader public discussion.

B. CATHOLIC SOCIAL TEACHING

Catholic Social Teaching On Work

13. The Government's proposals require that we consider Catholic Social Teaching on work and related issues. These are important and essential aspects of the Catholic faith. There can be no proper analysis or response unless this teaching is properly understood. Accordingly, we set out the relevant teachings.

The Nature And Purpose Of Work

14. Catholic Social Teaching is based on Christian beliefs and values and aims to bring about a good and fair society for the common good. These are unifying forces within the Christian community. Similar values are also found in other religions, including Judaism and Islam. These shared values provide a further opportunity for the discussion of, and actions on, various social and economic issues.
15. Our starting point is Catholic Social Teaching on work. Catholic teaching on the spiritual, economic and social aspects of work in modern industrial societies has its genesis in Pope Leo XIII's 1891 encyclical *Rerum Novarum*. *Rerum Novarum* "expounds ... the Catholic doctrine on work, the right to property, the principle of collaboration instead of class struggle as the fundamental means for social change, the rights of the weak, the dignity of the poor and the obligations of the rich, the perfecting of justice through charity, on the right to form professional associations"; *Guidelines for the Study and Teaching of the Church's Social Doctrine in the Formation of Priests*, Congregation for Catholic Education, 1988, page 24. As the Australian Catholic Bishops have noted in their Pastoral Letter of 1991, *Rerum Novarum* "became in effect the charter of the Catholic social movement during the past 100 years" (*A Century of Catholic Social Teaching*; Appendix to *Centesimus Annus*, St. Paul Publications).
16. On the centenary of *Rerum Novarum*, Pope John Paul II wrote the encyclical *Centesimus Annus*, to commemorate *Rerum Novarum* and to reflect on Catholic Social Teaching in a contemporary setting. He sought to "discover anew the richness of the fundamental principles which it formulated for dealing with the question of the condition of workers" and to re-read the earlier encyclical in the context of new and emerging circumstances (*Centesimus Annus*, 3).
17. The significance of *Rerum Novarum* and the centrality of its teaching in the Church's social doctrine are affirmed in *Centesimus Annus*:

“Today, at a distance of a hundred years, the validity of this approach [in *Rerum Novarum*] affords me the opportunity to contribute to the development of Christian social doctrine. The “new evangelisation”, which the modern world urgently needs and which I have emphasised many times, must include among its essential elements a proclamation of the Church’s social doctrine. As in the days of Pope Leo XIII, this doctrine is still suitable for indicating the right way to respond to the great challenges of today, when ideologies are being increasingly discredited.” (*Centesimus Annus*, 5)

18. In the concluding chapter of *Centesimus Annus* Pope John Paul II re-affirmed the basis of the Church’s social teaching, with a particular reference to “the working class”:

“The Encyclical *Rerum Novarum* can be read as a valid contribution to socio-economic analysis at the end of the nineteenth century, but its specific value derives from the fact that it is a document of the Magisterium and is fully a part of the Church's evangelizing mission, together with many other documents of this nature. Thus the Church's *social teaching* is itself a valid *instrument of evangelization*. As such, it proclaims God and his mystery of salvation in Christ to every human being, and for that very reason reveals man to himself. In this light, and only in this light, does it concern itself with everything else: the human rights of the individual, and in particular of the "working class", the family and education, the duties of the State, the ordering of national and international society, economic life, culture, war and peace, and respect for life from the moment of conception until death.” (*Centesimus Annus*, 54)

19. Catholic Social Teaching on work starts from the nature and dignity of humanity and work and the role of employees in the continuing process of creation. Economic systems and economic philosophies are not the starting point.
20. It is because of the nature and purpose of work that employees cannot be treated like other parts of an economic process, with their value assessed only in economic terms. Employees cannot be treated as commodities, nor can their labour be treated in purely economic terms. Their work has to be understood as part of God's plan. Their work is also vital to their relations with others. It is through work that men and women co-operate and support each other and achieve social progress. In particular, and at its most fundamental level, it is the means by which families are formed and nurtured.

21. On the ninetieth anniversary of *Rerum Novarum*, Pope John Paul II, writing in the encyclical *Laborem Exercens*, summarized these matters in the following way:

“Man must work, both because the Creator has commanded it and because of his own humanity, which requires work in order to be maintained and developed. Man must work out of regard for others, especially his own family, but also for the society he belongs to, the country of which he is a child, and the whole human family of which he is a member, since he is the heir to the work of generations and at the same time a sharer in building the future of those who will come after him in the succession of history. All this constitutes the moral obligation of work, understood in its wide sense.” (*Laborem Exercens*, 16, St. Paul Publications)

Labour And Capital

22. The importance of work in Catholic Social Teaching is recognised in the principle of the priority of labour over capital, a principle that has always been taught by the Church (*Laborem Exercens*, 12).

23. In *Industrial Relations - The Guiding Principles*, the Australian Catholic Bishops' Committee for Industrial Affairs summarised Church teaching on the nature of work:

“Work is a principal means by which human kind seek their personal fulfilment and make their contribution to the common good. Thus there is a natural priority of labour over capital. Simply expressed, work exists for the person, not the person for the work. It follows that human work cannot be treated as a resource or as a commodity to be traded in like any other commodity... Every family has the right to sufficient income through work. Workers have the right to just minimum wages and to just and safe working conditions.” (*Industrial Relations - The Guiding Principles*, 1993, p.2, Australian Catholic Bishops Conference)

24. These kinds of views are found in the writings of other Episcopal bodies. In 1996 the Catholic Bishops' Conference of England and Wales wrote the following in *The Common Good and the Catholic Church's Social Teaching*:

“Workers have rights which Catholic teaching has consistently maintained are superior to the rights of capital. These include the right to decent work, to just wages, to security of employment, to adequate rest and holidays, to limitation of hours of work, to health and safety protection, to non-discrimination, to form and join trade unions, and, as a last resort, to go on strike. The Catholic Church has always deplored the treatment of employment as nothing more than a form of commercial contract. This leads to a sense of alienation between a worker and his or her labour. Instead, forms of employment should stress the integration of work and worker, and encourage the application of creative skills.” (*The Common Good and the Catholic Church’s Social Teaching*, 91)

25. The Church’s teachings require that the importance of work to society and the dignity of the employee should lie at the heart of the regulation of workplace relations and employment law.

26. The Church's teachings on the priority of labour over capital have implications for the rights of those who own capital. The Church supports the principle of private property rights. However, the ownership of the means of production carries obligations. In referring to the right of private property as it relates to work, Pope John Paul II wrote:

"Christian tradition has never upheld this right as absolute and untouchable. On the contrary, it has always understood this right within the broader context of the right common to all to use the goods of the whole of creation: *the right to private property is subordinated to the right to common use, to the fact that the goods are meant for everyone.*" (*Laborem Exercens*, 14)

27. The owners of capital are, therefore, not free to exercise their property rights without proper regard for the rights of their employees. The rights of employees, when not respected by employers, must be of concern to governments. We will return to the role of governments.

The Role Of The Market And Enterprises

28. The “free market economy” is of value because it can serve the needs of society as a whole and employees in particular. But this is not always the case. In *Centesimus Annus*, Pope John Paul II, who was writing soon after the collapse of communism, wrote:

“It would appear that, on the level of individual nations and of international relations, the *free market* is the most efficient instrument for utilizing resources and effectively responding to

needs. But this is true only for those needs which are "solvent", insofar as they are endowed with purchasing power, and for those resources which are "marketable", insofar as they are capable of obtaining a satisfactory price. But there are many human needs which find no place on the market. It is a strict duty of justice and truth not to allow fundamental human needs to remain unsatisfied, and not to allow those burdened by such needs to perish. It is also necessary to help these needy people to acquire expertise, to enter the circle of exchange, and to develop their skills in order to make the best use of their capacities and resources. Even prior to the logic of a fair exchange of goods and the forms of justice appropriate to it, there exists *something which is due to man because he is man*, by reason of his lofty dignity. Inseparable from that required "something" is the possibility to survive and, at the same time, to make an active contribution to the common good of humanity." (*Centesimus Annus*, 34)

29. One of the points made in this passage is that some employees come to the job market disadvantaged. Their dignity requires appropriate intervention and protection.

30. Later in *Centesimus Annus* Pope John Paul II referred to the goal of *a society of free work, of enterprise and of participation*:

"Such a society [*a society of free work, of enterprise and of participation*] is not directed against the market, but demands that the market be appropriately controlled by the forces of society and by the State, so as to guarantee that the basic needs of the whole of society are satisfied." (*Centesimus Annus*, 35)

31. Pope John Paul II acknowledged the importance of profit to the operation of enterprises and added:

"In fact, the purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a *community of persons* who in various ways are endeavouring to satisfy their basic needs, and who form a particular group at the service of the whole of society. Profit is a regulator of the life of a business, but it is not the only one; *other human and moral factors* must also be considered which, in the long term, are at least equally important for the life of a business." (*Centesimus Annus*, 35)

32. Pope John Paul II returned to the subject of capitalism and the market in the chapter entitled "Private Property and the Universal Destination of Goods":

"Returning now to the initial question: can it perhaps be said that, after the failure of Communism, capitalism is the victorious social system, and that capitalism should be the goal of the countries now making efforts to rebuild their economy and society? Is this the model which ought to be proposed to the countries of the Third World which are searching for the path to true economic and civil progress?"

The answer is obviously complex. If by "capitalism" is meant an economic system which recognizes the fundamental and positive role of business, the market, private property and the resulting responsibility for the means of production, as well as free human creativity in the economic sector, then the answer is certainly in the affirmative, even though it would perhaps be more appropriate to speak of a "business economy", "market economy" or simply "free economy". But if by "capitalism" is meant a system in which freedom in the economic sector is not circumscribed within a strong juridical framework which places it at the service of human freedom in its totality, and which sees it as a particular aspect of that freedom, the core of which is ethical and religious, then the reply is certainly negative." (*Centesimus Annus*, 42)

The Special Position Of The Poor And The Vulnerable

33. A major concern of Catholic Social Teaching is with the position of the poor and the vulnerable. There is a *preferential option for the poor*. In *Laborem Exercens* Pope John Paul II wrote:

"In order to achieve social justice in the various parts of the world, in the various countries, and in the relationships between them, there is a need for ever new *movements of solidarity of the workers and with the workers*. This solidarity must be present whenever it is called for by the social degrading of the subject of work, by exploitation of the workers, and by the growing areas of poverty and even hunger. The Church is firmly committed to this cause, for she considers it her mission, her service, a proof of her fidelity to Christ, so that she can truly be the "Church of the poor". And the "poor" appear under various forms; they appear in various places and at various times; in many cases they appear as a *result of the violation of the dignity of human work*: either because the opportunities for human work are limited as a result of the scourge of unemployment, or because a low value is put on work and the

rights that flow from it, especially the right to a just wage and to the personal security of the worker and his or her family.”
(*Laborem Exercens*, 8)

34. The poor in our society include the unemployed, the under-employed and low paid employees, especially those with family responsibilities. The unemployed and the under-employed are most likely to be employed in low paid jobs if they become employed. The proper protection of these low paid employees has to be given high priority. Policies that might be benign or of assistance to some employees may cause injustice to others, especially the low paid and those who find it difficult to obtain secure employment. While it is the position of the low paid employees that requires greatest attention, the Church has the obligation to speak on the circumstances of employees more generally. The fundamental principles apply to all employees.

The Broader Context

35. In recent decades Catholic Social Teaching has given increasing emphasis to a wider range of elements and principles of human life and society. The Australian Catholic Bishops have described this in the following terms:

“In reviewing the teaching of the Church’s magisterium on social issues in the post-war years, we see that concern for the worker’s right to a living wage was still evident and that the central importance of human work for human well-being and development continued to be recognised. At the same time, papal attention and that of the Fathers of the Second Vatican Council were directed increasingly to other related and important elements and principles of human life and human society as a whole.

