

**Fair Work Australia**

*Fair Work Act 2009*

**Annual Wage Review 2009-10**

**Submission in Reply**

**by the**

**Australian Catholic Council for Employment Relations**

**Introduction**

1. The principal submission filed by the Australian Catholic Council for Employment Relations (ACCER) in the *Annual Wage Review 2009-10* has placed considerable emphasis on the needs of low paid workers and their families in the context of increasing costs of living, relative living standards and the statutory and policy objective of social inclusion. While the submissions lodged by some of the other parties have covered living costs, relative wage rates and social inclusion, there is very little in their submissions that concerns the needs of low paid workers and their families.
2. There is, we submit, nothing in those other submissions that requires any qualification or modification of what we have put in regard to the needs of low paid workers. Specifically, there is nothing in the other submissions, whether by assertion of principle or fact, that would support a conclusion that wages could be set by reference to the needs of the single worker, and without reference to the needs of workers with family responsibilities. There is, for example, no claim that government family payments are sufficient to meet the needs of workers' dependents.

**Quantum of general increase**

3. ACCER's principal submission included a claim for a percentage increase in wages, reflecting increases in the Consumer Price Index (CPI) since the last decision of the Australian Fair Pay Commission (AFPC) to increase wages in July 2008. At the time

of the principal submission the total increase in the CPI was 4.5%. With the release of the CPI figure for the March Quarter 2010 the increase that we now seek for this part of the claim is 5.4%.

4. This part of ACCER's claim is consistent with the Commonwealth's submissions in respect of the quantum: the Commonwealth seeks a "considered real increase" that would take into account the published price increases since the AFPC's last decision to increase wages in July 2008 (see its submissions at paragraphs 1.48-1.50 and 5.10-5.11). A similar proposal was put by the New South Wales and Queensland Governments. The submission on behalf of the Western Australia Government proposes a qualified CPI-based increase, based on the estimated increase for 2009-2010 (paragraph 1.3). In regard to the AFPC's decision in 2009 it submits that, should the national minimum wage be adjusted to take account of the 2009 AFPC decision, FWA should consider the potential impact on business viability and competitiveness (paragraph 6.3). We submit that there is no continuing economic reason for the denial of compensation for relevant price increases prior to the AFPC's decision in 2009.
5. We agree with the Commonwealth that there is community expectation that wage increases, especially for the low paid, are sufficient to cover cost of living increases (at paragraph 5.7) and reject the claims that safety net workers should be denied compensation for the cost of living increases denied in the 2009 wage freeze (see, eg, Australian Chamber of Commerce and Industry (ACCI) at paragraph 137).
6. ACCI has proposed increases of \$12.50 per week up to C10 rate, then \$10.50 per week, arguing that tiered increases "most properly accords with the role of minimum wages as a safety net for the low paid" (paragraphs 91 and 93k). Fair safety net rates are not limited to the low paid. The words used by ACCI may have been used in earlier years, but are not appropriate under the current legislation.

#### **Increases above CPI movements**

7. The Queensland Government's submission proposes increases in federal minimum rates to bring them towards the higher rates in Division 2 State awards:

“...the Queensland Government seeks FWA exercise its power in a manner than maintains the integrity and fairness of the national award safety net and supports the transition to a fair nationally consistent system.

To this end, the Queensland Government submits that FWA should, in addition to maintaining real wages to all minimum wage workers (including those subject to Division 2B State awards) address the disparity between Federal and state minimum wage rates by increasing Federal minimum rates to bring them more in line with rates in Division 2B State awards. In the case of Queensland, a gap of \$24.40 exists between the current transitional national minimum wage and the Queensland Minimum Wage (QMW). This gap is reflected to a greater or lesser degree across award rates.” (Paragraphs 4 and 5)

