

Fair Work Australia

Fair Work Act 2009

Annual Wage Review 2010-11

Submission by the

Australian Catholic Council for Employment Relations

March 2011

Table of Contents

List of Abbreviations

Executive Summary

Paragraph

Chapter 1 *Fair Work*: an opportunity for reform

- | | | |
|----|---|----|
| A. | Introduction | 1 |
| B. | From <i>Work Choices</i> to <i>Fair Work</i> | 15 |
| C. | Fair Work Australia's statutory duty | 16 |
| D. | The need to restore fairness to the setting of safety net wages | 26 |

Chapter 2 Why we advocate for low paid workers and their families

- | | | |
|----|--|----|
| A. | Introduction | 29 |
| B. | Catholic social teaching on work and workers' rights | 30 |
| C. | Mr Hawke on <i>Rerum Novarum</i> and Australian industrial relations | 42 |
| D. | Fairness is central to the setting of safety net wages | 49 |

Chapter 3 The needs of workers include the needs of their families

- | | | |
|----|---|-----|
| A. | The question that must be asked | 74 |
| B. | The needs of families have to be taken into account | 78 |
| C. | The needs of families are relevant: policy, principle and legislation | 85 |
| D. | Workers with family responsibilities cannot rely solely on the NMW | 100 |

Chapter 4 Wage-setting has failed low income workers and their families

- | | | |
|----|--|-----|
| A. | Introduction | 108 |
| B. | Safety net wages have not kept up with price increases | 116 |
| C. | Most safety net workers have suffered real wage cuts | 120 |

D.	Safety net wages have fallen well behind general wage levels	137
E.	Safety net wages have lost value compared to other arbitrated wages	148
F.	Safety net workers have not received productivity increases	169
G.	The tax cuts do not justify the real wage cuts	180
H.	Increased family payments have not compensated for wage cuts	196
I.	Safety net wages have not been based on evidence of workers' needs	213
	• Housing costs have been underestimated	228
	• Child care costs have been excluded	237
J.	Low income working families have fallen behind rising poverty lines	250
	• Henderson poverty lines	251
	• Relative poverty lines	271
K.	Safety net wages have fallen behind pensions	285
L.	Conclusion	292

Chapter 5 Mr Costigan's five questions

A.	Introduction	296
B.	Who are the low paid?	304
C.	What is living in poverty?	306
D.	What is the poverty line?	321
E.	How does the NMW compare to the poverty line?	330
F.	What are the needs of the low paid?	333

Chapter 6 Conclusions and orders sought

A.	Introduction	365
B.	Errors in FWA's 2010 decision	401
C.	ACCER's claim	436
D.	The first part: \$16.60 per week	442
E.	The second part: CPI increases	474
F.	FWA inquiry and research into the needs of the low paid	477

List of Abbreviations

ABS	Australian Bureau of Statistics
ACCER	Australian Catholic Council for Employment Relations
ACCI	Australian Chamber of Commerce and Industry
ACOSS	Australian Council of Social Services
ACTU	Australian Council of Trade Unions
AFPC	Australian Fair Pay Commission
AIRC	Australian Industrial Relations Commission
ABS	Australian Bureau of Statistics
AWOTE	Average Weekly Ordinary Time Earnings
CCER	Catholic Commission for Employment Relations
CPI	Consumer Price Index
CSSA	Catholic Social Services Australia
FMW	Federal Minimum Wage
FTB A	Family Tax Benefit Part A
FTB B	Family Tax Benefit Part B
FWA	Fair Work Australia
GST	Goods and Services Tax
HDI	household disposable income
HPL	Henderson Poverty Line
MTAWE	Male Total Average Weekly Earnings
NMW	National Minimum Wage
OECD	Organization for Economic Co-operation and Development
SPRC	Social Policy Research Centre
WPI	Wage Price Index

Executive Summary

This submission by the Australian Catholic Council for Employment Relations (ACCER) focuses on the needs of the low paid and relative living standards. It is primarily made for the purpose of improving the living standards of low paid workers and their families.

ACCER's advocacy is informed by the Church's experience as a major employer in Australia with over 130,000 employees in health, aged care, education, welfare and administration; but it essentially arises from the belief, based on Catholic social teaching, that workers have the right to wages that will support themselves and their families at a decent standard of living.

Our main objective in this and past annual wage reviews has been the increased support of families through the wage packet because we know that employment in work which pays a decent wage will promote:

- the proper care of children;
- the stability of families;
- social inclusion; and
- social cohesion.

Better wages and other conditions of employment are necessary if we are to deal with the unacceptable degree of family and social dysfunction that we now have in Australia. This goal is complementary to, and not inconsistent, with prudential economic management and the strengthening of employment opportunities.

The impact that wage policies have on families, on children in particular, is one that cannot be ignored or glossed over. A precondition for social inclusion is a decent wage. Family payments by the Commonwealth do not, and are not intended to, provide for all of the needs of workers' dependents. The notion that wages should be set by reference to the needs of a single person without family responsibilities has no part to play in the current Australian wage-setting system.

A major part of this submission is concerned with a detailed analysis of the way in which the setting of safety net wages over the past decade has failed low paid workers and their families. Safety net-dependent workers, who comprise about one-sixth of the Australian workforce, rely on safety net wages because they do not have the ability to bargain for higher rates of pay. Low paid workers who are dependent on safety net wages have seen a substantial decline in their wages relative to wages in the rest of the community. Furthermore, many safety net-dependent workers have had increases of less than the rate of inflation.

Another major part of this submission is concerned with quantifying the needs of low paid workers and their families. The National Minimum Wage and other low wage rates have become poverty wages for low income working families.

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

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

To these ends we have three major submissions:

- *Award wages*: ACCER seeks increases in safety net wage rates to cover published price increases in the Consumer Price Index (CPI) since the handing down of the *Annual Wage Review 2010* in June 2010. Since then the three published CPI

increases have totalled 2.3%, with another adjustment, for the March quarter 2011, to be published prior to the conclusion of this year's wage review.

- *The National Minimum Wage:* The current National Minimum Wage of \$569.90 per week is manifestly inadequate, and will continue to be if it is only adjusted by the accrued CPI increases. Our submissions present the case for the base cleaner's classification rate of pay, currently \$608.80 per week, to be adopted as the target rate for the National Minimum Wage, pending the completion of a research program designed to identify the needs of workers and their families. We propose that the target rate be achieved in three annual steps.

In 2011 we ask that the National Minimum Wage be increased by \$16.60 per week to \$586.50 and that this amount be increased by the published CPI increased since the handing down of the *Annual Wage Review 2010* in June 2010.

This means that the new National Minimum Wage would be \$600 per week, based on the published CPI increases to date and, for example, \$605.00 per week if the annual inflation rate is 3%. Our submissions show that the cost of this first step towards a decent National Minimum Wage would be insignificant.

- *Inquiry and Research Program:* We propose that Fair Work Australia establish an inquiry into the financial needs of low paid workers and their families and relative living standards. The purpose of the inquiry would be to gather material that is relevant to the exercise of FWA's statutory obligation to have regard to (amongst others) relative living standards and the needs of the low paid when setting award wages and the National Minimum Wage. The inquiry would be able to take submissions on areas of research and research methodologies, conduct or commission research, and consider the formulation of various kinds of benchmarks to better inform FWA about the financial needs of the low paid. We also propose that the inquiry, or some other process, deals with what we identify as systemic issues and failings in safety net wage-setting over the past decade or more.

Chapter 1 *Fair Work: an opportunity for reform*

A.	Introduction	1
B.	From <i>Work Choices</i> to <i>Fair Work</i>	15
C.	Fair Work Australia's statutory duty	16
D.	The need to restore fairness to the setting safety net wages	26

A. Introduction

1. This submission to the *Annual Wage Review 2010-11* of Fair Work Australia (FWA) is made by the Australian Catholic Council for Employment Relations (ACCER). ACCER is an agency of the Australian Catholic Bishops Conference which provides the Bishops with advice on employment relations issues and acts as a public advocate for good employment relations. One of its principal activities has been the advocacy of adequate safety net wages for low paid workers. About one in six Australian workers receives no more than the prescribed safety net wage. They are unable to bargain for a higher rate, either individually or collectively, and most usually are not union members.
2. The submission was prepared in cooperation with the Catholic Commission for Employment Relations (CCER) and Catholic Social Services Australia (CSSA).
3. CCER is an employer body representing Catholic employers in New South Wales and the Australian Capital Territory. In recent years CCER played an active role in State Wage Cases in the New South Wales Industrial Relations Commission in support of low paid workers. In 2007 it alone successfully argued for a further wage increase of \$7.00 per week for workers on the lowest award rate of pay; see *NSW State Wage Case 2007* [2007] NSWIRComm 118. Following the Federal increase later that year, the NSW rate was \$9.28 per week more than the Federal Minimum Wage. As a result of the referral of the State's employment powers to the Commonwealth in 2010, and the application of the lower Federal rate to the entire private sector workforce in NSW, the benefit of CCER's successful claim has been lost.
4. CSSA is the Catholic Church's peak national body for social services and is an agency of the Australian Catholic Bishops Conference. CSSA represents 69 member organizations which employ about 11,000 people, engage over 3,000

volunteers and provide 500 different services to over a million people each year from sites in metropolitan, regional and rural Australia. Clients are drawn from a wide spectrum of Australian society, including low income and unemployed workers and their families.

B. From *Work Choices* to *Fair Work*

5. The protection of vulnerable workers and their families was the subject of a Statement made by the Australian Catholic Bishops Conference on 25 November 2005 in relation to the then Commonwealth Government's *Workplace Relations Amendment (Work Choices) Bill 2005 (Work Choices)*. In commenting on the proposed amendments and calling for changes to them (which were unheeded), the Bishops said:

- “Our experience emphasises the importance that employment, fair remuneration and job security play in providing a decent life for workers and their families. They are particularly important for those who have limited job prospects and who are vulnerable to economic change. It is not morally acceptable to reduce the scourge of unemployment by allowing wages and conditions of employment to fall below the level that is needed by workers to sustain a decent standard of living.”
- “Workers are entitled to a wage that allows them to live a fulfilling life and to meet their family obligations. We are concerned that the legislation does not give sufficient emphasis to the objective of fairness in the setting of wages; the provision of a fair safety net by reference to the living standards generally prevailing in Australia; the needs of employees and their families; and the proper assessment of the impact of taxes and welfare support payments.
In our view, changes should be made to the proposed legislation to take into account these concerns.”
- “The integration of economic growth and social justice is a fundamental obligation of government. They must be pursued in ways that are fair and equitable to the society as a whole. In this context, our proposals for change to the *Workplace Relations Amendment (Work Choices) Bill 2005* seek to moderate the impact on the poor, the vulnerable and families and limit any consequences on social cohesion.”

6. It was for these reasons that we welcomed the current Government's *Fair Work* reforms to the framework of national wage-setting when they were enacted in the *Fair Work Act 2009*. The new legislative framework provides the opportunity to address what we see as significant inadequacies in the wages safety net. Consistent with the concerns of the Bishops about *Work Choices*, our judgment on *Fair Work* will depend on whether or not FWA actually sets a fair safety net by reference to (amongst other matters) the needs of workers and their families and to the living standards generally prevailing in Australia.
7. Our optimism is tempered, however, by the belief that no progress will be made on behalf of low paid workers and their families unless the major parties to the Annual Wage Review, and FWA, proceed with an *enquiring mind*. Close attention should be given to questions such as, how much income does the worker and his or her family need to live a decent life? There are no simple answers to that question, but it is the kind of question that must be answered in order to discharge the overriding statutory task to provide a *fair* safety net.
8. We submit that the terms of the new legislation enable FWA to meet the concerns identified by the Bishops in 2005. But, to do so, it will be necessary to address and correct some very concerning developments in the safety net protections for low paid workers and their families. Wage-setting has failed low income workers and their families. As we show in Chapter 4, relative to the rest of the community, safety net workers and their families are substantially worse off than they were in 2000; and some workers and their families are worse off in real terms than they were in 2000. It has been a decade of increasing inequality.
9. The points made in the previous four paragraphs were also made in our submissions twelve months ago to the *Annual Wage Review 2009-10*. That case, FWA's first wages review, occurred in unusual circumstances, principally because it followed a wage freeze in 2009 by its predecessor, the Australian Fair Pay Commission (AFPC). The consequences for the 2010 wage were substantial. Not only did FWA have to deal with the usual consequences of a wage freeze, but the AFPC was the only wage-setting tribunal to impose a freeze, causing Federal rates to fall further behind comparable State rates; and market rates for the majority of workers

had increased substantially. In 2010 it was clear that the *effective* ceiling on wage increases would be imposed by factors other than the basic question of how much income a worker needs in order for the worker and his or her family to live a decent life. The 2010 wage review did not correct the “fairness deficit” created by the AFPC’s wage freeze; but 2011 is different.

10. Research is needed to fully address the question of how much income a worker needs in order for the worker and his or her family to live a decent life. This research is not a precondition for the step that we ask FWA to take in 2011, but it is essential for the setting of wage rates that take proper account of the needs of the low paid. The FWA research section has recently published a very helpful review of a range of issues concerning the measurement of needs, poverty levels and associated matters; *Research report 2/2011 - Relative living standards and needs of low-paid employees: definition and measurement*. This report would provide a valuable contribution to our proposed inquiry into the needs of the low paid.
11. To our disappointment, we saw little effort by the parties in 2010 to the assist FWA to understand the needs of the low paid.
12. ACCER believes that a precondition for real progress in this matter is a pro-active approach by FWA. We urge FWA to be forthright in the exercise of its statutory duty to take into account the needs of the low paid. We submit that it should ask the parties to put submissions on matters such as:
 - the way in which FWA's statutory duty to take into account the needs of the low paid should be exercised;
 - the quantum required to meet the needs of the low paid; and
 - the kind of research that is needed to assist the proper exercise of its statutory duty.
13. One aspect of the failure of minimum wage-setting has been the growing gap between safety net rates and the wages generally paid in the community. We show in Chapter 4 that from December 2000 to December 2010 the Federal Minimum Wage (FMW) and, from 2010, the National Minimum Wage (NMW) increased by 42.3% while from November 2000 to November 2010, full time average weekly

ordinary time earnings (AWOTE) increased by 59.3%. Other safety net rates covering the low paid suffered greater relative reductions.

14. At various points in this submission we refer to the AFPC's statutory charter and to its decisions. While we are critical of aspects of both, we emphasize that the matters about which we are concerned have developed over a longer period. We show in Chapter 4 that the declining relative economic circumstances of low paid working families did not start with *Work Choices*, although *Work Choices* accelerated these changes. The trend may continue even under the current legislation unless there is a vigorous and principled debate about the treatment of low paid workers.
15. Finally, in relation to fairness we repeat a point made by us in earlier wage review cases (prior to *Work Choices*) about a statutory obligation to set fair safety net wages: the obligation is to set a *fair* minimum wage, not a *bare* minimum wage. A bare minimum wage is one that barely avoids being a poverty wage. A fair minimum wage is one that provides a decent standard of living. We submit that this now has extra force in the light of the legislation's social inclusion objective.