These included: the obligation of human self-development in the image of God; the right to life from the moment of conception; the right to freedom of religion and religious practice; the right to freedom from discrimination on racial grounds; the rights of youth; the role and rights of women in society; the role and rights of the family; the right of citizens to take an appropriate part in political decision-making; the right to take refuge from political or other forms of political persecution; the right to migrate, to have adequate education, to choose the way to earn a living, to be able to live in peace, and so on.” (*A Century of Catholic Social Teaching*)

36. Part of Catholic Social Teaching is concerned with a framework for economic life. Our discussion of work and employees has covered a number of themes within that framework. The United States Conference of Catholic Bishops has identified

ten themes of Catholic Social Teaching that bear on economic issues. In summary, they are:

- “1. The economy exists for the person, not the person for the economy.
2. All economic life should be shaped by moral principles. Economic choices and institutions must be judged by how they protect or undermine the life and dignity of the human person, support the family, and serve the common good.
3. A fundamental moral measure of any economy is how the poor and vulnerable are faring.
4. All people have a right to life and to secure the basic necessities of life (e.g., food, clothing, shelter, education, health care, a safe environment, and economic security).
5. All people have the right to economic initiative, to productive work, to just wages and benefits, to decent working conditions and to organize and join unions or other associations.
6. All people, to the extent they are able, have a corresponding duty to work, a responsibility to provide for the needs of their families, and an obligation to contribute to the broader society.
7. In economic life, free markets have both clear advantages and limits; government has essential responsibilities and limitations; voluntary groups have irreplaceable roles but cannot substitute for the proper working of the market and the just policies of the state.
8. Society has a moral obligation, including governmental action where necessary, to ensure opportunity, to meet basic human needs, and to pursue justice in economic life.
9. Workers, owners, managers, stockholders and consumers are moral agents in economic life. By our choices, initiative, creativity and investment, we enhance or diminish economic opportunity, community life, and social justice.
10. The global economy has moral dimensions and human consequences. Decisions on investment, trade, aid and development should protect human life and promote human rights, especially for those most in need, wherever they might live on this globe.”

(A Place at the Table: A Catholic Recommitment to Overcome Poverty and to Respect the Dignity of All God's Children, United States Conference of Catholic Bishops, pages 27 - 28)

The Rights Of The Worker

37. Catholic Social Teaching has identified a number of rights and responsibilities of employees, employers and the State.
38. In introducing his chapter "Rights of Workers" in *Laborem Exercens*, Pope John Paul II referred to the "context of human rights" and the "*human rights that flow from work*":

"While work, in all its many senses, is an obligation, that is to say a duty, it is also a source of rights on the part of the *worker*. These rights must be examined in the broad *context of human rights as a whole*, which are connatural with man, and many of which are proclaimed by various international organisations and increasingly guaranteed by the individual States for their citizens. Respect for this broad range of human rights constitutes the fundamental condition for peace in the modern world: peace both within individual countries and societies and in international relations, as the Church's Magisterium has several times noted, especially since the encyclical *Pacem in Terris*. The *human rights that flow from work* are part of the broader context of those fundamental rights of the person." (*Laborem Exercens*, 16)

39. The roots of human rights are to be found in the dignity that belongs to each human being. The movement towards the identification and proclamation of human rights is one of the most significant attempts to respond effectively to the inescapable demands of human dignity; *Compendium of the Social Doctrine of the Church*, paragraphs 152 and 153. In emphasising the importance of human rights Pope John Paul II said:

"These rights apply to every stage of life and to every political, social, economic and cultural situation. Together they form a single whole, directed unambiguously towards the promotion of every aspect of the good of both the person and society...The integral promotion of every category of human rights is the true guarantee of full respect for each individual right." (*Message for the 1999 World Day of Peace*, 3)

The Right To Just Wages And Support For The Family

40. The principal right of an employee is the right to a just wage. In his 1961 encyclical, *Mater et Magistra*, Pope John XXIII, reflecting on *Rerum Novarum*, wrote:

“We consider it our duty to reaffirm that the remuneration of work is not something that can be left to the laws of the marketplace; nor should it be a decision left to the will of the more powerful. It must be determined in accordance with justice and equity; which means that workers must be paid a wage that allows them to live a truly human life and to fulfil their family obligations in a worthy manner. Other factors too enter into the assessment of a just wage: namely, the effective contribution which each individual makes to the economic effort, the financial state of the company for which he works, the requirements of the general good of the particular country ... and finally the requirements of the common good of the universal family of nations ...” (*Mater et Magistra*, 71, St. Paul Publications)

41. In *Laborem Exercens*, Pope John Paul II referred to the various rights formed within the employment relationship:

“The key problem of social ethics in this case is that of *just remuneration* for work done. In the context of the present there is no more important way for securing a just relationship between the worker and the employer than that constituted by remuneration for work....

It should also be noted that the justice of a socio-economic system and, in each case, its just functioning, deserve in the final analysis to be evaluated by the way in which man’s work is properly remunerated in the system... Hence, in every case, a just wage is the concrete means of *verifying the justice* of the whole socio-economic system and, in any case, of checking that it is functioning justly. It is not the only means of checking, but it is a particularly important one and, in a sense, the key means.

This means of checking concerns above all the family. Just remuneration for the work of an adult who is responsible for a family means remuneration that will suffice for establishing and properly maintaining a family and for providing security for its future. Such remuneration can be given either through what is called a *family wage* - that is, a single salary given to the head of the family for his work, sufficient for the needs of the family without the other spouse having to take up gainful employment outside the home - or through *other social measures* such as family allowances or grants to mothers devoting themselves exclusively to their families. These grants should correspond to the actual needs, that is, to the number of dependents for as long as they are not in a position to assume proper responsibility for their own lives.” (*Laborem Exercens*, 19)

42. On the centenary of *Rerum Novarum*, the Australian Catholic Bishops referred to the need for adequate wages and other entitlements:

“It was his [Pope Leo XIII’s] view that human society is built upon and around productive human work. When a person is employed to work full-time for wages, the employer, in strict justice, will pay for an honest day’s work a wage sufficient to enable the worker, even if unskilled, to have the benefits of survival, good health, security and modest comfort. The wage must also allow the worker to provide for the future and acquire the personal property needed for the support of a family. To pressure or trick the worker into taking less is, therefore, unjust.” (*A Century of Catholic Social Teaching*)

43. As the Australian Catholic Bishops have said, a full-time unskilled employee should be paid a wage that is sufficient to provide the benefits of survival, security and modest comfort and to allow the employee to provide for the future and acquire the personal property for the support of a family. This standard of living is the basis upon which a legal minimum wage should be fixed. This required minimum wage may be described as a “Living Wage”. Importantly, it is a “family wage” because it enables one of the parents to work in the home and not undertake paid employment.
44. A just wage for a particular employee may be in excess of the Living Wage. A just wage will be based on a number of additional factors related to skills, work environment and the like.
45. In an earlier quotation from *Laborem Exercens* reference was made to social measures that may be available to meet the needs of the employee's dependants. In Australia, government transfers constitute a significant part of the income of many families, especially those dependent upon the income of a low paid breadwinner. The receipt of such payments does not transfer the obligation to pay an appropriate wage from the employer to the government.
46. A Living Wage is a needs-based wage. As well as the costs of living, it must take into account the tax paid by the employee and government benefits paid to the employee and to the employee's dependants.
47. Government taxation bears upon the obligation to pay an appropriate wage. Taxation raises important moral issues for governments. In their 1986 Pastoral Letter *Economic Justice for All*, the Catholic Bishops of the United States said:

“The tax system should be continually evaluated in terms of its impact on the poor. This evaluation should be guided by three principles. First, the tax system should raise adequate revenues to pay for the public needs of society, especially to meet the basic needs of the poor. Secondly, the tax system should be structured according to the principle of progressivity, so that those with relatively greater financial resources pay a higher rate of taxation. The inclusion of such a principle in tax policies is an important means of reducing the severe inequalities of income and wealth in the nation. Action should be taken to reduce or offset a disproportionate burden on those with lower incomes. Thirdly, families below the official poverty line should not be required to pay income taxes. Such families are, by definition, without sufficient resources to purchase basic necessities of life. They should not be forced to bear the additional burden of paying income taxes.” (*Economic Justice for All*, 202, footnote omitted)

48. The third matter raised by the U.S. Bishops is an important moral point. It is wrong to impose an income tax on working families who live in poverty, that is, on those who are unable to achieve the minimally acceptable standard of living. The principle applies equally to those who are in poverty, but who are without family responsibilities.
49. Because the amount fixed for a minimum wage will take into account the income tax paid and transfers payments received, the cost of employing minimum wage employees and other low paid employees will be especially affected by government policy. Reductions in income tax and increases in transfer payments may increase employment because the cost of employing labour is less than it would otherwise have been. We say “may” because the relationship between wage levels and employment opportunities and the potential employment effect of wage increases are matters about which there is substantial discussion. To the extent that there is a relationship between wages and employment, government policies on taxes and transfer payments will be factors in increasing or decreasing employment opportunities. The amount of taxation required to be paid by low paid employees is, therefore, both an economic and a moral issue.

Security Of Employment

50. In *Laborem Exercens*, as we saw earlier, Pope John Paul II identified circumstances that can cause employees to be poor:

“And the “poor” appear under various forms; they appear in various places and at various time; in many cases they appear as a *result of the violation of the dignity of human work*: either because

the opportunities for human work are limited as a result of the scourge of unemployment, or because a low value is put on work and the rights that flow from it, especially the right to a just wage and to the personal security of the worker and his or her family.”
(*Laborem Exercens*, 8)

51. This precariousness of employment is inconsistent with the employee’s dignity. The observation in the last part of the passage cannot be doubted: the plight of low paid employees is compounded when they have no security in their employment. The Bishops of England and Wales have said that the rights of employees “include the right... to security of employment.” (*The Common Good and the Catholic Church’s Social Teaching*, 91)
52. The Church’s teachings do not prescribe the way in which security of employment is to be promoted. Security of employment would involve laws to remedy certain kinds of dismissals. The Church’s teaching on the role of work in the ongoing process of creation, the dignity of employees, the importance of work for employees and their families, the priority of labour over capital and the need to protect the vulnerable implicitly rejects arbitrary and unwarranted dismissals. An unconscionable dismissal, for example, would infringe the employee’s dignity and would be unwarranted.
53. It follows that the Church’s teaching requires that an employee should have substantial security of employment. This is not to say that an employer is required to employ an employee for whom there is no work, or no suitable work, or that an employee should not be dismissed if his or her conduct or work performance justify it. Nor is it to say that an employee should not be subject to a reasonable probationary period before qualifying for security of employment.
54. It also follows that governments are obliged to make laws that provide appropriate procedures and remedies for those whose employment security is violated. The way in which governments fulfil their obligation to protect employees from arbitrary and unwarranted dismissals will vary.

Family Responsibilities And Work

55. Catholic Social Teaching deals with rights that relate to what is sometimes called the *work/life balance*. The principal aspects of this balance are the right to adequate rest and the proper recognition of the employee’s family responsibilities.
56. Every employee has the right to adequate rest and protection against onerous working hours. In *Industrial Relations-The Guiding Principles* the Bishops’ Committee for Industrial Affairs said:

“Respect for human dignity requires that working conditions, including the length of shifts and the length of a week's work, be such as to protect the health and well-being of workers and to recognise their obligations to their family and the wider community.” (*Industrial Relations -The Guiding Principles*, page 2)

57. Central to Catholic Social Teaching on the family is the view that the family is to be supported and encouraged, for the benefit of the family and for the benefit of the broader community. It is the basic unit of society.

“The rights of the person, even though they are expressed as rights of the individual, have a fundamental social dimension which finds an innate and vital expression in the family;...the family constitutes, much more than a mere juridical, social and economic unit, a community of love and solidarity, which is uniquely suited to teach and transmit cultural, ethical, social, spiritual and religious values, essential for the development and well-being of its own members and of society.” (*Charter of the Rights of the Family*, Holy See, 1983)

58. In the opening of his 1981 Apostolic Exhortation, *Familiaris Consortio*, Pope John Paul II made the observation that the family in the modern world, as much and perhaps more than any other institution, has been beset by the many profound and rapid changes that have affected society and culture. The future prosperity and stability of society depends upon the strength of the family unit. The strength of the family will depend to a large extent on the employment relationship and the policies of governments.