8. We submit that this is a valid consideration and requires, at the least, a component in the National Minimum Wage (NMW) that recognises that its predecessor, the Federal Minimum Wage (FMW), had fallen behind the equivalent rates in State awards. We submit that it is important that the NMW, when made, is a truly national minimum wage and that it be the same amount across all relevant instruments.
9. We addressed the differences between the FMW and State equivalents in our principal submissions (at paragraphs 115-6). The wage in Western Australian (the only State not within the new system) is currently the highest, by only \$1.50 per week, followed by those of New South Wales and Queensland. Our principal submissions have detailed the argument for the adoption of the substantially higher base cleaner’s (Federal) rate as the *interim* NMW. (We have submitted that, if FWA accepts this rate as an interim rate for the NMW, it should place an onus on those who would argue for its phasing-in to demonstrate sound reasons for such a course.) If that is rejected, we submit that a truly national NMW should be not less than highest participating State rate, after the State rates are adjusted in the manner set out in the following section of this submission.

## **Division 2 State Awards**

10. The Queensland Government has addressed the position of those employees who were covered by State Awards prior to 1 January 2010 and who, by reason of the various references of State powers, have become subject to Federal regulation.

“The *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (T & C Act) includes powers for FWA to vary the wage rates in Division 2B

State awards as part of an annual wage review. This power is provided at Schedule 9, Part 5, Item 20 of the T & C Act...” (Paragraph 19)

“...the transition to a national industrial relations system presents an opportunity in the course of this annual wage review to contribute to the orderly progression of Division 28 State awards towards modern awards whilst maintaining real wages.” (Paragraph 22)

“The Queensland Government submits that FWA should support transition to nationally consistent fair minimum wage rates by increasing Federal minimum rates in comparison to Division 28 State award rates and reducing the gap between Federal and state minimum rates. The Queensland Government submits that such an exercise of power is consistent with the provision of a fair and relevant minimum safety net.” (Paragraph 33)

11. Without an increase in the Division 2 State awards, employees covered by those awards would have a wage freeze imposed on them. Having regard to the fact that these State rates are not identical and that they were set by State tribunals on different dates, ACCER submits that the most appropriate means of adjusting those rates is by the application of the published CPI changes since the date of the last State tribunal adjustment. This will maintain the real value of those rates and provide a better basis for the full transition of these employees into the national system. We do not agree with the claim by ACCI (at paragraphs 89-90) that they should not be adjusted.

### **Relativities**

12. Several submissions (including ACCER’s) refer to the need to review the relativities between internal award wage and the relativities within awards and between awards and other wage rates.

13. The Queensland Government:

“Queensland Government submits that in line with the statutory obligation on FWA to ensure a fair and relevant minimum safety net, there should be a continuing effort to address the disparity between award rates and wage outcomes achieved through bargaining, as well as general wage movements across the community.” (Paragraph 71)

14. The ACTU has submitted:

“The ACTU is cognizant of the importance of skill based classification structures and the associated relativities in modern awards and their importance for

productivity. The importance of these skill based relativities must be given weight at some stage in the future.” (Paragraph 1.15)

15. ACCER submits that these problems would be compounded by a flat money increase at this time. We do not support the claim by the Australian Council of Trade Unions (ACTU) for a flat \$27.00 per week because it compounds these difficulties without delivering benefits to those on the lowest wage rates. The figure is insufficient given the relevant price increases.
16. Relativities within awards and between safety net rates and community wage levels are important matters in the development of the new wage-setting system. They should be addressed at a hearing early in the new financial year.