C. Fair Work Australia's statutory duty

16. FWA is required by Part 2-6 of the FW Act to set and vary minimum wages. In each financial year the Minimum Wage Panel of FWA is required to conduct and complete an annual wage review of minimum wages in modern awards and to make minimum wage orders for employees who are not covered by modern awards.
17. The Act specifies the "minimum wages objective" which requires FWA to establish and maintain a safety net of fair minimum wages, taking into account certain social and economic factors. The minimum wages objective is set out in subsection 284(1):

"FWA must establish and maintain a safety net of *fair minimum wages*, taking into account:

- (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and
- (b) promoting social inclusion through increased workforce participation; and

- (c) *relative living standards and the needs of the low paid*; and
- (d) the principle of equal remuneration for work of equal or comparable value; and
- (e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.” (Emphasis added)

18. The same kind of provision is found in FWA's duties regarding award-making. Subsection 134(1) provides:

"FWA must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) *relative living standards and the needs of the low paid*; and
- (b) the need to encourage collective bargaining; and
- (c) the need to promote social inclusion through increased workforce participation; and
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
- (e) the principle of equal remuneration for work of equal or comparable value; and
- (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy." (Emphasis added)

19. We have particularly welcomed the return of *fairness* to wage setting following the repeal of the *Work Choices* legislation. Despite its name, the Australian *Fair Pay Commission*, there was nothing in the repealed *Work Choices* legislation that required the AFPC to act fairly. Over the years various parties (including ACCER) urged it to be fair, arguing for the implication of fairness from its name and from the requirement that it “have regard to ... providing a safety net for the low paid”. The significance of the AFPC's charter was referred to in a paper by the former Chairman of the AFPC, Professor Ian Harper:

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

20. It is also significant that the requirement to consider “relative living standards” has returned to the wage-setting legislation. Again this is a significant and welcome departure from the AFPC’s charter. We say “returned” because the pre-*Work Choices* legislation required the Australian Industrial Relations Commission (AIRC) to have regard to, amongst others, “the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community”. The notion of social equity underlying these kinds of provisions is important.
21. The obligation to take into account relative living standards means that price-based adjustments to wages are insufficient and that regard has to be paid to general increases in wages and disposable incomes throughout the community. While safety net rates may not be in short term lockstep with these increases, they should be adjusted to ensure that they are consistent with community movements over time.
22. We also welcome the adoption of “social inclusion” as an explicit object of the Act. Section 3 provides:

“The object of this Act is to provide a balanced framework for cooperative workplace relations that promotes national economic prosperity and social inclusion for all Australians by [amongst others]...ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions...”
23. The appointment of a Minister for Social Inclusion and the establishment of Australian Social Inclusion Board bring the *promise* of overdue attention being

given to the circumstances of low paid workers and their families. In its first annual report (December 2009), *Social Inclusion in Australia: How Australia is faring*, the Chair of the Board wrote:

“Social inclusion is about ensuring that everyone is able to participate fully in Australian society. It is about people having the necessary opportunities, capabilities and resources to enable them both to contribute to and share in the benefits of Australia’s success as a nation.” (Page 1)

24. Programs for the promotion of social inclusion will matter little unless the incomes of the low paid are sufficient. A precondition for social inclusion is a wage which, together with government transfers, will support workers and their families at an acceptable standard of living. We believe that a review of minimum wages should be at the heart of an integrated program to improve social inclusion.
25. The legislation’s concern with social inclusion finds particular expression in another of the matters to which FWA is to have regard when setting wages: “promoting social inclusion through increased workforce participation”; section 284(1)(b). The provision recognises two important matters: the importance of work and the promotion of social inclusion. That focuses attention on the level of wages. It is not a narrow concern with what may be called low cost jobs. Increased workforce participation, of itself, is insufficient to promote social inclusion and to ensure a decent living for workers and their families.
26. We submit that as well as commissioning research on economic questions, it is necessary for FWA to commission research on the social impacts of current and potential wage outcomes. In particular, this research should address the situation of couple parent families and sole parent families who are dependent on low paid work. We again propose that this research be done in consultation with the Social Inclusion Board.

D. The need to restore fairness to the setting safety net wages

27. Over the past decade tribunal decisions on safety net wages have worked against low paid workers and their families, even though the disposable incomes of NMW-dependent workers and their families, and some others who are dependent on higher safety net wages, have risen by more than the rate of inflation. There has

been a cut in the real value of classification rates that are now in excess of \$698.00 per week. Compared to the rest of the workforce, *all* safety net workers are *relatively* worse off at the end of the decade.

28. In support of these claims, we *establish* a number of key points in Chapter 4:
 - (a) We should be careful in illustrating changes in safety net rates by reference to the NMW. The number of workers on the NMW is very small and references to improvements in the NMW as a justification for past decisions and as an indicator of how safety net changes have operated are misleading.
 - (b) The real wages of many safety net workers have fallen over the decade, with the greatest falls being at the higher end of the low paid spectrum; for example, workers on a safety net wage of \$800.00 per week in December 2010 have had a real wage cut of \$44.00 per week, or 5.5% since 2000.
 - (c) When compared with other rates of pay and income measures, safety net wages have fallen dramatically; for example, while Average Weekly Ordinary Time Earnings (AWOTE) have risen 59.3%, the base safety net wage for a trades-qualified worker, or a worker with equivalent qualifications and skills, has risen by 34.8%.
 - (d) Unlike other workers, safety net workers have not received productivity-based increases. Since 2000 substantial productivity gains across the economy have resulted in substantial wage increases across the national economy; but safety net workers have not benefited from those gains.
 - (e) Some commentators have sought to explain away real wage cuts by arguing that tax cuts have increased the disposable incomes of safety net workers and their families. The tax cuts over the past decade have not targeted low paid workers and low paid workers have not received benefits in excess of those received by taxpayers generally. The use of after-tax figures as a justification for real wage cuts, or limited real wage increases, is not justified.

- (f) Decisions made by the AFPC under the *Work Choices* legislation have exacerbated the trend towards greater wage inequality over the decade.
 - (g) Family payments to low income working families have not compensated for real wage cuts. Family payments have increased, but not in a way that would permit them to be used as a justification for limiting safety net wage increases.
 - (h) The AFPC's preferred, and only, measure for estimating the needs of low income workers and their families, the Henderson Poverty Line (HPL), greatly underestimated the needs of working families by underestimating housing costs and, in the case of sole parents, by excluding child care costs.
29. It is too early to judge whether the *Fair Work* reforms will have an impact where they are most needed: in the safety net rates for low paid workers. We submit that the future direction of wage-setting under the proper expectations of the *Fair Work* reforms can only be chartered by reference to the failures of the past. We do not look for future outcomes to be decided in 2011, but we ask that the objectives, principles, methodologies and research that are essential for the future be considered and addressed by the parties and by FWA.

Chapter 2 Why we advocate for low paid workers and their families

A.	Introduction	29
B	Catholic social teaching on work and workers' rights	30
C	Mr Hawke on <i>Rerum Novarum</i> and Australian industrial relations	42
D	Fairness is central to the setting of safety net wages	49

A. Introduction

30. Through its many agencies, the Catholic Church employs over 130,000 employees throughout Australia. ACCER's advocacy is informed by the Church's experience as a major employer and as a major supplier of services in health, aged care, education and welfare throughout Australia. However, the advocacy is based on concern for the well being of workers, especially low paid workers and low income working families, as well as Catholic social teaching on work and the employment relationship. Catholic social teaching places great emphasis on the right of workers to wages that will support themselves and their families at a decent standard of living. (For a review of this teaching see *Workplace Relations: A Catholic Perspective*, published by ACCER in 2007. It is also available at www.accer.asn.au).

B. Catholic social teaching on work and workers' rights

31. Catholic teaching on the spiritual, economic and social aspects of 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"; Congregation for Catholic Education, *Guidelines for the Study and Teaching of the Church's Social Doctrine in the Formation of Priests*, Vatican Polyglot Press, Rome, 1988, page 24
32. An essential element in Catholic social teaching is the emphasis given to the protection of the poor and vulnerable. Often this is referred to as the "preferential option for the poor". This term is a modern one, first used by Pedro Arrupe, a Superior General of the Jesuits, in a letter to his fellow Jesuits in Latin America. It

is a term that recognises the special place in Church teaching of concern for the vulnerable, the powerless and the poverty-stricken.

33. Related to this a basic principle in Catholic social teaching: the need to promote the common good. The common good is “the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfilment more fully and more easily”; *Compendium of the Social Doctrine of the Church*, paragraph 164. This concept has much in common with “social inclusion”, an objective of the FW Act. Section 3 provides:

“The object of the Act is to provide a balanced framework for cooperative industrial relations that promotes national economic prosperity and social inclusion for all Australians...”

34. In Catholic social teaching work is an obligation and a source of rights. It is an obligation because of the importance of work to the individual, the family and society as a whole. Unemployment is, therefore, a scourge and its presence imposes serious obligations on governments.
35. The special emphasis on the rights of vulnerable workers is summed up in the following passage by Pope John Paul II in his 1981 encyclical *Laborem Exercens* in regard to the connection between work and the achievement of social justice for 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, italics in original)

36. The concluding words of this passage highlight and bring together three important aspects of the plight of poor and vulnerable workers: lack of employment opportunities, inadequate wages and the lack of job security. Employment, in itself, is not sufficient. The dignity of the worker requires a just wage and personal security. While the position of the low paid workers requires greatest attention, the fundamental principles apply to all workers. Higher paid and less vulnerable workers are also entitled to the rights that flow from the performance of work.

37. Understanding the human dimension is vital to the determination of fair minimum rates of pay. Catholic welfare agencies, like other agencies, have day-to-day experience of the circumstances of the unemployed, of the under-employed and of those who are employed in low paid jobs. Many people move between these three categories. The under-employed are those who rely on insufficient and irregular casual or part-time employment. They have little or no job security. The tenuous nature of their employment means that they will live a hand-to-mouth existence. There are also low paid workers in regular and ongoing employment who are unable to make adequate provision for themselves and their families. They have to call on welfare agencies because wages do not provide them with a decent standard of living. Furthermore, for many of these low paid workers there is little or no prospect of longer-term increases in pay by improving their skills.
38. The circumstances of the unemployed, the under-employed and those in full time low paid employment are similar in many respects. All of them share a struggle for work, security and decent pay in one of the richest countries in the world. A failure to appreciate the common interests of the unemployed, the under-employed and those in full time employment may result in simplistic and unjust proposals for the setting of minimum wages, creating jobs and providing rewards and incentives to work. We must guard against solutions, such as lower minimum wages, that seek to set the interests of low paid workers against the interests of the unemployed.
39. Many in the community, from a wide variety of backgrounds and views, have a deep concern for vulnerable low paid workers and their families and for those who are unemployed or underemployed. We do not present a position that is unique to the Catholic Church. The values we have described are shared by many; but not all.
40. Two major themes of Catholic social teaching are the importance of work to human development and the right of workers to a decent standard of living. Catholic teaching does not require a minimum standard of living that a well-governed and just society cannot afford. Specifically, workers should have a job *and* a decent wage, by reference to the standards and capacities of the societies in which they live. The teaching rejects the view that some workers can have a job *or* a decent

wage. It is not morally acceptable to seek to reduce unemployment by letting wages fall below the level at which workers can sustain a decent standard of living.

41. This does not deny a proper role for labour markets and market processes for the setting of wages above the minimum necessary for a decent life. Catholic social teaching on markets is presented in Pope John Paul II's encyclical *Centesimus Annus* delivered on the 100th anniversary of *Rerum Novarum*, and Pope Benedict XVI's *Caritas in Veritate*. Catholic social teaching recognises the importance of private ownership, price signals and profits to a free and prosperous society. But it recognises that outcomes are not necessarily consistent with social justice. Markets may undervalue, or fail to value, some socially desirable goods and services.
42. Labour markets, in particular, reflect the current distribution of wealth and personal skills of workers and the fact that some workers come to the labour market disadvantaged. Hence there is a heavy responsibility on government and civil society to provide a social and economic structure in which the interests of these marginal workers will be protected.

C. Mr Hawke on *Rerum Novarum* and Australian industrial relations

43. *Rerum Novarum* was the seminal contribution of the Catholic Church to a range of social, economic and political issues of the late nineteenth and twentieth centuries. Pope John Paul II's encyclicals *Laborem Exercens* (in 1981, on the 90th anniversary of *Rerum Novarum*) and *Centesimus Annus* preceded and followed, respectively, the collapse of Communism.
44. *Rerum Novarum* has a particular relevance to Australian wage-setting history and in shaping attitudes to the kind task that is now before FWA. Indeed, the fact that there is such a task, and its terms, owes something to *Rerum Novarum* and to the continuing relevance of its values. As often happens, the significance of seminal events and contributions are lost in the mists of time.
45. In the inaugural *Bishop Manning Lecture*, delivered on 7 October 2010, the former Prime Minister, the Hon. R J L Hawke AC, discussed the impact that *Rerum Novarum* had on the debates and decisions about whether the Commonwealth of Australia should have an employment-regulating power, and how that power should

be exercised. There was substantial debate around the issues, both before and after Federation. *Rerum Novarum* played a part in developing a critical alliance. Mr Hawke said:

"The influence of Catholic doctrine and the impact of individual Catholics on the evolution of the Australian industrial relations system in general and the fixation of wages in particular is a fascinating but little understood fact of our development as a nation. I think it is enlightening to put Bishop Kevin's massive contribution within that historical context. Let me do that. Most significantly *Rerum Novarum* profoundly influenced the thinking of Henry Bournes Higgins, a major advocate for the inclusion of a federal conciliation and arbitration power and later the President of the Commonwealth Conciliation and Arbitration Court who formulated the concept of the basic wage in the 1907 Harvester Case. The incongruity of this influence was wryly remarked upon by Justice Michael Kirby in a 2004 lecture commemorating the centenary of the establishment of the Conciliation and Arbitration Court – Kirby observed that, like himself, Higgins traced his origins to Protestant Ireland and he said of Higgins' embrace of the philosophy of *Rerum Novarum* '...it is no small thing for a person with such an Ulster background to adopt papal ideas.'"

46. The proposal to give to the Commonwealth a power to conciliate and arbitrate industrial tribunals was defeated at the Sydney Federation Convention in April 1891, shortly before the promulgation of *Rerum Novarum* on 15 May 1891, but, as Mr Hawke explained, it came to have an effect:

"But the logic, the humanity and the compassion of *Rerum Novarum* sat squarely with the embryonic arguments that Higgins had used at the Sydney Convention and these were arguments, now bolstered by the intellectual and institutional weight of *Rerum Novarum* that he was able to use with ultimate success at the 1898 Melbourne Convention."

47. The enactment of the *Australian Constitution* with a conciliation and arbitration power did not resolve the issue because it was re-litigated in the Commonwealth Parliament. Mr Hawke continued:

"But even more remarkable was the way in which over the next eight years this conjunction of Ulsterman and Pope did so much to shape the social fabric of the evolving Australian nation. No bill in the history of the federal parliament has had a more tumultuous passage than that introduced on the 7th July 1903 to create the Commonwealth Court of Conciliation and Arbitration. Seventeen months and eight days elapsed before the bill received the Royal Assent on the 15th December 1904...."

It was three years later however – in the 1907 Harvester Case – that witnessed the ultimate fusion of the philosophy of the Pope and the philosophy and practice of the Ulsterman.