59. There are many influences on the family outside those that come through the demands and pressures on the parents who are engaged in paid employment. But their work may have a substantial effect on the family. Clearly, poor wages, excessive hours, irregular work and job insecurity will affect the ability of the family to function as a family, meet day-to-day needs and provide for the future. Governments are obliged to implement policies that will remove or alleviate these potential threats to the well-being of families.

The Right To Form And Belong To Unions

60. Catholic Social Teaching recognises the rights and obligations of employees to co-operate to participate in their own employment and to advance their own interests. Under the heading “Importance of unions”, Pope John Paul II wrote in *Laborem Exercens*:

“All these rights, together with the need for the workers themselves to secure them, give rise to yet another right: the *right of association*, that is to form associations for the purpose of defending the vital interest of those employed in the various professions....

Catholic social teaching does not hold that unions are no more than a reflection of the “class” structure of society and that they are a mouthpiece for a class struggle, which inevitably governs social life. They are indeed *a mouthpiece for the struggle for social justice*, for the rights of working people in accordance with their individual professions.” (*Laborem Exercens*, 20)

61. The role of unions is also referred to in *Centesimus Annus*. We have already quoted a passage in the encyclical (at 15) in which reference is made to “negotiating minimum salaries and working conditions” and the role of unions as places “where workers can express themselves”. Pope John Paul II returned to the role of unions in the context of a discussion of economic systems:

“A business cannot be considered only as a "society of capital goods"; it is also a "society of persons" in which people participate in different ways and with specific responsibilities, whether they supply the necessary capital for the company's activities or take part in such activities through their labour. To achieve these goals there is still need for a broad associated workers' movement, directed towards the liberation and promotion of the whole person.” (*Centesimus Annus*, 43)

62. It can be seen from these passages that the Church emphasises the importance of unions because of the role that they can play in advancing the interests of employees. They are *encouraged* for that reason. One of the obligations of the State is to provide a legal structure in which employees can co-operate through unions to advance their common interests. It would be wrong for the State to enact laws that impede or frustrate unions in carrying out their lawful representative activities. The State should also ensure that employees are not coerced either to join or not to join unions: they are entitled to exercise their right of freedom of association.
63. The rights of unions are derived from the rights of the employees in an enterprise. It would be contrary to the rights of those employees for their employers to refuse to deal with their union, when acting on their behalf in relation to wages and working conditions. Because unions “serve the development of an authentic culture of work and help employees to share in a fully human way in the life of their place of employment” (*Centesimus Annus*, 15), unions and employers must be fair, honest and just in their dealings with each other. As the Bishops

Committee for Industrial Affairs has said, unions must be subject to law and it would be a misuse of their power for it “to be used for purposes other than those for which they were created, and for which members freely joined them.” (*Industrial Relations - The Guiding Principles*, page 3)

The Right To Strike And The Resolution Of Disputes

64. Catholic teaching affirms the right to strike, but it is a right that comes with limitations. It is summarised in *Laborem Exercens*.

“...*One method* used by unions in pursuing the just rights of their members is *the strike* or work stoppage, as a kind of ultimatum to the competent bodies, especially the employers. This method is recognized by Catholic social teaching as legitimate in the proper conditions and within just limits. In this connection workers should be assured the *right to strike*, without being subjected to personal penal sanctions for taking part in a strike. While admitting that it is a legitimate means, we must at the same time emphasize that a strike remains, in a sense, an extreme means. It *must not be abused*; it must not be abused especially for "political" purposes. Furthermore it must never be forgotten that, when essential community services are in question, they must in every case be ensured, if necessary by means of appropriate legislation. Abuse of the strike weapon can lead to the paralysis of the whole of socio-economic life, and this is contrary to the requirements of the common good of society, which also corresponds to the properly understood nature of work itself.” (*Laborem Exercens*, 20)

65. In *Centesimus Annus* (at 15) reference is made to the need for “careful controls and adequate legislative measures to block shameful forms of exploitation”. Unions have a role, but there is a need for action by the State. The Church’s teachings do not identify the kind of remedial action to be taken by the State. There are various ways by which the State can protect employees. It may enact laws that override private agreements that do not meet minimum standards and it may provide a dispute resolution process for employees who are aggrieved by an agreement or the implementation of the agreement.

66. The value of the Australian system of dispute resolution was recognized by Pope John Paul II in a speech made on his visit to Australia in 1986:

"Australia has a long and proud history of settling industrial disputes and promoting co-operation by its almost unique system of arbitration and conciliation. Over the years this system has helped to defend the rights of workers and promote their well being, while at the same time taking into account the needs and the future of the whole community." (Address to workers at the Transfield factory, Parramatta, 26 November 1986)

67. The Bishops Committee for Industrial Affairs made the following observation on that passage:

"Whatever changes need to be made to the mechanics of the conciliation and arbitration system, it should be ensured that these principles are preserved." (*Industrial Relations - The Guiding Principles*, p.5)

Mutual Responsibilities

68. A feature of Catholic Social Teaching is its identification of mutual rights and duties that link and unite individuals, society and the State. These rights and duties are necessary for the promotion of the common good.

The Role Of Governments

69. The encouragement of employment is one of the most fundamental obligations of the State. In *Laborem Exercens* a distinction is drawn between the "direct employer" and the "indirect employer". The use of the term indirect employer arises from the fact that the employment relationship (between the direct employer and the employee) is affected by institutions and persons other than the immediate parties to the contract of employment. The indirect employer includes, especially, the State. The encyclical identifies various obligations that fall to the State:

"When we consider the rights of workers in relation to the "indirect employer", that is to say, all the agents at the national and international level that are responsible for the whole orientation of labour policy, we must first direct our attention to a *fundamental issue*: the question of finding work, or, in other words, the issue of *suitable employment for all who are capable of it.*" (*Laborem Exercens*, 18)

The use of the term “suitable employment” is to be expected, given the importance and essential dignity of work and the need for an employee to properly support his or her family.

70. In a chapter entitled “State and Culture” in *Centesimus Annus*, Pope John Paul II referred to the role of the State in regard to “the exercise of human rights in the economic sector”:

“Another task of the State is that of overseeing and directing the exercise of human rights in the economic sector. However, primary responsibility in this area belongs not to the State but to individuals and to the various groups and associations which make up society. The State could not directly ensure the right to work for all its citizens unless it controlled every aspect of economic life and restricted the free initiative of individuals. This does not mean, however, that the State has no competence in this domain, as was claimed by those who argued against any rules in the economic sphere. Rather, the State has a duty to sustain business activities by creating conditions which will ensure job opportunities, by stimulating those activities where they are lacking or by supporting them in moments of crisis...” (*Centesimus Annus*, 48)

71. The State is not only obliged to promote economic activity. It is obliged to protect the weak against the strong. In *Centesimus Annus* Pope John Paul II referred to the proper role and obligations of the State:

“There is certainly a legitimate sphere of autonomy in economic life which the State should not enter. The State, however, has the task of determining the juridical framework within which economic affairs are to be conducted, and thus of safeguarding the prerequisites of a free economy, which presumes a certain equality between the parties, such that one party would not be so powerful as practically to reduce the other to subservience.

In this regard, *Rerum Novarum* points the way to just reforms which can restore dignity to work as the free activity of man. These reforms imply that society and the State will both assume responsibility, especially for protecting the worker from the nightmare of unemployment. Historically, this has happened in two converging ways: either through economic policies aimed at ensuring balanced growth and full employment, or through unemployment insurance and retraining programs capable of ensuring a smooth transfer of workers from crisis sectors to those in expansion.

Furthermore, society and the State must ensure wage levels adequate for the maintenance of the worker and his family, including a certain amount for savings. This requires a continuous effort to improve workers' training and capability so that their work will be more skilled and productive, as well as careful controls and adequate legislative measures to block shameful forms of exploitation, especially to the disadvantage of the most vulnerable workers, of immigrants and of those on the margins of society. The role of trade unions in negotiating minimum salaries and working conditions is decisive in this area.

Finally, "humane" working hours and adequate free-time need to be guaranteed, as well as the right to express one's own personality at the work-place without suffering any affront to one's conscience or personal dignity. This is the place to mention once more the role of trade unions, not only in negotiating contracts, but also as "places" where workers can express themselves. They serve the development of an authentic culture of work and help workers to share in a fully human way in the life of their place of employment.

The State must contribute to the achievement of these goals both directly and indirectly. Indirectly and according to the *principle of subsidiarity*, by creating favourable conditions for the free exercise of economic activity, which will lead to abundant opportunities for employment and sources of wealth. Directly and according to the *principle of solidarity*, by defending the weakest, by placing certain limits on the autonomy of the parties who determine working conditions, and by ensuring in every case the necessary minimum support for the unemployed worker." (*Centesimus Annus*, 15, footnotes omitted.)

72. The middle part of this passage emphasises the need for the creation of jobs that provide "wage levels adequate for the maintenance of the worker and his family, including a certain amount of savings". The last part of this passage refers to the need for government to promote employment and to regulate aspects of the relations between employers and employees. In part, it raises the issue of the interaction between wage rates and employment opportunities. It is an issue over which there is substantial discussion. But it is necessary to ensure the basic rights of low paid employees and to avoid imposing on them the burden of macroeconomic policy. The Australian Bishops Committee for Industrial Affairs has said:

"Every family has the right to sufficient income through work. Workers have the right to just minimum wages and to just and safe working conditions.

....

The provision of more work opportunities does not, however, by itself justify reducing below a just level, the wages of those already in jobs.” (*Industrial Relations – The Guiding Principles, 2*)

73. The Catholic Bishops of England and Wales addressed this matter in *The Common Good and the Catholic Church’s Social Teaching*:

“Employers, meanwhile, have a duty to pay a just wage, the level of which should take account of the needs of the individual and not just his or her value on the so-called labour market. If employers do not do this voluntarily, Catholic Social Teaching would allow the State to make them do so by means of a statutory minimum wage, either nationally or in some sectors. It is not morally acceptable to seek to reduce unemployment by letting wages fall below the level at which employees can sustain a decent standard of living.” (*The Common Good and the Catholic Church’s Social Teaching*, paragraph 97)

74. Catholic Social Teaching calls on governments to establish a framework that promotes fairness and remedies unfairness. How they do so will vary. The principle of subsidiarity applies to the way in which that obligation is to be discharged. Subsidiarity is a principle that emphasizes the devolution of decision-making and the importance of participation at the most appropriate level. Participation and agreement-making at the workplace can be, and are, valuable. But the principle does not require the exposure of the weak to improper practices at these levels.
75. Catholic Social Teaching, therefore, identifies interlocking obligations. There is an obligation on individuals to perform work where, and to the extent, they are able to do so. The obligation to work co-exists with the entitlement to receive a just wage. It is the duty of the State to ensure the payment of wages that are at least sufficient to meet the basic needs of the employee and the employee's family. The obligations of the State go further than ensuring the payment of minimum wages. The State also has a critical role to play in finding suitable employment that pays a wage sufficient to meet the basic needs of the employee and the employee's family.

Employment And Globalization

76. The State’s economic obligations to its citizens are affected by the globalisation of markets. Employment has to be created and maintained in economies and markets that are increasingly globalized and where many, but not all, vulnerable employees are in low paid employment in trade-exposed sectors. The impact of economic globalization on Australian employees and employers has largely resulted from the dramatic reduction in tariff levels and other forms of industry protection over the

last two decades. In more recent times free trade agreements have been negotiated. What is required to meet these challenges is a matter of some contention. Who should bear the costs of the necessary adjustments is an unresolved issue.

77. Catholic Social Teaching has addressed international trade and globalization and the impact that they have on the lives of employees and families. It has done so with an appreciation of the diversity of countries affected by these issues. It is especially concerned with the position of the poor in the developing world and the capacity of trade to improve their circumstances.
78. The issues and consequences of globalization and work were addressed by Cardinal Theodore E. McCarrick in the *Labor Day Statement* of 6 September 2004 issued on behalf of the United States Conference of Catholic Bishops:

“Pope John Paul II has called for the “globalization of solidarity,” inviting us to resist a zero-sum game that separates our brothers and sisters in the U.S. into winners and losers.” (*Ecclesia in America*, Jan.22, 1999, #55)...