### **Equal Remuneration**

17. The relativities question is relevant to the equal remuneration issue which has been raised in several submissions. The material referred to, especially *Employee Earnings and Hours, Australia, August 2008* (ABS catalogue no. 6306.0) published on 17 June 2009, shows that women are over-represented in award-dependent employment and that award-dependent women are employed in higher paid classifications than award-dependent men. The difference in relative wages is evident from, for example, the earnings of full time permanent non-managerial employees, as set out in Table 20 of the ABS report. The hourly average rate for male employees was \$17.40 (\$661.20 per week) and for female employees it was \$18.90 (\$718.20 per week). As we showed in our principal submission, an employee who was on this average female wage rate in August 2008 (ie before the increases of October 2008) has received a real wage cut since December 2000 (Table 1) and that the safety net wage increase for this worker over that period (23.4%) was less than half the increase of 52.3% in average weekly ordinary time earnings (Table 3).
18. On this material it appears that a cause of the relative decline in female pay rates over recent years has been the awarding of dollar rather than percentage increases and, in 2006 and 2007, the awarding of lower wage increases to those earning over \$700 per week. The adverse impact of past safety net decisions on the remuneration of women is another reason why percentage increases should be awarded in the current review.

19. The fact that women have been more disadvantaged by the drift of safety net rates from community wage levels over the past decade is a matter that should be considered in a review of safety net rates.

### **The Needs of the Low Paid**

20. As we noted earlier, there is very little in the other submissions that addresses the needs of low paid workers and their families. The Commonwealth, for example, does not attempt to deal with the issue:

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

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

21. Two points arise out of these passages. First, FWA-directed research should not be limited to “approaches to defining and measuring relative living standards and the needs of the low paid”. That work should be done as soon as possible, by FWA direction and guidance, so that sufficient up-to-date can be gathered and made available in the next Annual Wage Review. It would be unacceptable to leave it to the Government to decide if there is a need for further research.
22. Second, as we discussed in our principal submissions, there is a body of material that *assists* in estimating the needs of the low paid. It includes substantial research commissioned or used by the Commonwealth on the needs, and costs, of low paid workers and their families; see, for example, *Costs of children: research commissioned by the Ministerial Taskforce on Child Support*, Department of Families, Community Services and Indigenous Affairs, 2007; see paragraph 310 of the principal submissions.
23. Furthermore, the review of pensions to which we referred at paragraphs 236-7 of our principal submission, necessarily involved a review of the needs and costs of low

income singles and couples. (The pension rates have increased since the date of the submission.) The central question for the Pensions Review that lead to these changes “was the level at which the full rate of pension should be set”; it tested “whether current rates of pensions are providing a basic acceptable standard of living, accounting for prevailing community standards” and it “considered that the full rate of pension should provide a basic acceptable standard of living for those who are wholly reliant on it...” (*Pension Review Report*, 27 February 2009, page xii.). The outcome of this work, the current pension rates, can be taken as a *guide* to the costs of a *basic acceptable standard of living* for low income working families, by applying the equivalence scales used by the ABS (and by the AFPC when calculating relative poverty lines) and by estimates of the costs of working for the working family.

24. To provide the family of four with the same standard of living as that provided to the pensioner couple on \$528.50 per week, the family of two adults and two children would need a disposable income of \$739.90 per week, plus the costs of working. We would also argue that the wage rate should also provide an incentive to work and encourage workforce participation, which is part of the “minimum wage objective”. It should also provide a reward for working. The FMW-dependent family’s disposable income of \$742.75 per week (Table 11 of the principal submissions) is manifestly inadequate.
25. We submit that there is sufficient material already available to establish the manifest inadequacy of the FMW and other wage rates and that the material cannot be dismissed as it was in the Commonwealth’s submission. We do not accept that the Commonwealth, which has responsibilities over so many areas of social deprivation and need, is unable to provide some guidance to FWA in respect of on an important aspect of its own legislation.
26. We accept that more research is needed; that is why we have asked in each year since 2006 for research to be commissioned into the needs of low paid workers and their families. We do not want to see next year’s review limited to a “review of the literature” and submit that a program of research be commissioned early in the new financial year.

27. The Commonwealth has also advised that it is not aware of any research that focuses directly on the connection between social inclusion and minimum wages (paragraph 4.29). We submit that this is an important matter and one that should be addressed in the review of research programs. It is a matter that could be developed in conjunction with the Social Inclusion Board.