The Harvester Judgement was not given in an arbitration case but was given in response to an application for a declaration that the wages paid by the company H.V. McKay were “fair and reasonable” and that therefore the company’s products did not attract excise duties – this was the “new protection” concept. And Higgins as Judge of the Arbitration Court was called upon to make this declaration as to whether the wages paid by McKay were fair and reasonable. My friends, in re-reading as I have just done Higgins’ reasoning I had the immediate feeling that I was looking at a rephrasing and fleshing out of Leo’s *Rerum Novarum*.

Higgins wrote that the provision was obviously designed for the benefit of employees in the industry, and must be meant therefore “to secure them something which they cannot get by the ordinary system of individual bargaining with employers.” If Parliament had thought that was “fair and reasonable” there would have been no need for the provision and the course of wages could have been left to the usual unequal contest of the market. Therefore, he concluded, the standard of fair and reasonable must mean something else and he could think of no standard appropriate other than his now famous dictum “the normal needs of the average employee, regarded as a human being living in a civilised community.” The State, he said, by such stipulation must surely mean wages sufficient for food, drink, shelter, rent and clothing, and “a condition of frugal comfort estimated by current human standards. This, then, is the primary test, the test which I shall apply in ascertaining the minimum wage that can be treated as ‘fair and reasonable’ in the case of unskilled labourers.” ”

48. In drawing a four point summary from *Rerum Novarum*, Mr Hawke went to Pope John XXIII's encyclical *Mater et Magistra*, which was issued to mark the 70th anniversary of *Rerum Novarum*:

"For our purposes tonight the essence of the relevant sections of *Rerum Novarum* can be summed up I believe as follows:

- A) – Labour is not just another commodity whose price is simply to be determined by market forces. This, to me, absolutely foundational proposition – which was at the core of every argument I used in every national wage case I argued on behalf of the Australian workers – was expounded eloquently by Pope John XXIII in his encyclical *Mater et Magistra*, May 15th 1961, on the 70th anniversary of *Rerum Novarum* explaining Pope Leo’s “Basic Economic and Social Principles”. He said: “They concern first of all the question of work, which must be regarded not merely as a commodity, but as a specifically human

activity. In the majority of cases a man's work is his sole means of livelihood. Its remuneration, therefore, cannot be made to depend on the state of the market. It must be determined by the laws of justice and of equity. Any other procedure would be a clear violation of justice, even supposing the contract of work to have been freely entered into by both parties." My friends, don't those papal sentiments ring out with a commanding clarity among the weasel words of those who introduced and crave to bring back Work Choices into our industrial environment?

- B) – The worker is entitled to a fair foundational wage. Again in the words of Pope John XXIII in explaining *Rerum Novarum*: "We therefore 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 which allows them to live a truly human life and to fulfil their family obligations in a worthy manner. There is one very important social principle ... economic progress must be accompanied by a corresponding social progress so that all classes of citizens participate in the increased productivity."
- C) – The State has a duty to ensure such outcomes. Again the explanation of Leo's intention in John XXIII's words: "It is the duty of the State to ensure that terms of employment are regulated in accordance with justice and equity and to safeguard the human dignity of workers ..."
- D) – And John XXIII went immediately on to emphasise what for our purposes this evening is the fourth essential element of *Rerum Novarum*: "Pope Leo XIII also defended the worker's natural right to enter into association with his fellows. Such associations ... should be structured in a way best calculated to safeguard the workers' legitimate professional interest. And it is the natural right of the workers to work without hindrance, freely, and on their own initiative within these associations for the achievement of those ends."

49. This year is the 120th anniversary of *Rerum Novarum*. While it is not now a key reference point for public discourse on the importance of work and workers' rights, the kind of community values of which it spoke have become embedded in the fabric of Australian values and the terms of the *Fair Work* reforms. But these values will only be realised if the parties and FWA give full effect to the statutory obligation to take into account the needs of low paid workers.

D. Fairness is central to the setting of safety net wages

50. We reject the argument that safety net wages should be allowed to find their own level by operation of market forces as a means of addressing the scourge of unemployment. The view that wages for the most vulnerable workers should be able to fall to a “market-clearing” level is inconsistent with long-held beliefs and values across all major political groups in Australia and, of course, the terms of our minimum wages legislation.
51. It is necessary to go further than this bedrock position in order to provide the principles on which wage-setting should be based. The necessity for a more comprehensive basis for wage-setting is evident from our review in the following pages of aspects of wage-setting over the past decade.

Using Safety Net Wages as macroeconomic regulators

52. One of our concerns is the use of safety net wages as labour market and macroeconomic regulators which have the effect of requiring low paid workers to bear a burden that other workers do not have to bear.
53. In the good economic times of 2008 safety net workers received lesser wage increases than the rest of the workforce. In the threatening economic times of 2009 safety net workers suffered a wage freeze, a real wage cut, when the real wages of the rest of the workforce were increasing. In each year the *arguments* that had been put in support of those outcomes were based on the use of safety net wages to affect outcomes in the rest of the economy.
54. In 2008 it was argued that safety net wage increases should be limited in order to reduce the chances of a wage "breakout" in the bargaining sector. ACCER replied:

"There is no basis for concluding that these workers with bargaining power will bargain for less than the market rate because they know that they have received tax cuts or that lower paid workers who rely on AFPC decisions are doing it harder than they are. Even if it could be shown that there might be some impact on the behaviour of others, it would only demonstrate that the depression of the living standards of the low paid is the bluntest of policy instruments." (ACCER Post-Budget Submission May 2008.)
55. The increases awarded by the AFPC in 2008 not only fell well short of the predicted increases in community wage levels, but ensured real wage cuts. As we pointed out in the following year, the loss for a worker on a classification rate paying

\$600.00 per week was \$3.54 per week and the loss for a worker on a classification rate paying \$700.00 per week was \$7.44 per week. By contrast, from November 2007 to November 2008, average weekly ordinary time earnings rose 5.2%, from \$1,100.80 to \$1,158.40 (see Table 3, below). The 2008 decision was a failure of wage-setting in good economic times.

56. In 2009 it was argued by some that safety net wage increases should be refused or be minimal in order to keep down labour costs. ACCER stressed that safety net workers need protection against real wage cuts because of the nature of safety net wages. ACCER has also rejected the notion that safety net wages should be treated as a kind of regulator of wages in the bargaining sector. The wage freeze was imposed even though it was evident that wage increases in the bargaining sector would be substantial; for example, as we pointed out to the AFPC, the Commonwealth Budget of May 2009 forecast a 3.25% rise in the Wage Price Index over 2009-10; see ACCER Post-Budget Submission May 2009. Wages did rise. From November 2008 to November 2009, average weekly ordinary time earnings rose 5.8% from \$1,158.40 to \$1,225.10; and in the following 12 months, they rose another 3.9%, to \$1,272.50 (see Table 3). The 2009 decision was a failure of wage setting in threatening economic times, with a continuing legacy for safety net-dependent workers.
57. The decisions in 2008 and 2009 were made by the AFPC which, as we have explained, was not obliged to set *fair* wages. The decisions, in fact, failed the fairness test.

Cost-shifting to the public purse

58. Another argument used against minimum wage claims over the years has been the claim that “there are better ways to help the low paid than by a wage increase”. This is essentially an argument for cost-shifting, from the wage packet to the public purse. However, if it is to be valid it must be underpinned by a pre-condition, ie a change in government policy.
59. Advocates of this approach point to the increasing gap between the benefits received from employees as a result of a wage increase and the costs to employers of that increase. The benefits for employees are reduced by income tax and, in

some cases, by a reduction in family benefits. The costs to employers are the gross wage and a variety of on-costs. These advocates argue that wage increases should be limited or refused on the basis that targeted payments from the public purse would be a more effective way of helping the low paid and their families.

60. Underlying the argument in support of non-wage initiatives, such as income tax cuts and increased family payments, is the fact that those costs and benefits affect the cost of labour and employment opportunities. The argument gained support around Australia following the letter of the “five economists” to the Prime Minister in 1998; see *A Plan to Cut Unemployment in Australia: An Elaboration of the ‘Five Economists’ Letter to the Prime Minister, 28th October 1998*. (This document is available at www.cepr.anu.edu/pdf/dawkins). While the letter specifically addressed unemployment, the case it makes is of relevance to the whole of the business cycle. As a result it has become a familiar argument in annual wage review cases over the past decade.
61. Governments can reduce the costs of employment in two significant respects: by reducing the amount of income taxation that is taken from wage packets and by making and increasing various kinds of transfer payments to low income families. Australian wage-setting started in a time when there was no government support for workers and their dependants and when workers and their families were totally dependent on the wage packet.
62. Increasing transfer payments for the support of dependants have enabled wages to be considerably less than they otherwise would have been. While some commentators would argue that this has made economic sense, we argue later that the impact on low paid workers without dependants has been too detrimental, while, at the same time, the rising family benefits on decreasing wage rates have not improved the lot of low paid workers and their families. Safety net wage cuts have gone too far, while transfer payments have not gone far enough.
63. There is a range of government policies that add to the costs of employment, some essential or desirable, but others unnecessary. An obvious one in the last category is income tax on the very low paid. A safety net wage has to be set by reference to after-tax incomes, not pre-tax wages. Income tax, like payroll taxes, has the effect

of increasing the lowest safety net wage rates at a level that is higher than that necessary to sustain workers and their families and operate as a tax on employment. Income tax on low paid safety net wages operates as a tax on employment.

64. The income tax on the NMW is \$48.08 per week, or 8.4% (see Table 8, below). Without that tax, the cost of employing labour would be around \$48.00 per week less, at the same standard of living for the worker. Alternatively, if no tax were payable, workers and their families could have a substantial increase in their standards of living with no extra cost to the employer. This is not the kind of change that can be brought in overnight, but the logic of moving in this direction comes from the "better way" argument.

Budgetary fairness

65. The "better way" argument reveals two important points about wages. First, the level of safety net wages is affected by government policies, with the consequence that employment costs, particularly among the least skilled and most marginal workers are influenced by Commonwealth policies. Second, the transfer of employment costs to the public purse raises, and depends on, judgments about Commonwealth revenue and spending, including *budgetary fairness*.
66. These are important matters because they bear on a fundamental point: the Commonwealth Government is critical to the achievement of fair safety net wages through its capacity to reduce the costs of employing labour. It can provide for the needs of low paid workers and their families through "bottom up" income tax reform and improved family payments.
67. The issue of whether, and to what extent, there is a connection between minimum wage levels and employment opportunities is an important one for FWA to consider when making its decision, but it should be mindful of the impact that government policies have on employment costs and opportunities.
68. The connection between the costs of labour and employment opportunities, however strong or weak, should result in an examination of the government imposts on employment. Although the "better ways" argument has been a regular part of wage cases it has not driven any lobbying of the Commonwealth to pay for these better ways. It has not translated into proposal for income taxation reform and

increases in family payments. The issues raised by the argument in industrial tribunals that there are better means of helping the low paid than wage increases has not shifted into public discourse and debate. Those who advocate this line in industrial tribunals should pursue it in public debate and in pre-Budget submissions to the Commonwealth.

69. The argument that there are better ways of helping the low paid than a wage increase is an arid point if there is no prospect of benefits from the public purse to compensate for a wage claim. Given the Commonwealth's current budgetary position and policies, it is unlikely that there will be any substantial change to income taxation rates or family payments in 2011.
70. Commonwealth policies have an impact on the connection between fairness in wage-setting, income taxation and family payments and the maintenance and promotion of employment opportunities. The Commonwealth Budget is the principal means by which the Commonwealth Government exercises its duty to maximise employment opportunities and influence a wages system to provide decent wages. It is through the Commonwealth Budget that the *nation* shares the burdens of job creation and support, and decent wages and incomes to protect workers.
71. We show later that the NMW does not provide a decent standard of living for low income working families and that it can be truly described as a poverty wage. This is the outcome of a wages system that does not sufficiently take into account the needs of the most disadvantaged and vulnerable workers, and their families, in a country that has the capacity to provide much better.
72. An ethical approach to sharing the burdens of job creation and the treatment of low-paid workers would question why income tax is payable on the lowest minimum wage and why transfers are so low when some families are unable to live a decent life. It is immoral to hold back wage increases or drive wages down below a decent level on account of economic circumstances when there are other ways to promote job protection and the creation of employment opportunities; ways which are consistent with an equitable sharing of the burden of creating and sustaining jobs.

73. There may be cases where tax cuts or increases in family payments can be taken into account when setting wages. However, three conditions should be met before this results in discounted wage increases: first, the tax cuts or family payments should be targeted at low paid workers and their families and not part of a broader government initiative; second, the cuts or extra payments should have been made for the explicit purpose of seeking a moderation in safety net wage increases; and, third, on a proper assessment of needs of the low paid, the discounting of wage increases should occur.
74. None of these matters regarding the setting of safety net wages denies the value of wage flexibility in changing economic circumstances. But wage flexibility, reflecting changes in supply and demand for labour, is essentially a function of the bargaining sector. Safety net wages, based as they are on *needs* (and on wage increments reflecting changes in relative work values) are not intended to be affected by the business cycle in the way that bargained rates are. In good economic times fairness in the setting of minimum wages might result in extra benefits that may not be sustained in a subsequent downturn. But this is very different to the way in which the bargaining sector of the labour market can operate. A bargaining system presents the *opportunity* for making various arrangements that can minimise the impact of an economic downturn or changes within the firm. Wage rates and other terms of employment in the bargaining sector are intended to be, and are able to be, more responsive to the changing operational needs of the firm than safety net rates. Logic and fairness mean that the burden of adjustment should not fall on safety net-dependent workers who do not have the power to bargain and who do not receive the benefits that come from bargaining.

Chapter 3 The needs of workers include the needs of their families

A.	The question that must be asked	74
B.	The needs of families have to be taken into account	78
C.	The needs of families are relevant: policy, principle and legislation	85
D.	Workers with family responsibilities cannot rely solely on the NMW	100

A. The question that must be asked

75. There is a preliminary matter in any submission about the needs of low paid workers, and about FWA's statutory duty to take them into account when setting safety net wages: do the needs of the low paid include the needs of their families? Our submission is that the needs of the low paid must include the needs of workers with family responsibilities. Taking into account the needs of workers with family responsibilities means taking into account the needs of families. We return to how FWA should set those wages, but the purpose of this chapter is to present the case on the basic question.
76. The question of whether the needs of the families of workers are to be taken into account is a fundamental matter about which there should be no ambiguity. We submit that a party cannot make any sensible contribution to the issue of the needs of the low paid without addressing this issue. All parties addressing the needs of the low paid in this Annual Wage Review should state where they stand on the question.
77. The previous paragraph was also included in our 2010 submission. It is a matter for comment and criticism that major parties to the *Annual Wage Review 2010* did not address in any, or in any substantial way, this fundamental question. It was not a matter that would have caught the parties unaware: it has been raised over the years and is well known to the parties in wage cases. The only conclusion that we can draw is that the needs of low paid workers are not taken seriously by some parties because, if they were scrutinised, the lowest of the safety net rates would be found to be manifestly inadequate. For some it is an issue to be avoided.
78. We should add that any party which has a preference for wages being set by reference to the needs of the single worker without family responsibilities should

address the following facts: government transfers are presently inadequate to support the dependants of low paid workers; the current level of family payments is unlikely to rise substantially in the foreseeable future; and there has been no acceptance by Commonwealth that it carries the responsibility for meeting all of the needs of the dependants of low paid workers.