As a global Church, we believe in building bridges and crossing boundaries in order to share both our needs and our gifts. Arguments that focus simply and exclusively on the likely domestic impact of trade are far too narrow. At the same time, U.S. workers and their families must be able to earn a decent living and, when necessary, adjust to the requirements of job changes and dislocation. As Pope John Paul II reminds us: “All must work so that the economic system in which we live does not upset the fundamental order of the priority of work over capital, of the common good over private interest.” (*Jubilee of Workers*, May 1, 2000).

Effective steps should be taken to minimize serious negative impacts on workers affected by trade and development. No one at home or abroad should be forced to sacrifice their right to work, their ability to raise a family or their authentic cultural expressions because of the demands of the market. By ignoring these values, trade policies can fall short of their true potential and, as the Pope has said, “the weakest, the most powerless and the poorest appear to have so little hope!” (*Ecclesia de Eucharistia*, April 17, 2003, #20). We must always remember that trade agreements and economic policies are not pre-ordained laws of nature, but are created by people and governments. Their goal must be to promote the dignity of work and the rights of workers.” (www.usccb.org/sdwp/national/ld04.htm)

79. The argument for globalizing markets, reducing tariffs and entering into free trade agreements is based on their consequential increases in national wealth. One of the costs to industrialised nations is the increased exposure to low-wage competition and to competition from other high-wage nations. In both cases wages and employment prospects will come under pressure in some industries. Free trade agreements are created by people and governments. Their adverse consequences must be addressed by governments.
80. Globalization also confronts Australia and other advanced industrial economies with fundamental questions: how do governments ensure the payment of a Living Wage in an increasingly globalized world? How does a nation use part of its increased wealth to meet the competitive challenges from other countries while maintaining living standards for its workforce, especially the low paid?

The Church In The Modern World

81. Catholic Social Teaching on work has to be seen in the broader context of the Church's other social teachings and its active engagement in the world. The social doctrine of the Church guides Catholics to take positions on a variety of issues. "The immediate purpose of the Church's social doctrine is to propose the principles and values that can sustain a society worthy of the human person"; *Compendium of the Social Doctrine of the Church*; paragraph 580. In his 1987 encyclical *Sollicitudo Rei Socialis (On Social Concern)* Pope John Paul II wrote:

“...the Church does not propose economic and political systems or programs, nor does she show preference for one or the other, provided that human dignity is properly respected and promoted, and provided she herself is allowed the room she needs to exercise her ministry in the world.

....

The Church's social doctrine *is not* a “third way” between *liberal capitalism* and *Marxist collectivism*, nor even a possible alternative to other solutions less radically opposed to one another: rather, it constitutes a *category of its own*. Nor is it an *ideology*, but rather the *accurate formulation* of the results of a careful reflection on the complex realities of human existence, in society and in the international order, in the light of faith and of the Church's traditions. Its main aim is to *interpret* these realities, determining their conformity with or divergence from the lines of the Gospel teaching on man and his vocation, a vocation which is at once earthly and transcendent; its aim is thus *to guide* Christian behaviour. It therefore belongs to the field, not of *ideology*, but of *theology* and particularly of moral theology.

The teaching and spreading of her social doctrine are part of the Church's evangelizing mission. And since it is a doctrine aimed at guiding *people's behaviour*, it consequently gives rise to a "commitment to justice," according to each individual's role, vocation and circumstances." (*Sollicitudo Rei Socialis*, 41, St. Paul Publications)

82. This passage enlightens one's understanding of the Church's social doctrine and the basis on which the Church and individual Catholics advocate issues in society. As we have seen in the teachings on work and employees, there are matters upon which the Church and Catholics must take a position. They are called to live in accordance with those teaching. Advocacy of those teachings is both a right and a duty. This advocacy may give rise to criticism of the Church to the effect that it is intruding into matters of politics. That aspect was discussed in *Common Wealth and Common Good*, a statement on wealth distribution from the Catholic Bishops of Australia, published in 1991. Under the heading "Dualism rejected", it said:

"Ours is not the only Church taking part in the national discussion on wealth and poverty. We acknowledge gratefully the contributions made through research and publications by agencies of the other Churches, as well as their willingness to co-operate with our own consultation.

A few critics wish to exclude the Churches from the discussion on these issues, on the grounds that their attention should be given exclusively to spiritual and other-worldly (or "eschatological") matters. We reject the dualism implicit in such criticisms, reaffirming the right and duty of the Church at every level to include social justice in its agenda as it prepares for the coming of God's Kingdom. At the same time, we also reaffirm the vital importance of the traditional Catholic and Gospel teaching, that faith and holiness lead to everlasting life. The Kingdom of God includes human efforts to build a just society, but cannot be reduced to this.

....

Although Church leaders have no wish or intention to "play politics" when dealing with these issues, we recognise that they have an important political dimension. Our perspective when making comments or criticisms is religious, pastoral and ethical, not political or economic. When Bishops speak, however, it is necessary to distinguish between the presentation of doctrinal principles, where teaching authority is invoked, and the offering of contingent judgments on real-life situations, where the possibility of differences in viewpoint among believers exists." (*Common Wealth and Common Good*, pages 9-10)

83. To this point we have set out and considered some implications of the teachings of the Church on work and associated issues. We now turn to a consideration of the proposed legislation and its implications for workplace relations in Australia. In doing so, we will apply the principles of Catholic Social Teaching and draw on the Church's collective and diverse experience as an employer.

C. THE PROPOSED LEGISLATION

84. The following descriptions of the Government's proposals for legislative change are taken from the Minister's statement. They are necessarily general and a proper understanding of them may have to await the final detail of the proposed legislation. Some short comments have been inserted in parentheses.

A National System

85. The States will be invited to refer their powers on workplace relations to the Commonwealth. In the absence of referrals by the States, the Government will move towards a more streamlined and efficient national workplace relations system relying on the corporations power. It is estimated that a national workplace relations system will then cover 85% of all Australian employees. (The major legislative basis upon which the AIRC operates is the exercise of the "conciliation and arbitration" power in the Australian Constitution. The AIRC has the power to prevent or settle by conciliation or arbitration an interstate industrial dispute by the making of an award. In contrast, the new system will be based on an exercise of the "corporations" power in the Constitution.)

Minimum Wage Setting

86. A new body called the Australian Fair Pay Commission ("the AFPC") will be established to set minimum wage rates. The AFPC will set and periodically adjust a single adult minimum wage, non-adult minimum wages such as the training wage, minimum wages for award classification levels and casual loadings. The AFPC would also set wage rates contained within awards. The AFPC would replace the AIRC in regard to wage fixing. (Awards prescribe wage rates and a number of other terms and conditions of employment. An award will contain a number of classifications, each with a different rate of pay.)
87. Award-based classification wages will not fall below the level set after the inclusion of any increase from the 2005 Safety Net Review Case, although they will be capable of upwards adjustment by the AFPC. (An annual Safety Net Review Case has been held before the AIRC for the purpose of reviewing and adjusting award rates of pay. The Federal Minimum Wage, presently \$484.40, is the lowest award rate of pay. It is not known at this stage how the rates for employees currently covered by State awards will be first fixed.)
88. The criteria for wage fixing will be the "single person". (The single person would be one without dependants and family responsibilities. We will return to this aspect and its implications for the setting of the minimum wage.)

Minimum Conditions Of Employment

89. The Government will set out in legislation key minimum conditions of employment: annual leave, personal/carer's leave, parental leave including maternity leave and maximum ordinary hours of work.
90. These legislated conditions together with the minimum wages set by the AFPC will form the Australian Fair Pay and Conditions Standard. (This means that the minimum standard will comprise five kinds of entitlements.)
91. Awards will no longer form the basis of the no-disadvantage test for agreement making – for both individual and collective agreements. The no-disadvantage test will operate by reference to the Australian Fair Pay and Conditions Standard. (This will be a significant change to the current requirements for the approval of individual and collective contracts. At present, in order for such an agreement to have legal effect and to override any relevant award it is necessary for the agreement to pass a no-disadvantage test based on the overall entitlements specified in a relevant award. The significance of this change is found in the greater number of matters, which now have to be taken into account, as compared with the five that are proposed by the Government.)

Award Matters

92. The following existing allowable award matters will be removed from awards: jury service, notice of termination, long service leave and superannuation. (At present, section 89A of the Act specifies twenty kinds of matters that the AIRC is allowed to include in its awards. This change will reduce the number to sixteen. Some of the sixteen are matters that would be covered by the functions of the AFPC. It is not clear how these two tribunals and their processes will interact; but it is clear that the Government wishes to have award pay rates determined by the AFPC. This suggests that the AIRC will lose its power to fix rates of pay and other matters covered by the AFPC.)
93. Provision will be made for the review of existing award wage and classification structures. A taskforce will be established, with further details to be announced. This taskforce will rationalise existing awards and award classification structures and will finalise its work within 12 months. (The composition, procedures, powers and underlying legal authority of the taskforce are not known. It may be a government appointed body that will make recommendations to the AFPC.)

Australian Industrial Relations Commission

94. The AIRC will focus on dispute resolution. The AIRC will also retain its responsibilities regarding further simplified awards. (The extent of the powers of the AIRC to settle industrial disputes is not explained. As noted above, it appears that it would not have the capacity to deal with pay rates and the other matters that are to be determined by the AFPC. We refer later to the “award simplification” process.)

Agreement-Making

95. All collective and individual agreements will be lodged with the Office of the Employment Advocate (“the OEA”). The process for both making and lodging workplace agreements will also be simplified. (At present statutory individual agreements known as Australian Workplace Agreements (“AWAs”) are lodged with the OEA for approval and collective agreements are lodged with the AIRC for approval.)
96. All agreements, both collective and individual, will take effect from the date of lodgement rather than the date of certification or approval. All agreements will be able to be made for up to five years. (At present they do not take effect upon lodgement, only upon certification or approval. The current maximum is three years.)

Unfair Dismissal Protection

97. The Government will legislate to establish a national system for unfair dismissal claims which will exempt businesses that employ up to 100 employees from unfair dismissal laws. For businesses with more than 100 employees, the probationary period, following which there will be access to unfair dismissal procedures, will increase from three to six months. (The proposal to have one national system involves the overriding of State unfair dismissal laws. At present there is no exemption. During the last term of Parliament the Government introduced legislation to exempt businesses employing up to 20 employees. The Senate rejected that legislation.)
98. Access to the unlawful termination provisions of the Act will remain in force. The Government will also press for amendments to termination of employment laws that have been contained in legislation previously not passed in the Parliament. (We refer later to the distinction between unfair dismissals and unlawful terminations.)

Other Proposals

99. The Government has also confirmed its commitment to legislate regarding a number of other matters: secret ballots before industrial action; the right of entry for union officials; the curtailment of "pattern bargaining" by unions; the regulation of independent contractors; the building and construction industry; and the removal of redundancy provisions from awards for small business. The scope of most of these changes will not become evident until the legislation is introduced. The redundancy payments proposal reflects earlier proposed legislation (which was rejected by the Senate) to exclude small businesses from paying the standard redundancy payments prescribed by awards of the AIRC.

100. The Government will also establish the Australian Safety and Compensation Council to oversee implementation of national occupational health and safety standards and pursue a national approach to workers' compensation throughout Australia.

D. THE PRINCIPAL ISSUES

101. We do not intend to attempt a commentary on all aspects of the Government's proposals. Rather, we will concentrate on the principal issues that are most related to the Church's teachings on employment and to the Church's collective experience as a diverse employer.