### **Relative poverty and single earner households**

28. The ACTU's submissions in respect of the needs of the low paid include calculations showing the disposable incomes of various household relative to the 60% of median income poverty lines; see Tables 11.5 to 11.8. These tables substantially underestimate the deprivation suffered by single earner working families.
29. The ACTU's comparisons are based on the relevant AFPC tables in its 2008 and 2009 decisions which include the Newstart allowance for the second parent in a FMW-dependent household. For reasons that we explained in our principal submission, the Newstart allowance should be excluded. When this is done it is apparent that the FMW is manifestly inadequate to meet the needs of low paid workers and their families.
30. Another limitation of the ACTU's comparisons is that the only family with children that is covered in the tables is the family with one child. When a second child is added, the position becomes significantly worse; for example in its 2009 decision (at Table 5) the AFPC found that the addition of a second child would cause the family's margin over the poverty line to fall by five percentage points. (This, of course, reflects the fact that family payments do not meet the full costs of children.) The family with two children is the appropriate basic reference point in contemporary Australia and its position is substantially worse than the ACTU's tables would suggest.
31. While the ACTU's comparisons provide support for its current claim, we are concerned about them because they suggest that the position of low income *working families* is better than it is, after taking into account wages, taxation and family payments.



### **Changes to taxes and transfers**

32. The Australian Industry Group (Ai Group) has argued for a wage increase of \$12.00 per week. This represents a 2.2% increase in the FMW and substantially less for higher income groups. It argues, however, that income tax cuts mean that the increase in disposable income for the FMW-dependent single worker would be 2.6% and, for a FMW-dependent family of two adults and two children, the increase in disposable income would be 3.0% when tax cuts and increases in family payments are taken into account. Similar calculations are made in respect of a range of safety net rates; see Tables 3 and 4.
33. Three points arise from Ai Group's submission. First, for all groups there will be a real cut in disposable income having regard to price increases. Second, the calculations seek to make use of general tax cuts to reduce wage increases. Our principal submission deals with this aspect. The effect of this argument, if accepted, would be to deny safety net workers the intended benefit of the tax cuts and to treat them less favourably than other workers. Third, the increases in family payments are being used to support a wage reduction. If there had been a special increase in family payments for the stated purpose of enabling limited wage increases there would be some merit in this approach. But that is not the case. Table 10 of our principal submission shows that there were no increases apart from indexation. Increases in family benefits that compensate for price increases should not be used to justify real wage cuts. As with its claims in respect of the tax cuts, the effect of Ai Group's argument, if accepted, would be to deny safety net workers the full benefit of family payments and to treat them less favourably than other workers.

### **Procedural matters**

34. Ai Group has submitted:

“We hope that the following very worthwhile elements of the Fair Pay Commission's minimum wage reviews will be preserved under the new system:

- A greater degree of informality than previous AIRC safety net review proceedings;
- Proceedings which are inquisitorial in nature rather than adversarial;
- The commissioning of quality research.

Ai Group believes that there was great value in the process which the Fair Pay Commission adopted of organising meetings between the Members of the Fair Pay Commission and peak representative bodies such as Ai Group, ACCI and the ACTU. Typically, a team of four Ai Group staff attended these meetings comprising our Chief Executive plus our Directors responsible for workplace relations, economics, taxation and tax transfer policy areas. The meetings were conducted around a table and there was a free flowing exchange of views between all members of Ai Group's team and all Members of the Fair Pay Commission. Ai Group believes that it would be a retrograde step to abolish this approach and return to formal hearings, with formal submissions presented by industrial relations advocates." (Paragraphs 249-50)

35. ACCER has participated in the same kind of meetings over each of past four years.

Typically, as we understand it, an hour to an hour and a half has been allocated to each of the participating parties. Because no record has been made of the meetings there is no public record of what has been said and no other party has a record of what has transpired at other meetings.