B. The needs of families have to be taken into account

79. Over the years ACCER has maintained a clear position on this fundamental issue. It has opposed suggestions that a single person test be adopted and has said that wages and transfer payments were insufficient to support a family. In the *Safety Net Review Case 2003* it said:

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

Given the position of the Catholic Church on the need for wages to be sufficient to support the wage earner and his/her dependents, any support by the ACCER for the single person test for the purposes of wage fixation would only be conditional upon governments recognising that wage rates must be fixed on that basis and that they have an obligation to provide for the needs of dependent family members through the taxation and welfare systems.” (ACCER Submission to *Safety Net Review Case 2003*, paragraphs 28-9.)

80. This remains our position. ACCER has opposed the adoption of the single person test because an essential precondition for it has not been met: transfer payments are insufficient. Family benefits available to the low paid have not been fixed on the basis that they will cover the living costs of the dependants of low paid workers. In these circumstances, the adoption of a single person test would cause substantial harm and prejudice to low paid workers and their families and would exacerbate the social deprivations that they already suffer.
81. We support a “family wage” approach in which due regard is paid to the substantial, but insufficient, family payments received by workers and their

families. To adopt the more familiar terminology, it is an approach which takes into account the needs of workers with family responsibilities.

82. We do not, however, say that wages cannot be fixed by reference to the single person if the Commonwealth were to fully support dependants. Indeed, in their Social Justice Statement of 1954, *The Australian Standard of Living*, the Australian Catholic Bishops proposed the adoption of a new wages and family payments system, with the support of dependants being provided out of the public purse and wages being set on the basis of the needs of the single person, with *men and women being paid the same wage*.
83. ACCER's submissions to past wage cases have sought the fixing of minimum rates of pay that are sufficient, after allowing for income tax and relevant government transfers, to support a family of four at the minimum acceptable standard of living without the need for the second parent to undertake paid employment. The family of four has been identified because a family with two children best approximates the size of contemporary Australian families. The capacity of the wage to support the second parent, and not to require that parent to seek paid employment, is a necessary part of the ability of parents to exercise their family responsibilities in the way in which they believe will best advance the interests of their children.
84. Although we have identified the single income family of four as the relevant reference point, our submissions also cover the needs of low income sole parent families. The position of sole parent families must also be considered when setting a safety net wage.
85. The nature and purpose of a safety net is to provide an acceptable standard of living. It should be sufficient to meet the needs of low paid workers, including those with family responsibilities, so that they can live in dignity. The safety net does not have to cover exceptional cases, but it must cover ordinary and foreseeable cases and circumstances. The wage has to be sufficient to cover a family of two adults and two children, where the second parent stays at home to care for the children, and to cover a sole parent with two children, where the parent will necessarily incur child care expenses. It would not be acceptable to set a wage that is sufficient for one of these families, but not for the other.

86. We emphasise that our advocacy for a wage that takes into account the needs of parents with family responsibilities *does not raise any gender-specific issue*. It should also be remembered that the Catholic Church is one of Australia's largest employers of women with family responsibilities. There are three important points to make about ACCER's view of the *family wage*.

- First, parents should have the *effective* right to choose that one of them will stay out of the employed workforce in order to care for their children. A corollary of this principle is that parents may decide that the interests of the family, and those of the children in particular, would be best served by both of them being employed. Whether the second parent takes a job will depend on a variety of factors, including the availability and cost of good child care.
- Second, the principle applies whether the breadwinner, or principal breadwinner, is male or female. Parents should be able to choose which one of them will be the breadwinner and which one of them will stay out of the employed workforce in order to care for their children.
- Third, where parents are out of the employed workforce for a substantial period of time in order to raise children there should be various kinds of training programs and other educational support to assist them to return to the workforce when they choose to do so.

C. The Needs of families are relevant: policy, principle and legislation

87. Our reasons for submitting that the needs of workers should include the needs of their families are based on sound public policy, industrial principle and, especially, the legislation under which FWA operates.

88. The International Labour Organisation's *Minimum Wage Fixing Convention, 1970*, which has been ratified by Australia, recognises the interests of workers *and their families* and the relevance of general economic circumstances. Article 3 provides:

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

- (a) the needs of workers *and their families*, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.” (Emphasis added)

We submit that it would be an unwarranted departure from Australia’s international obligations if our principal employment tribunal did not take into account the needs of families in circumstances where the social security benefits payable to workers and their families are insufficient to meet the needs of those families. The obligation has to be taken seriously.

89. There are two specific requirements in the FW Act that bear on this issue. Section 153, which applies to the making of modern awards, and to wage rates in particular, provides:

“A modern award must not include terms that discriminate against an employee because of, or for reasons including, the employee’s...family or carer’s responsibilities...”

A similar obligation is found in section 578 which provides:

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

Similar provisions are also found in respect of the making of enterprise agreements (section 195) and in regard to the taking of adverse action (section 351).

90. The family responsibilities obligations reflect Parliament’s concern to protect and advance the proper interests of workers and their families, to strike a balance between work and family, to prevent discrimination against those with family responsibilities and to ensure that relevant decisions and instruments give effect to these *values*. They recognise the right of parents to make choices about how they will exercise their parental responsibilities. Those freedoms may not extend to unreasonable choices; but nothing we are advocating amounts to an unreasonable choice. A decision by parents that one of them will stay at home to care for their children and not seek employment is not an unreasonable choice.

91. Wage-setting decisions cannot be separated from a wide range of “family friendly” laws and policies that have been developed, especially in recent years. There is protection against direct and indirect discrimination. Anti-discrimination laws and policies might be breached in a variety of ways; for example by rostering and leave provisions. A provision in an award or an industrial agreement that does not enable the flexibility needed for workers to exercise their family responsibilities would be impermissible. Provisions in an award or agreement that are predicated on the workers being single and not having family responsibilities would also be impermissible.
92. A wages policy that is predicated on the needs of the single person without dependants cannot be consistent with the protection of workers with family responsibilities. This is so in regard to sole parent families and to families where one parent works and the other does not seek paid employment in order to care for their children. To have wages fixed by reference to the more limited needs of single workers without dependants places those who have family responsibilities at a disadvantage and discriminates against them.
93. Of course, if family payments were sufficient to meet the needs of a worker's family then there would be a basis upon which a single person assessment of needs (along with regard to the other relevant factors in the minimum wages objective) could be made and a fair safety net wage could be set without it having discriminatory effect. However, this is not the case.
94. In the *Safety Net Review Case 2004* there was debate about the reference point for the setting of wages. ACCER argued that the determination of the needs of the low paid should be made on the basis of the need of a family of two adults and two children, with only one adult working. In referring to the debate about the range of “household types” within Australia the AIRC 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 Case 2004*, paragraph [275].

95. Many Australian families can, and do, choose to live on a single income. Many couples chose to live on a single income for the benefit of their children and many couples find that the best interests of their children can be best served by both of them working, often with one parent working part time. That is a choice that they are entitled to make. But it is harder for lower income families as a result of low wages and limited government support.
96. A substantial impetus for the change in Commonwealth financial support for families came from the work of the Commonwealth Commission of Inquiry into Poverty (the Poverty Commission) in the early 1970s. In August 1972 the McMahon Government established the Poverty Commission with Professor R F Henderson as its sole member. In March 1973 it was expanded by the Whitlam Government to include four extra Commissioners, with Professor Henderson becoming Chairman. The Commission delivered its *First Main Report* in April 1975 (the Poverty Report). One of its major concerns was the extent of poverty among single breadwinner families and the policies needed to address their situation.
97. The Poverty Report adopted poverty lines for various household groups. Those poverty lines, frequently called Henderson Poverty Lines (HPLs), were established by reference to a benchmark household of two adults and two children, with one parent working and the other parent caring for the children without seeking employment. We have used the term *Henderson Benchmark Family* to describe this benchmark household, and for convenience we will use it from time to time. Each quarter the Melbourne Institute of Applied Economic and Social Research (the Melbourne Institute) produces a newsletter, *Poverty Lines: Australia*, which contains updated HPLs and associated information. HPLs are adjusted by reference to estimates of changes in per capita seasonally adjusted household disposable income.
98. The work of the Poverty Commission and the Poverty Report made an important contribution to family policy in Australia and the articulation of the values that underpin good family policies. Providing parents with a choice about how they care for their children is of fundamental importance. The issue was usefully

summarised in the Poverty Report, in the context of its discussion of the extent of poverty among families in which there was a full time breadwinner:

“A further way in which many low income families are often placed under great stress is in relation to the freedom parents have to decide how they will divide their time between working, looking after children, and other activities. Because of financial pressures some parents are confronted with the choice of spending more time earning money and less time at home or struggling on an income below the poverty line....

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

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

99. This passage was written in the context of a higher proportion of stay-at-home mothers in two parent families than is presently the case. Whether the changes since that time in workforce participation by mothers are the result of free choice or economic pressure is a matter of debate. However, the substantive point made in the passage remains true: parents should have the ability to choose that one of them will stay at home and care for the children and not engage in employment.
100. The Poverty Commission proposed substantial changes to government policies to lift these families above the poverty line. The policy objective was to have an acceptable disposable income for families without the need for the second parent to undertake, or apply for, paid employment.
101. Since the Poverty Commission there has been a very substantial increase in family payments. Their relative contributions to family budgets is illustrated in Chapter 4. As we also show in Chapter 4, despite the increases in public funding, the level of relative deprivation remains much as it was in the early 1970s. Family payments are not intended, however, to meet all of the needs of a worker’s dependants. As we show later, they fall a long way short of supporting those needs.

D. Workers with family responsibilities cannot rely solely on the NMW

102. The policy objective that underpinned the work of the Poverty Commission remains a valid objective. The objective is to provide a minimum wage which, together with family payments, will enable families to rely *solely* on that wage.
103. In its first decision in 2006 the AFPC compared family disposable incomes with the relevant HPLs. It found that the objective had been achieved:

“The income support and family assistance safety net, and its continued improvement over recent years, *allows people with family responsibilities to rely solely on a single wage to support their families.*” (*Wage-Setting Decision and Reasons for Decision* October 2006, page 96, emphasis added.)
104. We wish this were the case. It was not because the calculation of disposable income underpinning the conclusion in respect to families of two adults and two children had erroneously included the Newstart allowance, an unemployment benefit, in respect of the second parent. It was not an appropriate inclusion because it is an allowance that carries with it the obligation to take up employment, if it is available. A parent is not entitled to the Newstart allowance if he or she wishes to stay at home to care for the children. We note that the Poverty Commission took no account of any potential entitlement to an unemployment benefit because the intention was to provide support to the single-breadwinner family. The benchmark family from which poverty lines for various households have been calculated was, and remains, the family of four where the second parent stays at home in order to look after the children.
105. The increase in family payments has had a profound impact on wage-setting in Australia. It has permitted, and cushioned the impact of, the decline of minimum wages in Australia, relative to general wage levels. We return to this matter later, but, at this stage, we make several general comments which arise out of the next chapter.
106. Relative to the single person’s HPL, the lowest minimum wage (net of tax) has fallen from about 62% above the poverty line in August 1973 to 19% above in December 2008. An economic case may be made for the switch to family payments

and limiting wage increases accordingly, but at only 19% above the HPL the decline in the minimum wage has very arguably gone too far for single workers.

107. Rising family payments over these years have cushioned the impact of the fall in the wage component, but barely, if at all, improved the combined outcome of wages and transfers relative to the benchmark family's HPL. The combined effect of falling real wages and rising transfer payments has not helped low income working families achieve a decent standard of living. We demonstrate that family payments are insufficient to provide for the needs of families.
108. The position of the family has worsened over the last decade. Since December 2000 the disposable income of the NMW-dependent family of two adults and two school-aged children has risen by 53.5%, while the family's HPL has risen by 62.9% (see Table 20). As we show later, the decline has been mostly caused by low wage growth.
109. Our material in the next two chapters shows why the "single person test" cannot be used for the purposes of assessing the needs of low paid workers and setting safety net wages. To apply the test would discriminate against workers with family responsibilities and leave their dependants without any prospect of adequate support from government transfers.

Chapter 4 Wage-setting has failed low income workers and their families

A.	Introduction	108
B.	Safety net wages have not kept up with price increases	116
C.	Most safety net workers have suffered real wage cuts	120
D.	Safety net wages have fallen well behind general wage levels	137
E.	Safety net wages have lost value compared to other arbitrated wages	148
F.	Safety net workers have not received productivity increases	169
G.	The tax cuts do not justify the real wage cuts	180
H.	Increased family payments have not compensated for wage cuts	196
I.	Safety net wages have not been based on evidence of workers' needs	213
	• Housing costs have been underestimated	228
	• Child care costs have been excluded	237
J.	Low income working families have fallen behind rising poverty lines	250
	• Henderson poverty lines	251
	• Relative poverty lines	271
K.	Safety net wages have fallen behind pensions	285
L.	Conclusion	292

A. Introduction

110. In this chapter we give an overview of changes in safety net wages over the past decade to demonstrate that the wage-setting system has failed low income workers and their families.
111. We have concentrated on the past decade because it started with a convenient reference point: a package of taxation and family support measures that accompanied the introduction of the *Goods and Services Tax* on 1 July 2000. Our comparisons and commentary will concentrate on the period December 2000 to December 2010. The decade has presented the best of economic times and, in the last part, threatened the worst economic circumstances since the Great Depression. As it turned out, the economy remained strong despite the Global Financial Crisis.
112. Especially because of the introduction of a new national system of wage setting in 2010, it is time to take a close look at the past decade and ask whether we have had a fair and socially desirable way of distributing the benefits of economic growth and the sharing of the burdens of economic pain. Analysing how the wages system has worked over the past decade is necessary if we are to assess our current position and establish a fair and sustainable framework for setting safety net wages. Our

review will pay particular attention to changes in the FMW and, from 2010, its successor, the NMW. In general, we will use the term NMW, unless the context requires reference to the FMW.

113. Wage-setting over the decade falls into three parts: until December 2005 wage rates were set by the AIRC; from December 2006 to 2009 they were set by the AFPC under the *Work Choices* legislation; and from 2010 when FWA set wages under the FW Act. The outcomes for safety net workers in each period were different, reflecting, in part, differences in legislation. We stress, however, that the failure in wage-setting that we point to was only partly the result of *Work Choices*.
114. The disposable incomes of FMW/NMW-dependent workers and their families have risen by more than the rate of inflation over the course of the decade. But, overall, the tribunal decisions on safety net wages have worked against low paid workers and their families. Some safety net workers have suffered a real wage cut since 2000. Compared to the rest of the workforce, *all* safety net workers are *relatively* worse off at the end of the decade.
115. In this chapter we establish:
 - (a) The number of workers on the NMW is very small and references to improvements in the NMW as a justification for past decisions and as an indicator of how safety net changes have operated are misleading.
 - (b) The real wages of many safety net workers have fallen over the decade, with the greatest falls being at the higher end of the low paid spectrum; for example, workers now on a safety net wage of more than \$698.38 per week have had a real wage cut since 2000.
 - (c) When compared with other rates of pay and income measures, safety net wages have fallen dramatically; for example, while Average Weekly Ordinary Time Earnings (AWOTE) have risen 59.3%, the base safety net wage for a trades-qualified worker, or a worker with equivalent qualifications and skills, has risen by 34.8%.
 - (d) Unlike other workers, safety net workers have not received productivity-based increases. Since 2000 substantial productivity gains across the

economy have resulted in substantial wage increases for most workers; but safety net workers have not benefited from those gains.