A National System

102. A proper understanding of the Government's proposals requires an explanation of its proposal to introduce a national industrial relations system into Australia.
103. For most of the past century the Commonwealth's power in industrial relations matters has been exercised under the "conciliation and arbitration" power in the Australian Constitution. This power is limited to interstate disputes. Interstate disputes include "paper disputes" which are created by the rejection of written demands for improvements in the terms and conditions of employment. A Federal award may be made by the AIRC even though there is no more than a paper dispute. Furthermore, this constitutional power does not allow the Government to legislate so as to directly determine these disputes. It has to set up an independent statutory body to exercise the powers of conciliation and arbitration.
104. The Commonwealth also has the constitutional power to make laws with respect to what is known as the "corporations power". This power enables laws to be made in respect of trading or financial corporations. The term "constitutional corporation" is sometimes used to describe them. The corporations power was not exercised by the Commonwealth in any significant way until it was relied upon to enact trade practices legislation in the 1970s. In the 1990s it was used to supplement the conciliation and arbitration power in order to enable the making of agreements between corporations and unions and between corporations and individuals and to cover some unfair dismissal claims. The limits of the corporations power have not been determined by the High Court.
105. The Government proposes to exercise its corporations power in a way that will create an inconsistency between State and Commonwealth laws, thereby activating section 109 of the Australian Constitution. Section 109 provides, in effect, that the Commonwealth law will prevail where there is an inconsistency between it and a State law. The State laws remain in force and have operation in any area not covered by the Commonwealth law. Under the current proposal, State laws would be ineffective in relation to constitutional corporations; in particular, they would be ineffective in the matters of remuneration and dismissal. State laws would continue to operate in regard to non-corporate employers. The issue of the constitutionality of the Government's proposed legislation is outside the scope of

this paper. We note, however, that some State employees, and employees of their many agencies, cannot be covered by the Commonwealth because of the “implied limitation” doctrine under the Australian Constitution, a doctrine that protects the States against various kinds of laws of the Commonwealth.

106. Over the last century an increasing number of employees have become covered by Federal awards made by the AIRC and its predecessors. This has had an impact on the State jurisdictions. The proportion of Federal coverage varies from State to State. In 1996 Victoria referred most of its industrial powers to the Commonwealth effective from 1997. Unlike the other States, there are no Victorian awards and no Victorian industrial tribunal.
107. The existence of the Federal and State industrial relations systems can confuse those who are not familiar with their operation. Some employers have had more than one award apply to their businesses and, sometimes, both State and Federal award coverage. The awards may apply in respect of different work classifications. When this occurs enterprise awards or certified enterprise agreements can be made to provide consistency and convenience. There has been a high degree of co-operation between State and Federal tribunals in recent years, with the AIRC being the lead tribunal; for example, the State tribunals follow the AIRC in relation to minimum wage increases. There is also high degree of consistency between Federal and State award rates of pay and conditions. Despite these features, in recent years many have argued that a national system of industrial regulation would be of economic benefit to the nation.
108. The basic reason for the consistency between State and Federal awards has been the presence of similar legislation in each jurisdiction, save for the notable exception of Victoria between 1993 and 1997. In that period the Victorian Government introduced a different industrial relations system, a system that ended when Victoria referred its industrial powers to the Commonwealth. At present, the industrial relations systems throughout Australia are basically the same.
109. Church employment takes place under the aegis of a variety of bodies or individuals. It is regulated in different ways by either the AIRC or by a State tribunal. The location of that regulation has not depended on the corporate identity (if any) of the employing authority. Many Catholic employers have a corporate identity. An important issue is whether they are financial or trading corporations and are, therefore, amenable to the Commonwealth's constitutional power. We do not canvass that issue in this paper. The detail of the Government's proposed legislation may clarify the situation of such organisations. Recently, issues have emerged in regard to a range of employers, such as sole traders and other unincorporated entities, and the possible introduction of transitional provisions applicable to them. We will address these issues at a later date.

110. The Government's announcement does not indicate how the AIRC's wage fixing powers will be affected in regard to awards in the non-corporate area of employment. Indeed, there will be a need for the AIRC and State tribunals to continue to set wages even though the AFPC will have the function in respect of, perhaps, 85% of the workforce. In regard to unfair dismissals, similar issues arise. Catholic employers who are not trading or financial corporations are likely to be covered by State awards and State unfair dismissal laws, even if they are currently covered by the Federal jurisdiction. This is because, aside from Victoria, the State legislation will probably fill the void if the Federal provisions cease to apply to them.
111. The Government's proposal to introduce a national industrial relations system raises issues of significant importance to Church and other employers currently under State industrial relations systems, including the mechanics of any transitional arrangements to the Federal industrial relations jurisdiction. The full implications of the Government's proposal to invoke the corporations power may not be apparent until the legislation is introduced into Parliament.

Wages

112. The most contentious part of the Government's proposals in regard to wage-fixing is in the proposal to introduce the "single adult minimum wage". In order to explain the issues raised by the Government's proposal it is necessary to refer to the legislation and to relevant AIRC cases.
113. The current provisions dealing with the AIRC's award-making power were introduced by the present Government in 1996. Section 88B(2) the Act provides that the 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;
 - (b) when adjusting the safety net, the needs of the low paid.”

114. This provision is a contemporary expression of the way in which the AIRC and its predecessors have set wages for much of the last century. It uses the modern term “safety net”. It requires fairness and it requires the needs of the low paid to be taken into account when adjusting the safety net. The term low paid is not defined. However, ACCER has argued that, at the least, it covers employees who are paid wages up to the basic trades-qualified (or equivalent) rate, which is presently \$578.20 per week. The AIRC is also required by section 90 of the Act to take into account the public interest when making its decisions.
115. Award wages have been reviewed on an annual basis since the 1996 changes took effect in early 1997. In the last three years ACCER has supported the unions’ claims for increases in the Federal Minimum Wage, but it has not supported the "across the board" increases (applying to all other award rates of pay) sought by them. Those in greatest need should be given priority. This view was taken on the basis of ACCER's assessment of the needs of the low paid employee and his or her family. ACCER’s position on this aspect has not been accepted and across the board increases have been awarded.
116. ACCER has argued that the Federal Minimum Wage (the lowest classification rate in an award) must meet the needs of the employee and his or her family. It should be sufficient to enable one parent to be in the paid workforce and the other to work in the home, for them to be able to support two children and to achieve the minimally acceptable standard of living. The Federal Minimum Wage was increased to \$484.40 per week in May 2005 as a result of the 2005 Safety Net Review Case. This minimum wage, together with government transfer payments, is insufficient. ACCER has argued for research to be conducted into the financial needs of families so as to provide a better basis upon which the AIRC may be able to assess the needs of employees and their families. This research is critical for the determination of a fair and sufficient family wage.
117. The family wage has a long history in Australia. From the early days of Federation, following the *Harvester* case in 1907, the “Living Wage” became a central feature of employment regulation in Australia and became part of the fabric of Australian life. Its expression was a product of the times: it was fixed by reference to the needs of the male breadwinner, his wife and three children. But its substance was fundamental and enduring. The Living Wage was important because it recognised the need to fix fair and reasonable wages, the need for employees to live in dignity and the need for the employee to be provided with a wage sufficient to support a family. This was done even though many employees were not the sole breadwinner in a family of five.
118. The importance of the family was recognised in the *Harvester* Living Wage. In an address entitled *The Failure of the Family* delivered on 22 August 2001 Cardinal George Pell DD said:

“The family in Australia once enjoyed a privileged place at law and in social and economic policy. Nothing epitomised this more than...the *Harvester* case.

....

The *Harvester* case is usually referred to as one of the key elements in the development of a raft of benevolent laws and social legislation...in the wake of the economic crash of the 1890s. These laws were intended to minimize social conflict, especially conflict between labour and capital...; to ensure a decent standard of living for workers and their families; and more broadly through the system of tariffs and economic protection, to encourage local industry and to maintain Australia’ independence.

....

Harvester placed the welfare of the family at the centre of social and economic policy from the beginnings of Federation. In a new nation concerned to minimise the divisions between rich and poor and to lay a solid basis for social stability this made perfect sense. As I will discuss in a moment, over the last thirty years an enormous amount of empirical work has been done on the relationship between marriage breakdown and family dysfunction, and the rise of the different social pathologies that pose such problems today for all of us, but especially for law enforcement agencies and health and welfare workers. One of the many things this research makes clear is that if you want to preserve social stability or to prevent it being slowly eroded, it makes good sense to buttress the stability of the family.” (*The Failure of the Family*, 2001)

119. It is sometimes said that because the family, especially the family with a sole breadwinner, is now a minority household, we must revisit the family-based Living Wage and move to a new basis for wage fixation. This misunderstands the Living Wage. *Harvester* was not based on the *preponderance* of the identified family in society, but on the *importance* of the family to society. The increasing pressure on, and breakdown of, the Australian family in the last decades of the twentieth century is not a reason to move from this position. Rather, it is a reason to reinforce the family, including its economic circumstances, by the payment of a contemporary Living Wage. Nor is the fact that more parents work, especially mothers, a reason to depart from the objective of providing a Living Wage that provides “frugal comfort” (in the words of *Harvester*) without the need for a second parent to enter the paid workforce. Regrettably, the income of a second parent is needed for some, if not many, families to achieve “frugal comfort”. As was recognised a century ago, a Living Wage capable of supporting a family is needed because of its *importance* to society.

120. There is one notable aspect of the *Harvester* Living Wage that has been overtaken by the events of the last century. It is the reason why we cannot return to the *Harvester* formulation and the reason why we must have a contemporary Living Wage. In the early 20th Century the wage packet was required to provide for the *total* support of the employee and the employee's dependants. It was not supplemented by a welfare system. The wages system was made possible by tariff protection. The relative importance of the wage in the support of the family has declined as government transfers to families have increased, particularly in the last 20 years. The substantial increases in non-wage financial support to employees and their families, part of the "social wage" as it has sometimes been described, came about as a result of a change in government policy in the 1980s. It was initiated by a policy of wage restraint by unions and the adoption of "centralised" wage-fixing principles and procedures in the AIRC that resulted in carefully controlled wage increases. That centralised system has gone, but the legacy endures. There has been substantial bi-partisan support for the provision of family support payments by the Government. The contemporary Living Wage has to recognise government transfers.
121. Family assistance changes in the last two decades have been accompanied by significant economic change; arguably they have been required by, and have facilitated our adaptation to, that change. The high levels of tariff protection of the last century have gone. In general terms, for the best part of a century after Federation, the wages of Australian employees and Australia's employment levels were supported by tariffs. The costs of this support were borne by Australians as consumers. Now, the incomes of many employees and their families are being supported by Australians as taxpayers. A substantial part of the cost of supporting employees and their dependants has moved from the employer to the taxpayer, from the wage packet to the public purse.
122. The Government's proposal for a single adult minimum wage raises a number of issues that have been canvassed in wage claims in recent years. The family wage/single employee wage issue has been before the AIRC. In the 2004 Safety Net Review Case, ACCER argued that the determination of the needs of the low paid should be made on the basis of the needs of a family of two adults and two children, with only one adult working. In its 2004 decision the AIRC referred to the discussion about the range of "household types" within Australia. It said:
- "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 consideration of the needs of the low paid." (*Safety Net Review-Wages, May 2004*, Print PR002004, paragraph [275])

123. In the 2005 Safety Net Review Case, ACCER raised the matter in these terms:

“The **Harvester** Living Wage was based on a family of three children. ACCER’s submission is that, having regard to the number of children in contemporary Australian families, the figure should be two. Because the costs of raising children vary over the years a degree of averaging is required in order to cover age-related variations in costs.

If one accepts (as one should) that the sole income earner within a family may be male or female (and that the parent earning the family income may change from time to time) there is no issue about the relative roles of men and women. The wage should enable the mother to work and the father to stay at home if they so wish or for both parents to share full time paid work between them.

These are fundamental matters about the basis on which the needs of the low paid are to be fixed and about which there should be no ambiguity. If any party or intervener in this case contests that wages are to be assessed on any other basis to that set out above it should say so to the Commission and provide its reasons.” (*ACCER 2005 Safety Net Review Submission*, paragraphs 77 to 79)

124. The family wage issue was raised fairly and squarely. With the exception of the Australian Council of Social Services (“ACOSS”), no party or intervener claimed a position contrary to ACCER’s. The Government and the employers did not specifically respond, but their submissions make it clear that the existing award rates were not based on the needs of the single person. ACOSS made its submissions in support of the single person test on the basis that transfer payments should cover the costs of dependants.
125. There has been increasing support in recent years for the use of transfer payments to target those most in need, especially working families. The Government’s increased payments to families in recent years have been very welcome. As we explained earlier, transfer payments mean that the wage necessary to support the employee at the minimally acceptable standard of living may be lower than would otherwise be the case and that there is an economic case for transfer payments. This was a position put by ACCER to the 2005 Safety New Review Case:

“An argument used by some of those opposing the claimed wage increase is that there are other and better means of addressing the needs of the low paid. By this they mean tax relief and government transfer payments. As ACCER has demonstrated in its earlier submissions, the needs of low paid workers and their families are, and must continue to be, addressed through both the wage packet and the public purse. The employment impact of taxation on needs-based wages must also be considered. To the extent that there is a connection between wage and employment levels, income tax levied on low paid workers may be seen as a tax on employment. On the other hand, targeted government transfers will enhance employment opportunities. There is, therefore, a strong economic case for supporting low paid workers and their dependants by way of targeted tax reductions and transfer payments. These measures enhance the competitiveness of Australian businesses.