36. We do not support private meetings or private representations. We support a procedure that gives each party a reasonable opportunity to put its views, through a single representative or through several representatives, whether they are in-house or external representatives. We also support the active engagement of tribunal members in the matters being advanced, but we do not expect them to express any views that might be seen as compromising their ability to fully consider all points of view. Any oral submissions should be underpinned by, and refer to, previously filed written submissions. Written submissions, supplemented by targeted oral submissions, are an efficient and satisfactory way of presenting a case and views and of giving other parties an opportunity to respond to those issues.

37. In regard to private representations, we refer to a passage in an article written by the former Chairman of the AFPC, Professor Harper:

"..I never received explicit or implicit directions from either the Howard government or the Rudd government. Occasionally, staff of the relevant minister's office would let me know what they thought the minister was thinking, but this never crossed the line of exerting undue influence on me or any of my fellow Commissioners, to the

best of my knowledge.”(*Why Would an Economic Liberal Set Minimum Wages? Policy*, Vol. 25 No. 4, page 7.)

38. The issue is not whether the advice has the intention or effect of exerting undue influence. It is whether this kind of communication should occur. We submit it should not and if the government of the day, or any other person or party wishes to put a view to the tribunal, it should do so in an open and transparent way.

39. ACCER’s interest in these matters is not of recent origin. In its November 2005 submission to the Senate inquiry into the *Workplace Relations Amendment (Work Choices) Bill 2005*, ACCER submitted:

“Given the important tasks conferred on it, the AFPC should have an explicit obligation to comply with the rules of natural justice when exercising its power. The proposed section 7K should be amended by the addition of a new subsection:

‘In the exercise of its wage-setting functions the AFPC is obliged to observe the rules of natural justice, including giving relevant parties the opportunity of being heard and disclosing to relevant parties the material upon which it may make its decisions.’” (Paragraph 45)

No such change was made.

40. Ai Group’s proposals must also be subject to the terms of the current legislation. The *Fair Work Act* contains a number of provisions designed to ensure that the decisions of FWA are transparent and in accordance with the principles of natural justice. We support them. As with all regulatory tribunals, they are integral to the credibility and standing of FWA.

41. The legislation provides that wage-setting is to be transparent; see sections 289, 291, 593, 577 and 593. The intention is that proceedings will be in public, submissions will be published and there will be an opportunity to respond to the material that is put to FWA. This doesn’t require a procedural straightjacket. Section 577, for example, provides:

“FWA must perform its functions and exercise its powers in a manner that:

- (a) is fair and just; and
- (b) is quick, informal and avoids unnecessary technicalities; and
- (c) is open and transparent; and

(d) promotes harmonious and cooperative workplace relations.”

42. The Explanatory Memorandum for the *Fair Work Bill* has a number of references to the transparency objective: paragraphs r.112 (regulatory analysis), 1160 (regarding section 289 and 577(c)), 1164 (section 291), 2248, and 2312. In respect of natural justice specifically, see paragraphs 2561 and 2281 (section 593). FWA has the capacity to adopt flexible procedures that are consistent with the requirement to be transparent.
43. We submit that FWA can establish “pre-hearing” procedures that will enhance the wage-setting function, consistent with its statutory obligations. A program of consultations and inspections could be conducted prior to the calling for submissions in each *Annual Wage Review* without infringing the transparency requirements. This could include workplace inspections, consultations with officers of relevant organisations, employers, union officials and meetings with low income workers and their families. These would be for the purposes of familiarisation and not evidence-gathering. With appropriate protocols and understandings there would be no need for parties other than the “hosting” organisation to be present. We submit that consideration should be given to the adoption of these procedures early in the next financial year.

### **Wage fixing principles**

44. New South Wales has discussed the need for the adoption of a set of wage fixing principles and has proposed that:
- “... FWA should invite submissions from interested parties as to the nature of a set of wage fixing principles as part of the current Wage Review. Such submissions would be filed and considered after the determination of the current Wage Review.” (Paragraph 173)
45. ACCER supports this proposal. The proposed hearing and principles can be the means by which a number of the foregoing matters can be addressed.

### **May Consultations**

46. ACCER seeks the opportunity to appear before FWA in the May consultations.