- (e) The use of after-tax figures by some commentators as a justification for real wage cuts, or limited real wage increases, is not justified. The tax cuts over the past decade have not targeted low paid workers and they have not received benefits in excess of those received by taxpayers generally. Safety net workers have been deprived of their tax cuts as a result of cuts in the real value of safety net wages.
- (f) Decisions made by the AFPC under the *Work Choices* legislation have exacerbated the trend towards greater wage inequality over the past decade.
- (g) Family payments paid to low income working families have not compensated for real wage cuts. Family payments have increased, but not in a way that would permit them to be used as a justification for limiting safety net wage increases.
- (h) The AFPC's preferred, and only, measure for estimating the needs of low income workers and their families, the HPL, greatly underestimates the needs of working families by underestimating housing costs and, in the case of sole parents, excluding child care costs.
- (i) Over the last decade HPLs and relative poverty lines have increased at a greater rate than the disposable incomes of low income safety net-dependent families causing lower living standards and more of them to fall into poverty.

116. These developments were not aberrations, but were part of a longer term decline in the relative position of a significant section of low income workers and working families in Australia. We demonstrate that while employees as a whole were better off at the end of the decade than they were at the start, the diversity of circumstances within the workforce have hidden counter-trends that call for rectification. The figures demonstrate that there are dangers in focussing on aggregates, without regard to the groups within them.

117. Our major concern is for the low paid safety net-dependent workers and their families who have not shared in the general improvement in living standards during what has been a period of very strong economic growth. However, we will also draw attention to sectors of employment among higher paid safety net-dependent workers who have suffered a marked deterioration in their wages over the decade.

B. Safety Net Wages have not kept up with price increases

118. Table 1 shows safety net wage adjustments over the decade by reference to a range of starting points in 2000. In this and the following tables we use the figures for December of each year, unless otherwise noted. Table 1 shows the wage increases awarded at various wage levels over the decade and changes in the CPI over that period. There were real increases in the NMW and in some low paid classifications. We can calculate that from December 2000 to December 2010 real wages were reduced for safety net rates that are now over \$698.38 per week. For example, the classification originally paying \$600.00 per week, and now paying \$768.30, had a real wage reduction of 3.4%, or \$26.70 per week, over the decade.

Table 1
Changes to Various Federal Safety Net Wage Rates
2001-2010
(\$ per week, unless otherwise indicated)

Year	Safety Net Rates (\$)								Cumulative CPI increases
	FMW/NMW		C10						
2000	400.40	450.00	492.20	500.00	550.00	600.00	650.00	700.00	
2001	413.40	463.00	507.20	515.00	565.00	617.00	667.00	717.00	3.1%
2002	431.40	481.00	525.20	533.00	583.00	635.00	685.00	735.00	6.2%
2003	448.40	498.00	542.20	550.00	600.00	652.00	702.00	750.00	8.8%
2004	467.40	517.00	561.20	569.00	619.00	671.00	721.00	769.00	11.6%
2005	484.40	534.00	578.20	586.00	636.00	688.00	738.00	786.00	14.3%
2006	511.86	561.36	605.56	613.36	663.36	715.36	760.04	808.04	18.4%
2007	522.12	571.62	615.82	623.62	673.62	720.68	765.36	813.36	21.9%
2008	543.78	593.28	637.48	645.28	695.28	742.34	787.02	835.02	26.4%
2009	543.78	593.28	637.48	645.28	695.28	742.34	787.02	835.02	29.1%
2010	569.90	619.30	663.60	671.30	721.30	768.30	813.00	861.00	32.5%
\$ Increase	169.50	169.30	171.40	171.30	171.30	168.30	163.00	161.00	-
% Increase	42.3%	37.6%	34.8%	34.3%	31.1%	28.1%	25.1%	23.0%	32.5%

In 2000 the Federal Minimum Wage (FMW) was \$400.40 and the base trades – qualified, or equivalent, wage rate (C10) was \$492.20. Wage rates have been rounded in the transition from the AFPC's rates to the modern award rates. The other 2010 figures are rounded to the nearest 10 cents, consistent with FWA practice. The NMW and C10 rate in 2010 are slightly more than the general wage increase granted in 2010 as a result of the use of the rates initially set in the making of modern awards.

119. The varying real wage increases were the product of the awarding of money increases, rather than percentage increases, by the various Federal tribunals in each year of the decade. In 2001 a further \$2.00 per week was awarded by the AIRC to classifications above \$490.00 per week, and a further \$2.00 per week for those above \$590 per week because of a concern for the relativities between wage classifications. In 2003 classifications in excess of \$731.80 per week received \$2.00 per week less than other classifications. In 2006 and 2007 the AFPC gave much smaller increases to classifications over \$700.00 per week (approximately). The end result was a substantial compression in relativities. Each wage adjustment can be compared with the cumulative increases in the CPI; from December 2000 to December 2010 the CPI increased by 32.5%.; see *Consumer Price Index, Australia, December 2010 cat. no 6401.0*, Table 1.
120. In July 2009 the AFPC decided that it would not increase the rates that it set in July 2008 for commencement in October 2008. Although the freeze was significant, the problem that we are now addressing is not just the product of the 2009 wage freeze.
121. FWA's decision in 2010 did not overcome the effects of the AFPC's wage freeze in 2008. Over the period between the AFPC's last decision in 2008 and FWA's decision in 2010 the published CPI increases totalled 5.4%. FWA's decision meant that the NMW was increased by 4.8% and, for example, a classification previously at \$700.00 per week was increased by 3.7%. The impact of the wage freeze has not been remedied: there is still a real wage cut, and a fairness deficit, as a result of the freeze.

C. Most Safety net workers have suffered real wage cuts

122. In its various assessments of the impact of its own decisions the AFPC has emphasized the FMW and the impact of its decisions on FMW-dependent workers and their families; see, for example, *Economic and Social Indicators – Monitoring*

Report July to December 2008, published 24 February 2009, at pages 31-5. While we would argue that particular attention needs to be given to this group, for they have the greatest needs, the group is only a very small part of the low paid safety net-dependent workforce. The concentration on the small group of NMW workers diverts attention away from what has happened to other low paid workers and their families.

123. The impact on safety net workers and their families of the various cuts in real safety net wages will depend on the spread of wage classifications, the distribution of workers across those classifications and the distribution of safety net-dependent workers across those classifications.
124. The number of NMW-dependent workers is limited because most low paid workers are covered by an award classification that pays a higher rate. Some pay scales have the NMW rate as an introductory wage, with a higher wage payable after a transitional period, typically 3 months. The lowest rate in many pay scales is well above the NMW.

ACCI's Effective Minimum Wage

125. The distribution of workers across the safety net classifications has been addressed in past wage cases in the AIRC. In the AIRC's *Safety Net Review* cases of 2004 and 2005 the Australian Chamber of Commerce and Industry (ACCI) argued that the emphasis given to the FMW by ACCER and others was misconceived because it was a wage of very limited application. It supported this argument by reference to a number of awards that provided higher wage rates in their lowest work classification. ACCI introduced the concept of the *Effective Minimum Wage*. (The relevant parts of ACCI's March 2005 submission are at pages 5-39 to 5-49 and the relevant parts of its April 2005 submission are at pages R4-18 to R4-23.) The submissions also identified a *Transitional Minimum Wage*, applying to newly-employed workers, which provided a lower wage rate than the Effective Minimum Wage, but only for a limited period.
126. In the *Safety Net Review Case 2005* ACCI said that the material "...show[s], in practical terms, very few employees would ever be employed on the Federal

Minimum Wage” (page 5-40). The ACCI material showed that the Effective Minimum Wage is substantially in excess of the FMW. It said:

“A proper analysis of award rates of pay demonstrates the award dependent employees, while they may be lower paid relative to other groups of employees in the community (e.g. those covered by agreements), are unlikely to be receiving rates of pay such as the Federal Minimum Wage *in almost all instances*” (page 5-46, emphasis added).

127. The ACCI submissions presented an estimate of the gap between the FMW and the Effective Minimum Wage. At a time when the FMW was \$467.40 per week, the sample of awards used by ACCI produced an average of \$502.35, or \$34.95 per week extra (see page 5-45). Because the safety net increases granted since 2005 have been flat money amounts, we expect the margin to have been maintained and that the Effective Minimum Wage at December 2010 would have been approximately \$605.00, which is very close to the cleaner's base rate of \$608.80.
128. Another guide to the distribution of workers across the range of safety net rates is to be found in the various classification rates in modern awards at December 2010. Table 2 sets out a cross section of entry level rates of pay. The rate of \$586.50 per week is the C13 rate in the *Manufacturing and Associated Industries and Occupations Award* 2010 and is found in a number of other awards. This is the rate that ACCER has identified in its calculation of the appropriate NMW adjustment in 2011.
129. We do not claim that the rates in Table 2 are necessarily a representative sample, but the data supports the view that the FMW is inadequate by reference to other rates of pay.
130. Table 2 also shows the impact of the limited wage increases on low paid workers has not been as beneficial as a simple reference to the NMW adjustments would suggest. A rate of \$626.00 per week (eg shop assistant) has been increased by \$169.30 per week, or 37.1%, since December 2000,. The base cleaner's rate, now \$608.80, has increased by 38.5% over that time. Both are substantially less than the 42.3% increase in the NMW since December 2000. They demonstrate how misleading references to the changes in the NMW are when describing the impact of wage setting decisions on the low paid.

Table 2
Lowest classification rates in various Modern Awards, December 2010
(\$ per week)

Award	Introductory rate	Lowest Classification Rate
Miscellaneous	\$569.90	\$609.00
Clerks Private Sector		\$606.00
Car Parking		\$600.40
General Retail Industry		\$626.00
Cleaning Services Industry		\$608.80
Hair and Beauty Industry		\$626.00
Restaurant Industry	\$569.90	\$586.50
Hospitality Industry (General) Award	\$569.90	\$586.50
Fast Food Industry Award		\$626.00
Aged Care		\$606.00
Higher Education Industry-General Staff Award		\$610.30
Waste Management		\$603.60
Local Government Industry		\$609.30
Manufacturing and Associated Industries and Occupations	\$569.90	\$586.50
Storage Services and Wholesale	\$609.90	\$616.50
Rail Industry- Operations		\$569.90

Where the award specifies an annual rate it has been divided by 52.18. In awards where annual or other time increments are provided in the lowest non-introductory classification, the lowest annual rate is specified.

FWA Research Report 4/2010

131. The second indicator of the inappropriateness of the NMW as an indicator of the benefits brought to low paid workers is found in the data on the spread of safety net-dependent workers. For this we have drawn on FWA's Research Report 4/2010, *Earnings of employees who are reliant on minimum rates of pay*. In May 2006, when the estimated number of workers in Australia was 10.2 million, 47% of minimum wage-reliant workers were permanent (ie non-casual) adult employees,

37% were adult casual workers and 16% were juniors in both casual and non-casual employment. At the time 19% of non-farm workers were minimum wage-reliant, although this figure fell to 16.5% by August 2008. Therefore, 47% of about 19% of the workforce would suggest that the group in the main category was about 8.9% of the working population. We can round this to 900,000 workers in the category of permanent minimum wage-reliant (or safety net-dependent) workers. We can round the adult casual group to 700,000.

132. Tables 2 (adult permanent) and Table 3 (adult casual) of the report show the distribution of adult workers across a range of wage rates fixed by reference to the “metals award” classifications. The tables show that a greater proportion of permanent workers are employed in the higher paid classifications than is the case with casuals. The distribution of these workers provides an indication of the overall spread of workers across the range of classifications. There are several important points that arise from the data as presented.
133. The adult permanent safety net workers were a very significant percentage of the workforce. How they, and their families, fared before and after May 2006 is very important in our assessment of the equity of the wages system. We should note that some of them would have been covered by State tribunals, but from January 2010 nearly all previously State-covered workers, other than those in Western Australia, came into a system shaped by the decisions of the AFPC, all of which occurred after the date of this May 2006 study.
134. The median rate of pay for safety net-dependent adult permanent workers in May 2006 was \$16.81 and \$17.91 per hour. The figures suggest that the median weekly wage for these safety net dependent workers was about \$660.00 per week when the minimum wage was \$484.40 per week. The median sits about halfway between the \$550.00 and \$600.00 per week columns in our Table 1, which have had decade long increases of 31.1% and 28.1%, respectively. We can say, therefore, that the median safety net worker identified by this survey has had increases of about 29.5% over the decade, less than the CPI increase, and as we shall see, much less than community wage increases.

135. The report's figures also show that 29.2% of the group were employed on rates below the C10 rate, including 9.5% on rates below the then current base cleaner's rate of \$13.78 per hour (the C12 rate). This latter group represents about 1% of the workforce, which is considerable number: about 100,000 workers. This group is our top priority among the permanent employees. However, it does support our submission that the impact of the cost of improving the living standards of the lowest paid will have negligible economic costs overall.
136. Table 1 in the FWA report shows that about 25% of these workers were employed at rates above the relevant figure in the \$700.00 column in our Table 1 (then \$786.00 per week or \$20.68 per hour). This group of over 250,000 workers have had increases of less than 23% over the decade, ie much less than the rate of inflation.
137. The situation with adult casual workers is significantly different, but, nonetheless, very concerning. Their position is set out in Table 2 of the FWA report. They constituted about 7% of the workforce. The median wage rate was just short of the C10 rate and 23.8% were in receipt of less than the cleaner's base rate. Almost 30% were on rates of \$15.77 per hour or more (then \$599 per week, when not in receipt of the casual loading). These workers were above the rate at which real wages were maintained over the decade (the current classification rate of \$698.38 per week) and have, therefore, suffered a real wage cuts. This represents a substantial number of workers and working families.
138. It is clear from the foregoing that the reliance on the NMW as an indicator of the movement in real wages over the decade is misleading and that many safety net-dependent workers have had a substantial real wage cut over the decade.

D. Safety net wages have fallen well behind general wage levels

139. The evaluation of the outcomes for NMW-dependent and other low paid safety net employees cannot be judged by reference to the CPI alone. The maintenance of real wages is a necessary condition, but it is not a sufficient condition for the effective operation of a safety net wage. Any proper assessment of the adjustments to low paid classifications has to be evaluated in the light of what has happened in

the rest of the community. Fair wages have to be set with regard to other wage levels throughout the community.

140. We now turn to a comparison between safety net wages and various measures of wages and incomes. Table 3 compares the changes in the FMW and the base trade-qualified (C10) rate with broad measures of changes in national wages and incomes over the decade. These broader measures may be compared with the other safety net rates set out in Table 1.