ACCER has stressed, however, that the obligation to pay a just wage, with appropriate recognition of tax and transfer payments, remains with the employer. The Commission in the exercise of its statutory jurisdiction is required to fix fair minimum wages having regard to the matters identified in section 88B(2) of the **Workplace Relations Act 1996**. This cannot be done without regard to the impact of taxation and transfer payments.” (*ACCER Post-Budget Submission*, 17 May 2005, paragraphs 2 and 3)

126. The argument that there are better ways to meet the needs of the low paid than giving them a pay increase is an argument that has been used in Safety Net Review Cases and, indeed, in other industrialised countries. Of course, the “other ways” are ways that come with a cost to the public purse. This is an area where government policy and employment rights intersect. In the 2005 Safety Net Review Case the Commonwealth said that safety net adjustments “are a poor means of addressing the needs of the low paid”. In response to this ACCER said:

“In our market economy it is the employer and the pay packet and not the government and transfer payments that have the primary responsibility of meeting the needs of the worker and his or her dependants. Government plays a supportive (but vital) role, not the primary role in this regard. (*ACCER Post Budget Safety Net Review Submission*, paragraph 5)

127. The presence of targeted family payments is relevant to another argument sometimes raised by those who are opposed to the fixing of wages based on the needs of a family. It is said that the payment of a family wage to those who do not support a family is unjustified. As we noted earlier, the payment of the family wage is justified on the basis of the *importance* of the family, not on its

preponderance. This incidental advantage in the past to those who do not have responsibilities did not prevent the payment of a minimum wage based on the needs of the family. It is important to appreciate that the presence of targeted family payments and their impact on the arbitrated minimum wage has the effect of reducing the scope for the minimum wage to over-compensate those who do not have family responsibilities. It should be noted, however, that employees other than those supporting another parent and children do have significant expenses; for example, a single person preparing for marriage, a single parent paying for child care and a couple with a grown family saving for retirement.

128. The current wage award rates are not based on a single person's needs. It is true that arbitrated rates have drifted from the full application of a Living Wage. Some wage rates, in particular the Federal Minimum Wage, are now insufficient as a family wage. But this does not lend support for the single person test. Wage rates have been fixed by reference to needs that are greater than the needs of the single person.
129. As well as putting its case for a family wage in Safety Net Review cases, ACCER has made this submission to a Senate Inquiry. In 2003 the Senate Employment, Workplace Relations and Education Legislation Committee held an Inquiry into the *Workplace Relations Amendment (Protecting the Low Paid) Bill 2003*. In the course of its written submissions to that Committee, ACCER referred to the question of whether or not the AIRC might adopt the single person test:

“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.

Given the position of the Catholic Church on the need for wages to be sufficient to support the wage earner and his or her dependants, any support by the ACCER for the single person test for the purposes of wage fixation would only be conditional upon governments recognizing that wage rates must be fixed on that basis and they have an obligation to provide for the needs of dependent family members through the taxation and welfare systems.” (*ACCER Submission to the Senate Employment, Workplace Relations and Education Legislation Committee*, 28 April 2000, paragraphs 36 and 37)

130. The Government's proposal that minimum wages be fixed on the basis of the needs of a single adult employee raises a number of important questions. Will the Government commit to provide full funding for all of the needs of the dependants of low paid employees? To what extent should the public purse provide for the needs of the dependants of employees? What is the most appropriate way of providing assistance to families; for example, by direct payments, tax offsets for low income earners, earned income tax credits or a combination of these or other measures? These are important matters about which we express no conclusions at this time. But they are matters that must be discussed and considered before entering into a system that puts an end to the family wage and before establishing a system that fixes wages only by reference to the needs of the single person.
131. There are some other aspects of the Government's proposal that require a response. The Government has said that the wage rates to be fixed by the AFPC under the new system "will not fall below the level set after the inclusion of any increase from the 2005 Safety Net Review Case". It appears that these rates will be adjusted by reference to the single person. This would mean that there is a very real risk that the wage rates, which have been assessed on a different basis (on needs greater than the needs of the single person), would only be adjusted when it could be demonstrated that wage rates were insufficient to meet the needs of a single person. A final view on this aspect will have to await the publication of the proposed legislation.
132. The Government has said that the single adult rate of pay will be "guided by parameters set out in legislation to ensure wages operate as a genuine safety net for agreement making". We have already referred to the criteria that apply to wage fixing under the present system. The Government has already sought to change the current criteria. In 2003 the Government sought to amend the criteria, or parameters, for changes to the award safety net. Included in the *Workplace Relations Amendments (Protecting the Low Paid) Bill 2003* were obligations to take into account the employment prospects of the unemployed and the capacity of employers to meet increased labour costs. The Senate rejected the legislation. As we noted earlier, ACCER made a written submission to the Senate Inquiry on the Bill. It did not agree with the proposal. It said that the AIRC already took into account the effect that its decision could have on inflation and the level of employment. ACCER was concerned that the amendment would have the effect of reducing wages below an appropriate level. It referred to a statement by the Australian Bishops Committee for Industrial Affairs in which it said:

"The provision of more work opportunities does not, however, by itself justify reducing, below a just level, the wages of those already in jobs." (*Industrial Relations - The Guiding Principles*, 1993, page 2)

133. As we observed earlier, a similar position has been taken by the Catholic Bishops Conference of England and Wales:

“It is not morally acceptable to seek to reduce unemployment by letting wages fall below the level at which employees can sustain a decent standard of living.” (*The Common Good and the Catholic Church’s Social Teaching*, paragraph 97)

134. ACCER is concerned that the Government’s proposals to change the criteria for wage-fixing will mean that low paid employees, whether single or with family responsibilities, will be placed in a position where they are required to carry a disproportionate burden of the requirement for economic adjustment. As a matter of principle, the burden of economic adjustment has to be spread across the community in an equitable manner, especially by way of changes to taxation rates and transfer payments.

135. On the issues of the impact of wages on employment opportunities we must keep in mind that the policies of governments are not neutral. As we pointed out earlier, income taxes imposed on the low paid have the effect of making their employment more expensive. ACCER’s submissions to the 2005 Safety Net Review Case pointed to the substantial amount of tax payable by low paid employees. The Federal Minimum Wage is now \$484.40, of which tax (not including the Medicare Levy) is approximately 13.26%. In 2000/2001, when the *New Tax System* was introduced, employees on the Federal Minimum Wage paid 12% of their income in tax, about 10% less than at present. The marginal tax rate on an extra dollar earned is 30%, a high figure when compared with the highest marginal tax rate of 47%. This position is compounded by the progressive loss of the low income tax offset, a process that raises the effective marginal rate of taxation to 34%. This causes us to consider the equity of the taxation imposed on the low paid. The economic implications should also be considered. There are moral and economic reasons for giving tax relief to low paid employees.

136. We return again to the Australian Catholic Bishops Pastoral letter, *A Century of Catholic Social Teaching*:

“When a person is employed to work full-time for wages, the employer, in strict justice, will pay for an honest day’s work a wage sufficient to enable the worker, even if unskilled, to have the benefits of survival, good health, security and modest comfort. The wage must also allow the worker to provide for the future and acquire the personal property needed for the support of a family. To pressure or trick the worker into taking less is, therefore, unjust.”

137. This passage is drawn from the Catholic Social Teaching referred to earlier. It calls for the fixing of a wage that is based on the needs of a family, not the needs of the single person. It requires that low paid unskilled employees be paid an amount that is sufficient to provide the benefits of survival, security and modest comfort and to allow the employee to provide for the future and acquire the personal property for the support of a family.
138. If the minimum wage is to be fixed by reference to the single adult employee, ACCER is concerned that there should be sufficient social measures, through the taxation and family payments systems, to meet the financial needs of dependants of employees whose wages are insufficient to meet those needs. All families should have reasonable financial means of support to live with dignity through a contemporary Living Wage that takes into account family payments. How this is to be achieved requires careful examination of the necessary balance between wage income levels and the government support mechanisms available to families. It is critical that research be undertaken into the financial needs of low-income families. Furthermore, there is a need to investigate the impact of taxation and family benefits on wage levels and the impact of all of these on the labour market and the economy. The results of these kinds of research and analysis will assist in the setting of wages and the formulation of the most appropriate taxation and transfer payment policies for families.

Unfair Dismissals

139. There have been unfair dismissal laws in the States for many years. National unfair dismissal legislation was introduced in 1994 by the then Commonwealth Labor Government. The jurisdiction to hear and determine claims was given to a new court, the Industrial Relations Court of Australia. That legislation was replaced by the current Government in 1996 and jurisdiction was given to the AIRC. The scheme is similar to the State schemes. A dismissed employee ordinarily lodges a claim in the tribunal that made the award under which he or she was employed. Because Victoria has referred most of its industrial powers to the Commonwealth, employees in Victoria now lodge their claims in the AIRC.
140. The new scheme introduced by the Government in 1996 was described in the Government's Explanatory Memorandum to the amending legislation:
- “Its principal effect is to introduce a new unfair dismissal scheme which provides employees with access to a fair and simple process of appeal against dismissal, based on the principle of a ‘fair go all round’, is fair to both employee and employer, ensures legal costs are minimised and discourages frivolous and malicious claims, and is consistent with Australia’s international obligations.”
(Explanatory Memorandum, Workplace Relations and Other Legislation Amendment Bill 1996, p.37)

141. It is this scheme that the Government now wishes to amend, by withdrawing its application to trading and financial corporations employing up to 100 employees. Furthermore, it proposes to draft its legislation in a way that it will override the States in their coverage of those corporations that are not currently covered by the Government's scheme, thereby effectively removing the unfair dismissal rights presently conferred by State legislation. The proposal would exclude the great majority of the Australian workforce from making an unfair dismissal application.
142. The Government's proposal involves a fundamental departure from its policy described in the 1996 Explanatory Memorandum. It would deny employees the right to a "fair go all round". It would also be contrary to the international obligations that are referred to in the Explanatory Memorandum. Australia is a signatory to the *Termination of Employment Convention*. The convention does not permit such an exclusion of employees from the operation of domestic legislation. While the Commonwealth is not bound by Australian law to implement the terms of the convention, it does contain "obligations", a matter that was recognised in the Explanatory Memorandum.
143. We will return to the Government's justification for this change. Before doing so, we need to set out some of the features of the present legislation
144. Several points should be made about the current unfair dismissal provisions. An applicant has to show that the dismissal was "harsh, unjust or unreasonable". (The term "unfair dismissal" is generally used to describe these three terms.) In Australia, a major question, but not the decisive question, is whether the employer had a valid reason for the dismissal. The AIRC must have regard to various matters, including whether there was a valid reason for the dismissal related to the capacity or conduct of the employee or to the operational requirements of the employer's business. A *bona fide* redundancy is an example of a valid reason. The legislation makes it plain that other matters may be relevant. A probationary period is available to an employer and an employee who is dismissed in that probationary period cannot make an unfair dismissal claim. The procedures and remedies for the consideration of termination of employment applications are intended to ensure that a "fair go all round" is accorded to both the employer and employee; see section 170CA of the Act.
145. There is a distinction between unlawful terminations and unfair dismissals. (The distinction between a "termination" and a "dismissal" is not significant.) In Australia, unfair dismissal applications are usually heard in an industrial tribunal and are based on an allegation that the dismissal was harsh, unjust or unreasonable. Under the current Commonwealth legislation it is the AIRC that hears and determines unfair dismissal claims. If it is established that a dismissal was unfair, a civil remedy is available. It does not involve a finding that there was a breach of the law. On the other hand, unlawful terminations are terminations that are contrary to an obligation imposed by law. They are claims that are heard

and determined in the courts. Employment and anti-discrimination laws usually prohibit termination by reason of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction and social origin. Termination for one or more of these proscribed reasons would be unlawful.