Table 3
Safety Net rates Compared to Community Wage and Income Measures
2000-2010
(\$ per week, unless otherwise indicated)

	Cumulative increases in FMW/ NMW	Cumulative increase in trades-qualified rate C(10)	Average Weekly Ordinary Time Earnings (AWOTE)	Cumulative increases in AWOTE	Cumulative Increases in Wage Price Index	Household Disposable Income per head (Melbourne Institute)	Cumulative increase in Household Disposable Income
2000			798.70			421.15	
2001	3.3%	3.0%	843.00	5.5%	3.5%	454.18	8.0%
2002	7.7%	6.7%	882.10	10.4%	6.9%	454.66	8.0%
2003	11.9%	10.2%	929.60	16.4%	11.0%	470.75	11.8%
2004	16.7%	14.0%	964.90	20.8%	14.9%	498.94	18.5%
2005	20.9%	17.5%	1014.60	27.0%	19.6%	524.92	24.6%
2006	27.8%	23.0%	1045.50	30.9%	24.4%	577.41	37.1%
2007	30.4%	25.1%	1100.80	37.8%	29.7%	601.47	42.8%
2008	35.8%	29.5%	1158.40	45.0%	35.2%	667.53	58.5%
2009	35.8%	29.5%	1225.30	53.2%	39.2%	654.22	55.3%
2010	42.3%	34.8%	1272.50	59.3%	44.3%	686.19	62.9%

AWOTE figures are trend estimates of full-time adult ordinary time earnings, public and private sectors, at November of the relevant years: *Average Weekly Earnings, Australia, November 2010* cat. no. 6302.0. Wage Price Index: *Labour Price Index December 2010* cat. no. 6345.0. Household Disposable Income figures are taken from the Melbourne Institute's *Poverty Lines: Australia September Quarter 2010* and are in respect of the December Quarter of each year, save for 2010, where the figure for the September quarter 2010 is used.

141. Table 3 demonstrates that safety net wage rates have fallen substantially against AWOTE, which increased by 59.3% over the decade. The AWOTE figures are trend estimates of average ordinary time earnings for adult full time employees. As

a measure of ordinary time earnings they are an appropriate comparator for the safety net rates.

142. The NMW increase of 42.3% compares unfavourably with the increase in AWOTE. The NMW fell from 50.1% to 44.8% of AWOTE over the ten years to December 2010. If it had increased at the same rate as AWOTE, the NMW would now be \$637.84 per week, \$67.94 per week more than it is. At the other end of the Table 1 calculations, a safety net rate starting at \$700 per week in December 2000 was increased by only 23.0% over the decade, which was only 38.8% of the community-wide movement in wages as measured by AWOTE. It had started the decade at 87.6% of AWOTE and finished the decade at 67.7% of it.
143. We do not argue for a strict arithmetical nexus between the NMW and AWOTE, for the ratio between them may go up or down depending on circumstances, but the figure shows how much the NMW has lost when compared to community wage movements and, as a result, general living standards. As a matter of principle and fairness, we do not see any reason why the NMW and other safety net rates should not follow a similar path to these average weekly earnings.
144. The Wage Price Index (WPI) increased by 44.3% over the ten years to December 2010, rather less than AWOTE. However, the WPI and other similar indexes used by the ABS are not designed to reflect the payments received across the workforce or in segments of it, but “to identify and measure quality and quantity changes and ensure that only pure price changes are reflected in the indexes”; *Labour Price Index, December 2010*, cat. no. 6345.0, page 16. On the other hand AWOTE and similar measures actually reflect levels of remuneration received by employees and changes in those levels. These measures are particularly useful in describing what is happening in the workforce and are needed because the legislation requires that regard is to be had to relative living standards.
145. The Melbourne Institute’s quarterly newsletter updates of the HPLs are based on updated estimates of seasonally adjusted household disposable income per head (HDI). Unlike AWOTE, which measures pre-tax wages of the workforce, this is a measure of disposable income across the population. There is an arithmetical relationship between each HPL and the estimated HDI. The newsletters advise that

the quarterly HDIs are based on data in *National Accounts* (cat. no. 5206.0) and *Australian Demographic Statistics* (cat. no. 3101.0).

146. The HDI figures used in Table 3 are taken from the latest issue of *Poverty Lines: Australia, September Quarter 2010*. The figures are subject to revision. The next issue, in respect of the December quarter 2010, is due in April 2011. The HDIs in Table 3 show a change that is broadly consistent with, but more than, the change shown in the AWOTE measure.
147. It is important to note that AWOTE and HDI both measure the population as a whole, including safety net workers and their families. A comparison between the wages and disposable incomes of safety net-dependent workers and other workers and their families would present a greater contrast than the figures used in Table 3. Simply put, if one-sixth of the workforce (the proportion who are safety net-dependent) have a wage increase of 30% over the decade, while the overall community increase is 60%, the five-sixths who are able to bargain (formally or informally) for higher wages will have had an increase of about 66%.
148. The current Commonwealth Government was elected in October 2007 with a policy to replace *Work Choices* with *Fair Work*. Table 4 shows that, in the three years from December 2007 to December 2010, the low paid went backwards.

Table 4

Real wage changes December 2007 to December 2010

Safety Net and AWOTE

(CPI increase of 8.68%)

(\$ per week, unless otherwise indicated)

Safety net rate Dec 2007	Wage to maintain real value	Safety net rate Dec 2010	Real Wage change
550.00	597.74	597.60	14c loss
600.00	652.08	647.60	4.48 loss
650.00	706.42	697.60	8.82 loss
700.00	760.76	747.60	13.16 loss
AWOTE 2007		AWOTE 2010	
1100.80	1196.34	1272.50	76.16 gain

Consumer Price Index December 2010 cat. no. 6401.0, at Table 1. The real wage change is based on CPI index, all groups, weighted average eight capital cities index at December 2007 (160.1) and at December 2010 (174.0).

149. From December 2007 to December 2010, the two wage increases have totalled \$47.68, while the CPI has increased by 8.68%. This amounts to substantial real wage cuts at a time when there were real wage increases across the community. In contrast to the safety net changes, the AWOTE increase (November 2007 to November 2010) was \$161.70 per week, yielding a substantial real wage increase.
150. We accept that it may be difficult to change trends in the short term (especially when a wage freeze is imposed), but, given these losses, and the promise of *Fair Work*, it is incumbent on the Commonwealth to show, through its submissions to FWA, how the position of the low paid and their families can be improved over time. Amongst other issues, it needs to address the widening gap between safety net rates and community wage levels, the maintenance of real safety net wages over time and the distribution of productivity gains to low paid workers.

E. Safety net wages have lost value compared to other arbitrated wages

151. While the AFPC was the primary wage-setting tribunal in Australia over the period 2006 to 2009, State industrial tribunals had the coverage of up to one third of safety net-dependent workers. These were workers who were outside the Federal jurisdiction and were covered by State awards made by industrial tribunals in States other than Victoria. The decisions of the AFPC in those years saw a departure from the earlier high degree of consistency in the wage rates set in the various jurisdictions. That consistency dates back to the late 1980s when all industrial tribunals cooperated to bring in nationally consistent classification structures and wage rates. It involved the establishment of pay relativities between the various classifications in each award, and the use of the tradesperson's rate (or its equivalent) as the key reference point in establishing consistency between awards.
152. The compression of relativities as a result of the awarding of money amounts, not percentages, has been significant, compounded federally by the AFPC awarding lower increases to higher paid workers on two occasions. The question of safety net relativities beyond the range of low paid wage rates needs to be addressed, but it is not as pressing as the need to establish proper rates for low paid workers.

Diverging State and Federal decisions

153. The differences between State and Federal tribunals in recent years is illustrated in Table 5, which compares the FMW/NMW and its State equivalents at December 2008, December 2009 and December 2010. Although New South Wales, Queensland, South Australia and Tasmania transferred the great bulk of their employment powers to the Commonwealth, their industrial tribunals continue to have a limited role in wage-setting. Each of them made a change to their minimum wages in 2010; as did Western Australia under its established arrangements.

Table 5
Comparison of FMW/NMW and relevant State rates
(\$ per week)

	Dec 2008	Dec 2009	Dec 2010
FMW/NMW	543.78	543.78	569.90
New South Wales	552.70	568.20	569.90/592.30
Queensland	552.00	568.20	588.20
Western Australia	557.40	569.70	587.20
South Australia	546.65	560.65	580.30
Tasmania	546.10	558.10	569.90

154. Special reference should be made to the situation in NSW. Until December 2010 the State Minimum Wage, the Award Review Classification Rate (which is the minimum rate payable under an award) and the C14 rate were the same: \$568.20. The *State Wage Case 2010* in December 2010 resulted in the awarding of an increase of only \$1.70 per week in the State Minimum Wage, to bring it in line with the NMW, and a 4.25% increase in the Award Review Classification Rate, as a result of a decision to generally increase rates by that percentage. The Award Review Classification Rate and the NSW C14 rate were increased to \$592.30. The NSW C14 rate is \$22.40 per week more than the C14 rates in Federal awards. The State Minimum Wage is at \$569.90 because of the terms of the recent changes to the State legislation. Absent that constraint, the tribunal fixed the minimum rate for award covered workers at \$592.30.

155. A reason why the Award Review Classification Rate and NSW C14 rate are higher than the Federal rates is that the Catholic Commission for Employment Relations (CCER) alone argued in 2007 for a further wage increase of \$7.00 per week for workers on the lowest award rate of pay; see *NSW State Wage Case 2007* [2007] NSWIRComm 118. With increases since 2007 (4%, 2.8% and 4.25%), that now represents \$7.80 per week. The transfer to Federal coverage of workers previously covered by NSW awards means that they have lost this benefit.
156. In 2008 the unweighted average of the State rates was \$7.19 per week more than the FMW. In 2009 it was \$21.19 per week. The increase in 2009 reflected the fact that the State jurisdictions did not impose a wage freeze. We do not suggest that the State rates are anywhere near sufficient. The States have been and are constrained in what they could do by the rates that are set federally. Nevertheless the State decisions, largely unaffected by the AFPC's decisions, highlight the inadequacy of the NMW. Leaving aside the two cases where the States have followed the NMW, the State minima, including the Award Review Classification Rate, remain substantially above the NMW. The unweighted average of the four jurisdictions is \$587.00 per week, \$17.10 more than the NMW.
157. The discrepancy between State and Federal rates continues into higher-paid classifications. A comparison of Federal and NSW rates at December 2010 (following the *NSW State Wage Case 2010*) in the major manufacturing/metals awards illustrates the differences in the Federal and NSW wage rates. For example, the Federal C4 classification wage in the *Manufacturing and Associated Industries and Occupations Award 2010* is \$797.20 per week and the NSW C4 wage in the *Metal, Engineering and Associated Industries (State) Award* is \$849.50 per week, a difference of \$52.30. In 2005, before the *Work Choices* amendments, the same rates of pay were set by the NSW award and the predecessor of the current Federal award.
158. We should also refer to the position of those workers who were covered by State regulation until they were transferred to the Federal system in early 2010. These workers (known as Division 2B employees) had received State increases in 2009, but did not receive federal increases in 2010, following FWA's decision in the

Annual Wage Review 2010. Had they stayed in their State systems, they would have received State increases. Low paid State award employees have been prejudiced by their transfer to Federal coverage

The Remuneration Tribunal

159. The decisions of the AFPC and the trend in safety net wage rates over the past decade may also be compared to the decisions of the Commonwealth's Remuneration Tribunal (the Tribunal) and the Commonwealth's own employment practices. The Tribunal sets rates of pay and various other entitlements for a wide range of public officeholders (including members of FWA), Parliamentary office holders (including Ministers) judicial and related officers and the holders of principal executive offices (PEOs). The Tribunal sets salary bands for PEOs and within each of them there is a "reference salary". Although the Tribunal does not set the salaries of Members of Parliament, for most of the decade there was a link established by legislation between their salaries and one of these reference salaries. The Tribunal awards general pay increases and pay increases in particular cases; eg for positions where there have been significant work value changes. The general increases are reflected in the PEO rates set out in Table 6.
160. On 24 August 2010 the Tribunal announced that it would increase the remuneration for the holders of public offices by 4.1%, effective from 1 August 2010. Table 6 sets out adjustments to two of the four PEO bands set by the tribunal and the level of payments made to members of the Senior Executive Service (SES). The PEO bands were increased by 54.4% over the decade.
161. SES salaries are not set by the tribunal, but by governmental processes. The information about SES remuneration was contained in the Tribunal's 2010 decision and its 2009 decision. It pointed out in 2010 that no new information had come to hand since 2009. We have been unable to find any updating of this material. We expect that the Commonwealth does have it.
162. We have included the SES data in Table 6 for the same reason that the Tribunal did: it provides a guide as to how the Commonwealth treats its own senior officers, and the impact that it has for wage-setting outside the SES.

Table 6
Remuneration of Senior Commonwealth Officers and SES Employees
2000-2010
(\$ per annum)

	Principal Executive Office Band A Reference salary	Principal Executive Office Band D Reference salary	SES Band 1 (Median)	SES Band 2 (Median)	SES Band 3 (Median)
2000	92000	209900	132287	160882	194309
2001	95600	218100	135541	166041	202884
2002	98800	225300	139948	171672	210725
2003	102760	234320	154097	187959	229147
2004	106770	243460	164981	203410	250607
2005	111150	253450	170416	210861	260983
2006	113930	259790	177857	220691	276446
2007	127060	289700	185606	233526	293404
2008	132530	302160	196880	248133	315007
2009	136500	311230	-	-	-
2010	142100	324000	-	-	-
% increase	54.4%	54.4% %	48.8% (2008)	54.2% (2008)	62.1% (2008)

SES figures are for total remuneration, but do not include performance pay

163. The Tribunal was clearly concerned about the impact the SES increases:

"It is evident that increases achieved by SES employees have exceeded those determined by the Tribunal by a considerable margin. Were the Tribunal disposed simply to address the continuous adverse shift in relativities that had occurred over the five years from 2003, then an adjustment of more than 10% would have been justified in 2008-2009.

In its September 2009 Statement, the Tribunal noted the distinctions between the roles of SES employees and those of the holders of public offices, particularly where the latter have responsibility for exercising statutory responsibilities and for leading agencies of considerable significance. As the Tribunal observed, then:

"... while the responsibilities of an SES office may be onerous, they are, in general, not of the same order as those of an agency head or of a public office carrying particular statutory powers."

The evident and sustained adverse shifts in relativities - unsupported by demonstrable changes in the roles and responsibilities of the SES and untested by any external authority - create unsatisfactory tensions within the

overall structure of public administration and, ultimately, are unsustainable. As the Tribunal expressed it in September 2009:

“This means that in every year in which the Tribunal determines an annual adjustment that is less than the averages indicated by the SES remuneration survey data, the remuneration of public offices falls behind.””

164. We do not argue that the Tribunal has awarded excessive increases. In fact, it has produced outcomes that are broadly consistent with the AWOTE increase mentioned earlier. The same cannot be said for all of the SES salaries, which are under Government control.
165. The increases awarded by the Tribunal are also in line with the AWOTE increase in the public sector, which includes more than the Commonwealth. The increase in public sector AWOTE was almost the same as the PEO increases: from \$887.40 in November 2000 to \$1371.70 in November 2010, an increase of 54.6%; see *Average Weekly Earnings, Australia, November 2010* cat. no. 6302.0, Table 7. The increase over the year to November 2010 was 5.3%.
166. FWA members are covered by determinations of the Remuneration Tribunal. There has been a change from the previous arrangements where legislation provided a salary link between FWA's predecessor, the AIRC, and judicial salaries. In 2000 the salaries of Deputy Presidents were set by legislation at 95% of the salary of a Federal Court judge, and Commissioners at 70% of a Deputy President's salary. The salaries of Deputy Presidents have risen from \$202,255 to \$304,520 per annum and the salaries of Commissioners have risen from \$141,578 to \$237,750 per annum (see Tribunal Determinations 2000/13 and 2010/19). These are increases of 50.6% and 65.1%, respectively, and, on average, are not outside the range of increases that have been awarded in the senior echelons of the public sector.
167. Over the decade the Tribunal has not discounted increases on account of the substantial tax cuts received by high income earners. The general level of increases reflected in the PEO rates and the public sector AWOTE contrast markedly with safety net rates. These public sector rates have increased by about 54% while, for example, the trades-qualified rate has increased by 34.8%. The

contrast is even more stark in, for example, classifications that now pay a modest wage of \$850.00 per week. In those classifications the increase over the decade was 23.4%, almost half the public sector increases.

168. The inconsistency between government employment and the wages for safety net workers is brought home in the social and community sector where there is a very wide gap between the wages of workers administering government supported programs and the safety net wages of workers delivering those programs through not for profit organisations.
169. These figures highlight a major inconsistency between the outcomes for the well-paid part of the public sector and low income working families. We are not dealing with just a few rates that are out of alignment. It is important for there to be broad consistency between what the Commonwealth does in respect of its own employees, including how its members and public officeholders are treated by the Tribunal, and the position it takes in respect of wages for low paid workers.
170. Our complaint is not with the outcomes of the Tribunal's decisions, but with the fact that safety net workers have been treated inequitably. We submit that they are entitled to the same kind of outcomes. We ask, rhetorically, why is it that public sector workers and the most senior members of government can have such better and sustained outcomes over the decade? We would suggest that this is a systemic problem entrenched by unacceptable values.
171. The Commonwealth's submissions to this Annual Wage Review should address this inconsistency and articulate a policy on wages that addresses these systemic issues.

F. Safety net workers have not received productivity increases

172. Productivity growth enables increases in real wages. All workers are entitled to expect that their living standards will increase as a result of productivity improvements. Substantial wage increases in, for example, average weekly ordinary time earnings have occurred without undue inflationary pressures because the economy has generated substantial productivity increases.

173. While most of the Australian workforce has reaped a productivity dividend over the last decade in the form of increased real wages, most safety net workers have had a real wage cut, thereby depriving them of a productivity dividend. Even in those cases where real safety net wages have been increased, the increase is not a fair reflection of productivity improvements. The adjustment of wages to reflect changes in “prices and productivity” has wide support. Safety net workers should not receive less than prices and productivity.
174. The substantial increases in productivity over the decade are shown in Table 7, extracted from a recent ABS publication. It contains indexes of chain volume measures of gross product per hour worked for three industries and for all industries.

Table 7
Labour productivity
Indexes of gross value added per hour worked

	2000–01	2001–02	2002–03	2003–04	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10
Health care and social assistance	91.9	93.6	95.5	97.1	97.8	96.2	97.8	99.8	100.0	100.6
Accommodation and food services	90.7	92.5	95.9	96.3	98.5	103.1	106.3	101.7	100.0	95.1
Retail trade	84.8	88.5	87.2	92.3	92.4	93.0	95.8	97.0	100.0	106.3
All industries	90.1	93.7	94.1	96.3	97.7	97.7	98.5	99.4	100.0	102.1

Source: *Australian System of National Accounts, 2009-10*, October 2010 cat. no. 5240.0.

175. Across all industries the productivity increase was 13.3% over the nine year period, 2000-01 to 2009-10. The three industries that have been included in the table are those in which there is significant proportion of safety net-dependent workers. While one of the industries is below the average, the other two are substantially above it.
176. Prior to the *Work Choices* amendments, the AIRC was required to have regard to, amongst others, “levels of productivity” when setting safety net wages. Under *Work Choices* there was no such requirement on the AFPC. In its four decisions the AFPC did not deal with the issue of productivity increases, let alone use productivity growth as a basis for its decisions on general safety net rates. There

was no productivity dividend for safety net workers, with all of the benefit of productivity gains going to employers.

177. By contrast to the AFPC, the AIRC had earlier given careful consideration to the question of productivity gains and, specifically, to productivity gains in industries in which there was a high degree of safety net-dependent workers. There was some opposition to the claim that safety net workers should receive productivity-based increases. It was argued that productivity increases had resulted from bargaining and that increases in safety net wages would remove the incentive to bargain.
178. In the 2003 and 2004 Safety Net Review cases the ACTU pointed to significant annual productivity changes. In 2004 the AIRC concluded:

“Based on the material before us, we adhere to the conclusion reached in the May 2003 decision that it has not been demonstrated that there is a negative association between safety net adjustments and productivity growth. There is no necessary association between award coverage, safety net adjustments and productivity growth” (*Safety Net Review Case 2004*, paragraph [166], footnote omitted.)

179. The matter was ventilated again in 2005 following the release by the ABS of figures showing very substantial increases in productivity of award-reliant industries over the 10 year period to June 2004. After an extensive review of the data and research, the AIRC concluded:

“There is no cogent evidence before us that award coverage per se inhibits productivity growth. The increase in productivity in the award-reliant sectors relied on by the ACTU and welcomed by the Commonwealth tells us nothing about causation. Nor is there any measure of the extent to which productivity has increased as a result of the shift to enterprise bargaining....

In determining the appropriate safety net adjustment to be granted, we are satisfied that we have not exercised our award variation powers in a way which fails to encourage enterprise bargaining. We agree with the States and Territories that the claim by the Commonwealth that safety net adjustments discourage productivity pivots on assertions that such adjustments act as a disincentive to bargaining. If safety net adjustments do not discourage bargaining, there is really no case to be answered in relation to productivity. We see no sound basis to depart from the conclusion in the May 2004 decision [at paragraph [166]] that “*There is no necessary association between award coverage, safety net adjustments and productivity growth*”.” (*Safety Net Review Case 2005*, paragraphs [327] and [330], italics in original)

180. We appreciate that in a system that encourages bargaining, and seeks to use bargaining as a means of achieving productivity gains, similar questions will arise in FWA to those that have been raised in the AIRC. We submit that the AIRC's approach to this matter should be adopted by FWA.
181. We submit that there is no basis for safety net workers to be denied wage increases based on productivity increases. In our view, productivity increases should be distributed across all industries and not on an industry by industry basis. The 13.3% increase in labour productivity over the nine years 2000-01 to 2009-10 has not been available to safety net-dependent workers and they have been denied a benefit that should be paid to them. The benefits of productivity increases that had been made available in the early part of the decade have been effectively lost by the limited adjustments in the latter part of the decade.
182. To deny safety net dependent workers access to productivity gains would be unjust and inconsistent with the FWA requirement to provide a fair safety net. Unless productivity is taken into account, safety net wages will fall further behind community movements. Failing to take into account productivity gains would perpetuate the systemic failure in wage-setting which has seen the bargaining sector being able to take advantage of productivity gains while those without bargaining power have been denied the benefits of their own productivity growth.

G. The tax cuts do not justify the real wage cuts

183. Some commentary on recent safety net wage increases pointed to the improved after-tax position of NMW-dependent workers, arguing that the increases in disposable incomes have been greater than the CPI increases. In effect, income tax cuts given to low paid workers have been used to justify the reduction in their real wages. As we pointed out earlier, the concentration on the NMW leaves aside the treatment of almost the entire safety net-dependent workforce.
184. Changes in taxation rates for all workers over the last decade, and the last two years in particular, have had a major impact on disposable incomes, but not in a way that would justify real wage cuts, or the discounting of wage increases. Table 8 shows the after-tax outcomes over the decade for the safety net workers in Table 1. We

have also added the position of the AWOTE worker to provide a point of comparison with community after-tax wage outcomes.

Table 8
After-tax changes to Safety Net Wages and AWOTE
2000-2010
(\$ per week, unless otherwise indicated)

									AWOTE
2000 Gross	400.40	450.00	492.20	500.00	550.00	600.00	650.00	700.00	798.70
2000 Net	346.38	378.37	406.53	412.39	446.13	480.38	514.63	548.88	616.48
2010 Gross	569.90	619.30	663.60	671.30	721.30	768.30	813.30	861.00	1272.50
2010 Net	521.86	561.33	596.54	602.67	640.59	669.61	699.74	730.69	996.17
\$ increase in Gross	169.50	169.30	171.40	171.30	171.30	168.40	163.00	161.00	473.80
% increase in Gross	42.3%	37.6%	34.8%	34.3%	31.1%	27.7%	25.1%	23%	59.3%
\$ increase in Net	175.48	182.96	190.01	190.28	194.46	189.23	185.11	181.81	379.69
% increase in Net	50.7 %	48.4 %	46.7%	46.1%	43.6%	39.4%	36.0%	33.1%	61.6 %

Calculations are based on 52.18 weeks in a year. The Medicare levy is included. The Low Income tax Offset (LITO) is included where relevant. In 2000 the full LITO of \$150.00 was paid at 20,700 and phased out at 4 cents for every dollar, and was zero at \$24,450 (at \$470 per week). In 2010/11 the LITO cuts out once a taxpayer's assessable income reaches \$67,500.

185. Table 8 shows that taxation cuts have increased the disposable income of low paid workers by significant margins. However, the after-tax outcomes for safety net workers are well short of the after-tax community movement as reflected by AWOTE.
186. There are, of course, many low paid workers who are covered by collective agreements and who have received similar increases to the general community wage increases. Situations will vary, but for those who have been able to bargain the general outcomes, as reflected in AWOTE, the decade has seen a significant improvement in their position, absolutely and relative to those in similar jobs but who are paid safety net rates.
187. Part of our response to those who would rely on tax cuts to justify the discounting of safety net wage increases is to point to the fact that tax cuts have applied to all workers and that low income earners have not been especially advantaged. In order

to compare the impact of taxation changes on various income levels over the decade it is necessary to use a uniform increase in wage rates. Table 9 shows what has happened to after-tax incomes for various wage groups receiving a 55% wage increase over the decade. This percentage is just a little lower than the AWOTE increase.

Table 9
After-tax changes for various income groups
Receiving wage increases of 55%
2000-2010
(\$ per week, unless otherwise indicated)

2000 Gross	400.00	425.00	450.00	500.00	550.00	600.00	800.00	1200.00	1600.00	2000.00	2400.00
2000 Net	346.12	362.24	378.37	412.39	446.13	480.38	617.38	859.86	1063.94	1271.86	1477.86
2010 Gross	620.00	658.75	697.50	775.00	852.50	930.00	1240.00	1860.00	2480.00	3100.00	3720.00
2010 Net	561.88	592.69	623.50	675.22	752.21	775.20	975.15	1374.82	1756.13	2137.43	2497.09
\$ increase in Gross	220.00	233.75	247.50	275.00	302.50	330.00	440.00	660.00	880.00	1100.00	1320.00
\$ increase in Net	215.76	230.45	245.13	262.83	306.08	294.82	357.77	514.96	692.19	865.57	1019.23
% increase in Net	62.3%	63.6%	65.4%	63.7%	68.6%	61.4%	57.9%	59.9%	65.1%	68.1%	69.00%
\$ value of tax cuts	25.39	31.22	37.03	36.02	60.71	30.61	18.21	42.04	107.02	166.05	206.41

Calculations are based on 52.18 weeks in a year. The Medicare levy is included. The Low Income tax Offset (LITO) is included where relevant. In 2000 the full LITO of \$150.00 was paid at 20,700 and phased out at 4 cents for every dollar, and was zero at \$24,450 (at \$470 per week). In 2010/11 the LITO cuts out once a taxpayer's assessable income reaches \$67,500.

188. Table 9 shows that the taxation changes have led to higher after-tax outcomes for workers who have moved in line with the changes in average ordinary time wages. The dollar value of the changes has been calculated for each income group by multiplying the 2000 after-tax figure by 155% and finding the difference between that sum and the after-tax sum in 2010. Clearly, the position of those who have moved by more or less than the 55% used here will have different outcomes, but all will have been advantaged.
189. Table 9 reveals that the taxation changes have had very different outcomes, in percentage and dollar terms, across the wage (and non-wage) groups. The limited tax cuts for incomes between \$900.00 per week and \$1,800.00 per week stand out from the rest. This is a range that centres on AWOTE workers. The starting point

of \$800.00 per week is close to the AWOTE starting point of \$798.70 and the end point of \$1,240 is only \$32.50 below the most recent AWOTE figure of \$1,272.50.

190. Another way of presenting the essence of these changes is in Table 10, where the percentage of tax paid in 2000 and 2010 by four income groups is compared. Again it demonstrates that low income groups have not been targeted for special consideration, but it does show that the middle income group has received relatively little by way of tax cuts.

Table 10
Proportion of Income Taxation for various groups
Receiving wage increases of 55%
2000-2010

\$ per week	2000	2010
\$400/\$620	13.5%	9.4%
\$800/\$1240	22.8%	21.4%
\$1600/\$2480	33.5%	29.2%
\$2400/\$3720	38.4%	32.9%

The taxation policies of the 2007 Election

191. The changes to income taxation rates over the last three Commonwealth Budgets were based on a three year package of tax cuts that the previous and current Commonwealth governments proposed prior to the 2007 Federal election. The points of difference between the two packages were limited and we can treat the income taxation policies of the three years as bi-partisan.
192. The tax cuts varied. For low income earners in the \$20,000 to \$30,000 per annum range tax cuts for the three years were \$14.42 per week. Most of their cuts came in the first year (2008-09), with \$8.65 per week, followed by \$2.89 per week in 2009-10 and \$2.88 per week in 2010-11. A taxpayer on \$180,000 per annum received tax cuts of \$77.89 per week over the same period.
193. The question of whether tax cuts should be used to reduce wage increases has been ventilated in various wage cases. In the *Safety Net Review Case 2005* the AIRC rejected the claim that the \$6.00 per week tax cut for low paid workers in the 2005

Budget should reduce wage increases. ACCER pointed out that the tax cuts represented less than the “bracket creep” that had occurred since the introduction of the *New Tax System* in July 2000. It also put the following position, which remains relevant in dealing with tax cuts over the past decade:

“...the \$6.00 per week reduction is a benefit available to all income earners resulting from changes to the first step in the taxation scales. It is available to those who are not employees and to those employees who are not regarded as low paid. It would be wrong to single out low paid workers as the only workers who should have their wage increases discounted by this factor. It is not a targeted measure of the kind that could be said to provide an alternative to a pay increase. If the Commission were to discount the safety net adjustments by \$6.00, or any lesser sum, it would be treating award workers less favourably than other workers. Significantly, it was not claimed in the Budget that it was being introduced as an alternative to a wage increase.” (ACCER *Post Budget Safety Net Review Submission 2005*, paragraph 9)

194. The same kind of question came before the AFPC in 2008. Various parties argued for the tax cuts to be taken into account in the adjustment of safety net wages. There were two issues: whether the tax cuts favoured low paid workers, only some of whom would depend on safety net wages; and whether the purpose of the tax cuts was inconsistent with their use as a discounting factor. ACCER put the following on both aspects:

“The tax cuts were promised as a *real* benefit by the former Government and by the then Opposition in the recent election campaign. There was no suggestion by either side that they might be taken away from some working families by way of reduced wage increases. Consistent with the promise, the Treasurer, Mr Swan, said in his Budget speech:

‘For too long, working families have watched the proceeds of the boom directed elsewhere, in the form of tax cuts skewed to those already doing very well. Tonight we tip the scales in favour of working families.’