146. The Government has announced that the new legislation will cover unlawful terminations by all employers, including those who will be exempt from the unfair dismissal provisions. The extent of the proposed coverage is presently unclear, as are the procedures for the enforcement of remedies. We note that there have been very few unlawful termination claims prosecuted in the courts under the current legislation. One reason for this is that the unfair dismissals provisions also cover the kind of conduct covered by unlawful termination provisions; for example terminating an employee because she is pregnant would be unjust or unreasonable. Applicants who may have a claim under each kind of provision will nearly always choose an unfair dismissal claim in the AIRC in preference to court enforcement. The higher cost of court proceedings can also be a disincentive to the initiation of unlawful termination claims.
147. There have been amendments to the unfair dismissals legislation since it was introduced in 1996. The Senate has rejected some of the proposals. ACCER has been before Senate inquiries into these matters.
148. In a Senate Inquiry into the *Workplace Relations Amendment (Termination of Employment) Bill 2000* ACCER supported the introduction of amendments that would require the AIRC to have regard to the position of small businesses which do not have access to internal human resource skills. It was an amendment designed to assist small business. Subsequently, legislation was passed requiring the AIRC to have regard to:
 - “(da) the degree to which the size of the employer's undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination; and
 - (db) the degree to which the absence of dedicated human resource management specialists or expertise in the undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination...” (*Workplace Relations Act 1996*, section 170CG(3))
149. Further proposed amendments in the *Workplace Relations Amendment (Fair Dismissal) Bill, 2002* sought the exemption of those employed by employers who engage less than 20 employees. This is the kind of exemption now being proposed by the Government in respect of employers who engage up to 100 employees. The

Bill was rejected by the Senate after an inquiry. ACCER made submissions to that Senate Inquiry. ACCER wrote:

“...the exemption of small business from the unfair termination of employment provisions is not supported by the ACCER, as it would create injustice and an imbalance in the employment relationship between employers and employees.”

150. ACCER’s view of the justice of the working relationship was based on Catholic Social Teaching, relevant parts of which are referred to earlier. This justice does not depend upon the size of the employer’s business. The size of the business is an arbitrary touchstone for the determination of whether or not the benefits and burdens of unfair dismissal remedies are to apply.
151. Security of employment is a matter of fundamental importance to the security of the family. Families need to be able to plan and to have confidence that the breadwinner will not lose his or her job by an unwarranted dismissal. Employees should be protected from arbitrary and unwarranted dismissals. This is especially so for the low paid and for those who do not have the skills to readily obtain new employment. The loss of a wage that is barely sufficient to meet day-to-day living expenses will usually have dire consequences for the employee and his or her family.
152. The value of unfair dismissal laws is not only measured in the ability of the dismissed employee to obtain a remedy. Many employers are capable of observing and applying fair procedures even without the threat of legal remedies, but some will not do so unless there are such remedies. The protection that comes from the cultural change in firms that know that they may face an unfair dismissal application should they dismiss an employee harshly, unjustly or unreasonably should not be underestimated. To remove this accountability from an employer, managers and others who have the right to hire and fire, is to put at risk the legal incentive for some firms to undertake fair and just treatment of their employees.
153. There is a case for the making of some procedural changes to the current federal unfair dismissal laws that will reduce the costs of that litigation for employers and employees. We mention two. Many of the claims made to the AIRC are, in substance, claims for relatively small amounts of compensation, which are sometimes associated with claims for unpaid wages or outstanding leave entitlements. These claims can be dealt with in a different way to reinstatement claims and claims for the maximum compensation available under the Act. If these smaller claims can be identified at an early stage they could be heard by way of a “small claims” procedure without the involvement of lawyers or paid agents. This procedure could apply to claims under, say, \$10,000. This procedure would present obvious advantages to employers, especially in the minimisation of the costs. Changes could also be made to the requirements for the lodging of

applications. In order to facilitate the hearing of claims and to dissuade the lodgement of claims seeking “go-away” money, applicants could be required to file a document setting out a *prima facie* case. In its role as an employer representative ACCER is aware that unfounded claims are made on occasions for the purpose of obtaining “go-away” money. The misuse of the system by people making these kinds of claims should not deny other employees the opportunity to seek redress when they are unfairly dismissed.

154. The Government has claimed that the “exemption will generate jobs in small to medium businesses, the engine room of the Australian economy”. No credible evidence to support that claim has been produced. It has been claimed that small businesses are inhibited from employing employees because of the difficulties in terminating them when there is a downturn or when they are found to be unsuitable. This misunderstands the provisions of the legislation, including its provisions for engaging employees under a period of probation, and the capacity of employers to engage employees as casuals on short term contracts or as casuals where there is uncertainty about future business operations.
155. We have explained the difference between unfair and unlawful terminations. Unlawful termination provisions will continue. One of the difficulties of litigating unlawful termination claims is the need to identify the reason or reasons for the decision to dismiss. For example, was a female employee terminated because she was unable to work a changed shift or because she was unable to work a changed shift because of her parental responsibilities? The reason for the decision may only be found in the mind of the decision-maker. The truth of the matter may not become apparent until a full hearing. The same problem arises when the dismissed employee has reason to believe that his or her age, gender, race, nationality or religion may have been a reason for the decision to dismiss. (Under unlawful termination provisions it is not necessary to show that the prohibited reason was the only reason for the dismissal.) The fact that there have been very few unlawful termination applications in the past (when unfair dismissal claims have been available) is not an indication of the likely number of future claims of unlawful termination. Indeed, employers may find themselves accused of unlawful termination, or responding to anti-discrimination claims in other tribunals, in circumstances where they would otherwise have been responding to unfair dismissal claims.
156. But there is a further consideration of the kind we referred to earlier in dealing with the minimum wages proposals. As with those proposals, the Government’s justification for changes to unfair dismissal laws is the claim that employment opportunities would increase if those changes were introduced. The justification imposes the burden of job creation on those who are in work. Those in work, especially the poor and the vulnerable, should not be required to carry a disproportionate or unnecessary burden in the promotion of employment opportunities. There are other and more just ways of promoting employment by

small and medium businesses. Justice for those in employment should not be compromised except in very clear and compelling circumstances. Those circumstances have not been established.

157. The Government's proposal to exempt employers of up to 100 employees from the unfair dismissal provisions of the Commonwealth and State legislation is of concern because of its implications for the security of employment of the employee and his or her ability to support their family. There is a case for some changes to the current system. The current unfair dismissal procedures should be reviewed for the purpose of improving their effectiveness and reducing the cost of litigation to employers. These improvements to the current system would be of benefit to all employers and employees.

Minimum Conditions, Awards And Agreement-Making

158. The Government has proposed that the Australian Fair Pay and Conditions Standard be the new standard for the purposes of approving collective and individual agreements. This standard would replace industrial awards for the purposes of determining whether or not an agreement meets the no-disadvantage test. It would be a new safety net, replacing the award safety net, above which employees and their employers would be able to bargain. The terms of their agreements, as a whole, would be required to be no less than those of this new safety net. As we shall explain later, the proposed safety net is *lower* than the current one.
159. The Government's justification for the proposed change is set out in the Minister's written statement:

“The existing “no disadvantage test”... fails to provide a consistent minimum standard which all agreements must meet.”

“The complexity of the existing “no disadvantage test” adds to business and employee uncertainty and can act as a hindrance to agreement making.”

(<http://www.dewr.gov.au/ministersAndMediaCentre/andrews/documents/NewWorkplaceRelationsSystem26May2005.pdf>)

We will return to this aspect.

160. The Government's announcement advised that the Australian Fair Pay and Conditions Standard will comprise the appropriate minimum wage rate (fixed by the AFPC) and other specified matters: annual leave, personal/carer's leave, parental leave (including maternity leave) and maximum ordinary hours of work. That standard is to replace the current award-based safety net. The safety net is

important because it sets the terms and conditions of employment that determine whether a proposed agreement meets the no-disadvantage test. The differences between the two safety nets are considerable, as are the consequences. To understand these points it is necessary to refer to the current award system.

161. The current Federal award system is a safety net award system of fair minimum terms and conditions. Section 88B(2) of the Act provides that the AIRC “must ensure that a safety net of fair minimum wages and conditions is established and maintained”. The present Government introduced this requirement in 1996. In compliance with its statutory duty the AIRC has reviewed its awards and has maintained wages, overtime rates, shift penalties, casual loadings and various other provisions as it is permitted to do under the “allowable matters” provisions in section 89A of the Act.
162. One of the objects of the Act is the encouragement of bargaining at the enterprise. Safety net awards of fair minimum terms and conditions of employment provide the basis upon which employers and employees bargain. At present, approximately 20% of employees are “award only” or “award dependent” i.e. the terms and conditions of their employment are those in the relevant award. They are mostly employed in the lower paid classifications. Typically, award only employees do not have the capacity to bargain above the safety net. As the AIRC said in its decision in the Safety Net Review Case decision in 2004, “Bargaining is not a practical possibility for employees who have no bargaining power.” (*Safety Net Review - Wages*, May 2004, Print PR002004, paragraph [325]) Those who have an agreement above the safety net may also be very dependent upon the safety net to obtain their bargained benefits. This is especially so for those who have benefits only slightly above the award safety net.
163. Employees are protected from bargaining away their safety net entitlements. This protection is provided in the form of the no-disadvantage test under section 170XA of the Act. This test is applied to both individual and collective employment agreements. An agreement fails the no-disadvantage test if it would result, on balance, in a reduction in the overall terms and conditions of employment of employees covered by the agreement when compared with the award. Safety net entitlements may be converted into other benefits, subject to the agreement meeting the no-disadvantage test. For example, the entitlement to overtime rates can be included in a higher wage rate if the extra amount paid reflects the amount of overtime worked.
164. The current legislation requires the agreements to be approved by the Employment Advocate (in regard to individual agreements) or by the AIRC (in regard to collective agreements). The legislation requires the test to be applied by reference to an award, either a “relevant” award or a “designated” award, and any other relevant law. The Act specifies the way in which the Employment Advocate

identifies the “relevant” award in regard to individual agreements (AWAs) and the AIRC identifies the “designated” award in regard to collective agreements.

165. The proposed change in the no-disadvantage test has the potential to erode the benefits that are presently in the award safety net, but which are not to be included in the Government’s proposed safety net. Overtime rates, shift penalties, limitations on the spread of hours of work, weekend and public holiday penalties and other allowances fixed in awards would be excluded from the no-disadvantage test. The position in regard to casual loadings is unclear. Employees who have no better terms and conditions than those prescribed in their award are unlikely to have any ability to bargain. The fact that approximately 20% of the workforce is employed on minimum award rates is evidence of their exposure to a bargain that would be below the current safety net, but which would be in conformity with the proposed safety net. The exposure to such bargains would extend to, at least, some of those who are presently on rates that are marginally above the award rates.
166. As we explained earlier, Catholic Social Teaching is concerned with just remuneration in the workplace. Its concern is not limited to minimum pay questions. It is also concerned about the protection of employees who are vulnerable and at risk of pressure to agree to that which is not just. Again the principle is the same as that stated in relation to wages and unfair dismissal claims. The poor and vulnerable should be protected against bargaining that would have them employed below the current safety net.
167. The AIRC has fixed fair minimum wages and conditions. They are included in the current awards consistent with its obligation to establish a fair safety net. The proposal to change the safety net puts at risk a number of these entitlements. For many employees these extra entitlements are a substantive and necessary source of income. Employees who are currently employed and, especially, those who will be offered work in the future will be at risk.
168. We return to the Government’s justification for its proposals. The fundamental changes and consequences are justified on the basis quoted earlier: the current no-disadvantage test is said to lack consistency, is uncertain and can act as a hindrance to agreement-making. This is the process introduced by the current Government in 1996 and it has been in operation for over eight years. ACCER does not accept that the awards have failed to provide a consistent minimum standard. The awards are not identical because they reflect to some extent the diversity of workplaces. Nor does ACCER accept that the current legislation is a substantial cause of uncertainty and a hindrance to decision-making, either in regard to the identification of the appropriate award or in identifying its requirements for the meeting of the no-disadvantage test. These matters are not substantial reasons for the kinds of consequences to which we have referred. It

would be wrong to put at risk and, in many cases, effectively remove important rights to fair remuneration arbitrated by the AIRC.

169. A point that can go unnoticed in regard to agreement-making is that some employers see no need to enter into an individual or collective agreement. Often employers will simply pay an over-award amount without entering into a formal statutory agreement. There may be only a common law contract (oral or written) to pay extra benefits. Some employers prefer to work with all of the terms of the applicable award. It might also be noted that many formal agreements incorporate the terms of the appropriate award, with few additions. In fact, there is no legal requirement that collective or individual agreements facilitate or contain efficiency and productivity outcomes.
170. This brings us to the important question of whether awards have an adverse impact on efficiency and productivity. Some of the claims about awards and the alternatives available under individual and collective agreements assume that awards are impediments to efficiency or productivity and are intrinsically of less value to a business than awards. This is a matter that requires explanation.
171. We referred earlier to the obligation on the AIRC, as a result of the 1996 amendments, to establish and maintain safety net awards of “fair minimum wages and conditions of employment”. It has been doing this. Another of the obligations imposed on the AIRC by the 1996 amendments was “award simplification”; see *Workplace Relations and Other Legislation Amendment Act 1996*, Schedule 5, Part 2. The AIRC was required to review the then existing awards to see if they were consistent with legislation. In that process the AIRC was required, if it considered it appropriate, to determine whether or not an award prescribed work practices or procedures that would restrict or hinder the efficient performance of work. If the AIRC determined that it did, it was empowered to “take whatever steps it considers appropriate to facilitate the variation of the award so that it does not meet those criteria”; Schedule 5, Part 2, item 51. Awards have been reviewed and simplified and the process is almost complete. As at 31 July 2005, the last 24 of the relevant awards were being processed.
172. There have, therefore, been opportunities over the past eight years for any inefficiencies and impediments caused by awards to be brought to the attention of the AIRC and for them to be remedied. There are, however, a number of ways in which an employer will be properly limited in the way in which it may direct its employees. Typically, awards include requirements for meal breaks, rest periods, minimum breaks between shifts, restrictions on excessive overtime and the like. Some may see these as impediments to efficiency and productivity gains, but they are, in truth, fair protections of the health and, sometimes, the safety of employees. They provide sufficient rest for employees and assist efficiency and productivity. Indeed, poor health and safety arrangements may be an impediment to those

objectives. These kinds of protections will be put at risk if they are not included in the safety net and taken into account under the no-disadvantage test.

173. There are also rates of remuneration fixed for overtime, shift work and weekend and public holiday work. Although these provisions increase the cost of labour when allocated to these times of work, the rates have been fixed on the basis of a fair compensation to employees during those periods.
174. The award simplification process builds on an award review process that started in the late 1980s. One of the objectives of the then centralised wage fixing system was the review of awards so as to ensure that they did not contain outdated and inappropriate provisions. Wage increases were partly dependent upon the making of award variations that would increase efficiency and productivity. This process had a major impact on the operations of those industries that were covered by outdated award provisions. Collective agreements were introduced in the early 1990s to promote increased efficiency and productivity at the enterprise level. The combined effect of award changes and collective agreements was very positive for the Australian economy. Many of the changes, with a “win-win” for employers and employees, cannot be repeated. We now have wage increases under collective and individual agreements without the kind of productivity increases seen in the past. Because of the changes that have been made to awards some employers have less need for individual and collective agreements for the purpose of achieving productivity increases.
175. It is sometimes claimed that a more productive workplace culture occurs when the employer and employees have bargained a workplace agreement. There has also been a tendency for some to focus only on the relationship between the employer and individual employee and the facilitation of this relationship by the making of individual agreements. This individualistic approach is sometimes claimed to be supportive of a positive workplace culture. Some would regard these views as unrealistic in many work situations and as an excuse for breaking down any strength that employees have to collectively bargain in a workplace, especially when the making of an AWA is a requirement of an offer of employment. These are matters about which people will have different views. However, there are two matters of importance in this part of the discussion. First, workplaces that are covered by awards are not restricted in their ability to develop a positive and productive workplace culture. Second, productive and fulfilling work in a positive workplace culture involves community among employees and the development of a partnership with the employer. This has been emphasised by the Australian Catholic Bishops:

“...solidarity and justice...should unite employers and their employees. They should not see each other...as perpetual antagonists with necessarily conflicting aims, as so many, unfortunately still do, with such harmful effects on our society.

Instead, they should see themselves as collaborators, truly necessary to one another, engaged in the great task of developing and perfecting creation.” (*A Century of Catholic Social Teaching*)

176. Safety net awards do not necessarily contain unreasonable impediments to efficient operations and productivity improvements in organisations bound by safety net awards. Additionally, in the event that an employer is faced with an unreasonable restriction on the efficient operation of its business following, say, an unforeseen change in its operational requirements, it is able to make an application to the AIRC for an award variation. The current system does not prevent a process that reviews awards so that they remain relevant to the operational needs of business and continue to be fair to employees.
177. The Government’s proposal to change the no-disadvantage test raises concern about its potential impact on the current conditions of employment of employees and their ability to bargain. ACCER is also concerned that safety net awards remain appropriate to the needs of employers and fair to employees. There should be an ongoing capacity to review award provisions, including classification structures and work flexibility arrangements, and to provide for the clarification of ambiguous provisions, the removal of outdated clauses and the introduction of necessary provisions.

Australian Industrial Relations Commission

178. The Australian Constitution confers a power on the Commonwealth Parliament to make laws with respect to “conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State”. When it exercises this power it must establish a system of conciliation and arbitration that is independent of government and is one that is required to observe the rules of natural justice. As Pope John Paul II observed, in a passage quoted earlier, Australia has an “almost unique system of arbitration and conciliation” which has “helped to defend the rights of workers and provide their well being, while at the same time taking into account the needs and the future of the whole community.” It has been capable of adapting to changing circumstance. As we have explained, this system is to be changed, not by use of the constitutional power granted to deal with the conciliation and arbitration of industrial disputes, but by the use of the power in respect of trading or financial corporations. The extent to which this can be done will be determined by the High Court in the foreshadowed constitutional challenges.

179. The functions that have been proposed for the AFPC are the kinds of functions that have been performed by the AIRC. It will exercise the wage-fixing powers that are presently being exercised by the AIRC and the State industrial tribunals. But the AFPC will not be a tribunal of conciliation and arbitration. The Government proposes to reduce the role of the AIRC to dispute resolution and responsibilities regarding further simplified awards. It is not clear what powers it will have under “dispute resolution”. However, the AIRC’s capacity to arbitrate an industrial dispute will be limited because, it appears, it will not be able to arbitrate wage rates, classification structures and rates of pay for overtime, shift work and casual work. The Government proposes two bodies when the AIRC has the capacity to exercise the functions that are proposed for the AFPC. The demarcation of their proposed respective functions may also produce uncertainty. For example, some industrial disputes contain issues regarding wages and other conditions of employment. It would be unfortunate if such disputes had to be determined in two tribunals. Further comment on this aspect will have to await the detail of the proposed legislation.
180. The Government’s proposed changes to the functions of the AIRC raise concern also about the possible removal from the AIRC of its capacity to hear and determine “test cases”. Test cases are cases that enable the AIRC to adapt awards to changing circumstance, both industrial and societal. If the award safety net is to remain fair and capable of adapting to changing circumstances, the AIRC should retain its capacity to arbitrate new minimum standards. Again, we await the detail of the proposed legislation before any further comment is offered.

The National Debate

181. There will be much discussion in the forthcoming months about the relationship between economic growth and social justice. It would be unfortunate if these two aspects were seen as simple or opposed alternatives. The discussion should be about growing and strengthening our economy in a way that will provide prosperity and economic security for all Australians. Economic growth is needed to enhance social justice. Social justice should be an explicit goal of government policy on economic growth so that burdens and benefits can be identified and considered. When economic transformation is envisaged it is always valid to ask: what social and economic goals will this transformation accomplish? The importance of a strong economy was reinforced earlier this year by the Churches Together in Britain and Ireland (formerly the Council of Churches for Britain and Ireland) in *Prosperity with a Purpose*:

“A purely negative appraisal of economic activity is unacceptable and an injustice to those engaged in it. Economic activity is instead something to celebrate. When it raises the standard of living of the population while relieving the lot of the poor, it is part of God’s will for humanity. There is a need to redress a perceived imbalance in the way Christians have regarded the creation of wealth by economic activity. They should recognize that it is one of the chief engines of progress and greater well-being in the modern age, both directly and indirectly; and thank God for it.

But the pursuit of profit as an end in itself does frequently result in hardship and injustice. A market-based economy, given free rein, can increase both wealth and poverty. Though this may be the result of the outworking of economic laws, such laws are not sovereign and market forces must stand under judgement. Where they detract from the common good, they will need to be restrained. So governments may legitimately intervene to correct injustices resulting from free-market enterprise, and not just those which result from the failure of market mechanisms themselves.” (*Prosperity with a Purpose*, pages 16-17)

182. Australia like the rest of the world must respond to changing economic circumstances, whether the changes are generated domestically or by the globalization of markets. The response will require flexibility and adaptation and responsiveness in the labour market. These aspects were addressed by the Director-General of the International Labour Organization, Juan Somavia, in a 2004 report on globalization, part of which reads:

“All economies are exposed to constant adjustments in production owing to differential sectoral growth rates, changing technologies and patterns of trade and domestic demand. These interact with changes in the labour force, such as the increased participation of women workers and the growth in informal employment. To respond to these changes, a set of mutually reinforcing policies is required. These include technological innovation, enterprise restructuring, labour market information, skill upgrading, effective social security policies and a sound system of social dialogue. The State has a key role to play in creating an enabling institutional framework to balance the need for flexibility for enterprises and security for workers in meeting the changing demands of a global economy. Dynamic labour market policies enhance a country’s ability to move up the technology ladder, expand its share of value added in the global production chain, and create new competitive enterprises and more and better jobs.” (*A Fair Globalization: The role of the ILO*, International Labour Organization, 2004, page 16)

183. It is evident from this passage that labour market flexibility is only part of the raft of policies that must be pursued by national governments in their response to changing economic circumstances. Importantly for the current discussion in Australia, labour market flexibility should not require the reduction of wages and other conditions of employment. If that were to occur, the burden of economic adjustment could fall on many employees, particularly the poor and the vulnerable. There should be more appropriate means of adapting to the new economic circumstances. We hope that the forthcoming discussion will address these kinds of issues, including the relationship between wages, taxation and government transfer payment policies.

184. The discussion will cover a number of areas not covered in this paper. We mention three of them lest they be overlooked in the broader discussion: “welfare to work” policies, the rate at which transfer payments are withdrawn as incomes increase (i.e. the effective marginal rate of taxation) and the establishment of education and training opportunities for parents who have been out of the paid workforce whilst raising their children.

185. The publication of the proposed legislation is likely to raise a number of further issues; for example, the regulation of unions and industrial action and the processes for the making of individual and collective agreements. These issues may turn on matters of technical detail. We intend to issue further briefing papers as the need arises.

E. CONCLUSION

186. We have reviewed and considered the currently announced detail by the Government about its proposed legislation for the purpose of identifying the key issues for further consideration and discussion.
187. The Government has proposed a number of changes which could have an impact on the lives of many Australians, particularly on families. The Government's case is that these changes are needed to secure Australia's economic future.
188. An informed discussion about the choices confronting Australia requires careful examination of the economic case for change and a proper consideration of the various means by which that change can be facilitated. Central to this discussion must be the recognition that social justice must be an explicit goal of government and that economic growth is an essential requirement for social justice.
189. The results of our examination of the matters announced by the Government are concerns about particular aspects of the proposals: wage fixing, unfair dismissals, minimum conditions and agreement making and the functions of the AIRC.
190. ACCER is open to the introduction of a national industrial relations system, provided it is supportive of the essential values and principles necessary for cooperative employment relations.
191. These values and principles are consistent with the achievement of the economic changes that are necessary to provide a strong economy for future generations. There is a need for balance in the relationship between employers and employees so that the objectives and needs of both are respected and supported through the establishment of a genuine partnership in the workplace. The values of society cannot be separated from the values of the workplace.