The discounting of wage increases would tip the scales against the most disadvantaged working families and would be inconsistent with the explicit purpose of the tax cuts. The AFPC should not take from the most disadvantaged of working families any of the benefit of the tax cuts that they were promised, on a bi-partisan basis, and which have been delivered in the Budget. This point is particularly compelling because higher paid workers are able to bargain for wage increases in addition to their tax cuts. Discounting wage increases by reference to tax cuts would effectively discriminate against low paid workers and would fail the

fairness test.” (ACCER *Post-Budget Submission 2008*, paragraphs 20-1, emphasis in original.)

195. These are matters of great importance in determining whether the real wage reductions in recent years were justified. Low paid workers did not get any special treatment from the three Budgets that delivered the tax cuts proposed in the 2007 Federal election. They did not get more than their fair share of the benefits of strong economic growth and the resources boom.
196. In respect of the decade as a whole it is clear that the low paid were not targeted for tax cuts any more than the rest of the population. To use those tax cuts to justify wage-discounting would deprive safety net workers of those cuts and impose on them a burden not suffered by those workers who have the capacity to bargain for higher rates of pay.
197. Even if it could be said that low income workers were targeted for special tax cuts and were treated more favourably than other taxpayers, it doesn't follow that they should be deprived of a benefit intended by the Parliament. If a tax cut were to be given for the purpose of improving their condition it would not be proper for a wage tribunal to withdraw the benefit, or part of it, by way of a reduced wage increase.
198. There may be cases where tax cuts can be taken into account. However, three conditions should be met before this happens: first, the tax cuts should be targeted at low paid workers and not part of a broader initiative; second, the cuts should have been for the explicit purpose of seeking a moderation in wage increases; and, third, based on a proper assessment of needs of the low paid, the discounting of wage increases should occur. If this test is applied, there would be no basis for reducing safety net wage increases on account of the income tax cuts over the last decade.

H. Increased family payments have not compensated for wage cuts

199. The assessment of living standards of low income working families depends on wage levels, income taxation and family payments. Family payments began in 1941 with the payment of child endowment of 5/- per week to each child after the

first child of a family. The restriction was removed in 1950. Limited changes were made to the scheme until 1976 when the Family Allowance replaced child endowment. The change followed the investigations and reports of the Commonwealth Commission of Inquiry into Poverty (the Poverty Commission) which we referred to in Chapter 3. Since 1976 various changes have been made to the eligibility, benefits and, on several occasions, the name of the scheme. A detailed history of family payments since 1941 is found in *Social Security Payments for People Caring for Children, 1912 to 2006*, Australian Parliamentary Library, 2006.

200. In July 2000 Family Tax Benefit Part A (FTB A) and Family Tax Benefit Part B (FTB B) were introduced to replace some earlier family payments measures and as part of the package of compensatory measures to accompany the commencement of the GST. FTB A provides payments for various categories of children, subject to income tests. FTB B provides an extra payment for families with one main income and replaced, amongst others, the Sole Parent Rebate and the Dependent Spouse [with children] Rebate. It is paid to the "dependent spouse" who stays at home to look after the children and to the sole parent who is in employment. FTB B payments are reduced once the recipient's income exceeds a specified level. The sole or main breadwinner's income is not taken into account in regard to the FTB B entitlement.
201. Family payments vary according to the age of the children. Table 11 is adapted from the abovementioned Australian Parliamentary Library report by the addition of entries for the period from 1 July 2007 and the use of weekly, rather than fortnightly, figures.
202. Table 11 demonstrates the importance of the age of the children in determining the level of family payments. The AFPC's calculations of transfer payments were usually based on the children being in the 8 to 12 year range. We have adopted that practice throughout this submission. The presence of a child under 5 will give a higher FTB B figure. The higher rate for children under 5 may be justified by higher child care costs, especially in the case of sole parents. We will return to child care costs.

Table 11
Family Payments 2000-2010
(\$ per week, unless otherwise indicated)

	Family tax benefit part A					Family tax benefit part B		
	Maximum Rates per Child		Base rate per child	Annual Supple- ment per child	Large Family Supplement	Rate per family		Annual Supplement per family
	Child under 13	Child 13-15	Child 0-15			Youngest aged under 5	Youngest aged 5-18	
	(\$ per week)			(\$ p.a.)	(\$ per week)	(\$ per week)		(\$ p.a.)
07.00	58.10	73.64	18.69	-	3.99	49.91	34.79	-
07.01	61.46	77.91	19.74	-	4.20	52.78	36.82	-
07.02	63.35	80.36	20.37	-	4.34	54.39	37.94	-
07.03	65.24	82.74	21.00	-	4.48	56.00	39.06	-
07.04	66.78	84.70	21.49	613.20	4.62	57.33	39.97	150 (from 1 Jan)
07.05	68.53	86.87	22.05	627.80	4.76	58.80	41.02	306.6
07.06	70.42	89.88	22.68	646.05	4.90	60.48	42.14	313.90
07.07	72.73	94.50	23.45	667.95	5.04	62.51	43.54	324.85
07.08	75.67	98.42	24.15	686.20	5.18	64.40	44.87	335.80
07.09	78.47	102.06	25.06	711.75	5.39	66.78	46.55	346.75
07.10	80.15	104.23	25.62	726.35	5.53	68.18	47.53	354.05

203. Over the ten year period the weekly rates have increased by 36.7% to 41.5%, which are higher than the CPI increases of 32.5%. The total payments have increased more substantially because of the introduction and adjustment of annual supplements, which operate to provide a buffer in the event that income estimates for the making of weekly payments are understated. However, it is important to note that the rate of change has slowed; for example, the family described in Table 12 (below) received an increase of 16.6% from December 2005 to December 2010, when the CPI increased by 15.5%. In the last year of the decade that family's increase was only 2.1%.
204. Lower income taxpayers with children are exempted from the Medicare levy of 1.5% of taxable income, but the levy exemption is phased out over an income range. In effect, the exemption is a family payment, but we have not specifically designated it as such in the following tables. In the following calculations we have

not included the Medicare levy in the after-tax calculations, save for those families who are required to pay part or all of it.

205. Rental assistance is available for low income families in private rental accommodation. It is available to recipients of FTB A, subject to income tests. The payment has been available for the whole of the decade and has been indexed over that time. It has not been included in the following Table 12 calculations, but it has been included in some later tables. The payment operates as a rental subsidy and is not a general monetary entitlement available to low income earners. It is in the nature of a utilities allowance. The AFPC treated it as part of the disposable income of low income families and assumed that the maximum rental assistance was received by all eligible groups, whether they were in private rental accommodation or not.
206. Generally we have treated rental assistance as an item that reduces the cost of housing, rent in particular, when calculating needs. However, we have included it on occasions in order to make various comments about the information and analysis provided by the AFPC. We are troubled by its treatment as income, especially when the maximum is used, because it has the effect of reducing safety net wages for all workers. It is a matter that needs to be considered by FWA in due course.
207. Our calculations of family payments do not include Child Care Benefits and the Education Tax Refund. Both are dependent on expenditure and are not general monetary entitlements. We explain the detail of the Child Care Benefits later. The Education Tax Refund, which provides a 50% rebate on a very limited range of expenses, such as home computers and laptops, has the effect of reducing the costs of education, provided the family can afford these items in the first place. Low income families have limited capacity to take up these government subsidies. It is a scheme, like child care and rental assistance, that should be taken into account in calculating expenses, rather than disposable income. In any event, there is no data at this time to enable us to estimate the value of these targeted measures.
208. Table 12 compares the Henderson Benchmark Family over various income levels with reference to changes in wages and family transfers over the decade. The Henderson Benchmark Family was discussed in Chapter 2C. It comprises a couple

and two children, with one of the parents staying home to care for the children. It builds on Table 8 and enables a comparison to be made between the AWOTE-dependent family and various similar, but safety net-dependent, families.

Table 12
Henderson Benchmark Families
AWOTE and Safety Net-dependent Families compared
2000-2010
(\$ per week, unless otherwise indicated)

	(NMW) Safety Net Wages							AWOTE
2000 Gross wage	400.40	450.00	500.00	550.00	600.00	650.00	700.00	798.70
2000 Net Wage	352.38	385.12	419.89	446.13	480.38	514.63	548.88	616.48
2000 Family Transfers	150.99	150.99	150.99	145.25	112.95	85.25	72.17	72.17
2000 Disposable Income	503.37	536.11	570.88	591.38	593.33	599.88	621.05	688.65
2010 Gross wage	569.90	593.28	645.28	695.28	740.34	787.02	835.02	1272.50
2010 Net Wage	530.41	570.23	612.35	652.01	677.45	703.61	730.69	996.17
2010 Family Transfers	242.46	242.46	242.46	242.46	242.46	242.46	242.46	192.06
2010 Disposable Income	772.87	812.69	854.81	894.47	919.91	946.07	973.15	1188.23
% Net Wage Increase	50.5%	48.1%	45.8%	46.1%	41.0%	36.7%	33.1%	61.6%
% Transfers Increase	60.6%	60.6%	60.6%	66.9%	114.7%	184.4%	236.0%	166.1%
\$ Disposable Income Increase	269.50	276.58	283.93	303.09	326.58	346.19	352.10	499.58
% Disposable Income increase	53.5%	51.6%	49.7%	51.3%	55.0%	57.7%	56.7%	72.5%
\$ Loss per week in Disposable Income of Safety Net family relative to AWOTE family	95.44	112.10	129.96	125.66	103.58	88.72	98.16	-

The Medicare levy has been included in the net wage where applicable. Family transfers in 2010 include the weekly value of the annual supplements for FTB A and FTB B.

209. Table 12 demonstrates several matters. First, families who qualified for the maximum family payments in 2000 have had increases of 60.6%; well in excess of the rate of inflation and a little more than the increase in average weekly ordinary

time earnings. Second, family payments have been extended to higher income groups. The income groups to which the family benefits have been extended have had greater increases in their disposable incomes. The AWOTE family, which is beyond the range for maximum payments, has benefited, with an increase of 166.1% in its family payments. Third, low income families have fallen behind higher income families.

210. This middle income AWOTE family has had a gross wage increase of 59.3%, a net wage increase of 61.6% and a disposable income increase of 72.5%, well in excess of similar families who depend on safety net wages. The comparable figures for the NMW-dependent family are 42.3%, 50.7% and 53.5%. The relative position of families on higher safety net rates is worse.
211. There is, therefore, nothing in this material that would justify a real wage cut or discounted wage increases for low paid workers. There is nothing to support a claim that the relative standards of low income working families are rising. It demonstrates the contrary: over the decade working families at or near the minimum wage have fallen behind middle income families. Family payments have not made up for the lack of wages growth. The dollar loss per week that appears in the last row of Table 12 is the difference between what the families have received and what they would have received had they received the AWOTE increase. It demonstrates how far they have fallen behind.
212. Table 12 compares safety net-dependent families with middle income families who have moved in line with average weekly ordinary time earnings. Many low paid workers who have had access to collective bargaining may have had quite different outcomes to safety net workers. Their wage increases may exceed the AWOTE increase.
213. In Table 13 we make comparisons between safety net-dependent low income families and low income families where the breadwinner was covered by a collective agreement that has moved in line with average weekly ordinary time earnings. Two examples are given, with the same starting points in 2000: \$450 and \$550 per week. Of course, the AWOTE increase will not be uniform across all low paid workers covered by bargaining arrangements, but any downward departure

from the average would have to be major if they were to have a bargaining outcome similar to safety net-dependent workers.

Table 13
Henderson Benchmark Families
Comparing safety net-dependent families and bargaining sector families
2000-2010
(\$ per week, unless otherwise indicated)

	Safety Net A	Bargaining A	Safety Net B	Bargaining B
2000 Gross	450.00	450.00	550.00	550.00
2000 Disposable income	536.11	536.11	591.38	591.38
2010 Gross	593.28	716.85	695.28	876.15
2010 Net Wage	570.23	647.55	652.01	740.34
2010 Transfers	242.46	242.46	242.46	241.06
2010 Disposable income	812.69	890.01	894.47	981.40
Loss of safety net worker relative to bargaining worker	87.32	-	86.93	

The bargaining rates have increased by the same percentage as AWOTE (ie 59.3%) over the relevant period. The net wage includes the family reduction in the Medicare levy, where applicable.

214. Table 13 illustrates the growing separation between workers with access to collective bargaining and those who are unable to bargain. It demonstrates the very different outcomes for low paid workers who have the capacity to bargain, generally through a union presence in their workplaces, and those who have no capacity to bargain.
215. We accept that bargaining outcomes should not be applied automatically to safety net decisions, especially when unusual cyclical factors are in operation, but there is a need to maintain a reasonable relationship between community wage levels and safety net rates.

I. Safety net wages have not been based on evidence of workers' needs

Introduction

216. An extraordinary feature of Australian minimum wage-setting over the past decade (and earlier) has been the lack of any serious attempt to set wages by reference to the needs of the low paid, despite the presence for the most part of the decade of an explicit obligation on the decision-maker to take into account the needs of the low paid. It is ironic that the only serious attempt to deal with this issue was made by the AFPC under the *Work Choices* legislation, which did not contain an explicit statutory obligation on the AFPC to take into account the needs of the low paid when setting wages.
217. In the preceding sections we have concentrated on the relative treatment of safety net workers over the past decade. Relative to the community, they have fallen behind. It is apparent from the foregoing sections that we are able to estimate the incomes available to the low paid and their families, but this knowledge is meaningless if we do not know how much it takes to live a decent life in contemporary Australia. In the following sections we deal with questions about the adequacy of the incomes, after taking into account any relevant transfer payments.
218. Starting with its inaugural decision in 2006 the AFPC used the HPLs as a guide to living costs and the sufficiency of the FMW, taking into account relevant family payments. It used the ratios of household disposable incomes to the relevant HPLs in order to assess the differential impact that the FMW had on various kinds of households. In the first two years it assessed nine kinds of households and, from 2008, ten households.
219. The AFPC placed substantial weight on the HPLs:

“While the HPL has never been an official measure of the lowest income necessary for an adequate standard of living, it is commonly used in Australia as an indicator of low income.”(*Economic and Social Indicators - Monitoring Report July to December 2008*, page 34, AFPC, February 2009)
220. We referred in Chapter 3 to the work of the Poverty Commission in the early 1970s under the chairmanship of Professor Henderson and to the origin of the HPLs.

Until the AFPC they were not used to inform wage-setting decisions primarily because, we would submit, their figures were manifestly too low to be used as an indicator of the needs of working families. The Poverty Commission fixed the HPLs at an “austere low level”. It said that it did this so that “It cannot seriously be argued that those below this austere line, whom we describe as ‘very poor’, are not so.” (*First Main Report*, page 13.)

221. When the AFPC first compared disposable incomes and HPLs it found that the margins were well above the HPLs. The size of the margin gave comfort to it. In referring to the submissions put to it, it said, without any reservation:

"There is general agreement that minimum wages should, in combination with cash transfers, provide an income 'well above poverty'. The Commission's modelling shows that this is indeed the case for a variety of family types and commonly used definitions of poverty." (*Wage-Setting Decision October 2006*, page 96.)

222. The HPLs are not an historical curiosity updated quarterly without intention that they be relied on. We note that the Melbourne Institute makes the following claims on its website about the newsletter and the HPLs:

"*Poverty Lines: Australia* is a quarterly newsletter that updates the Henderson Poverty Line as defined in the 1973 Commonwealth Commission of Inquiry into Poverty. *The Poverty Lines is standard reference material for those concerned with social welfare policy in Australia.* Minimum income levels required to avoid a situation of poverty are presented for a range of family sizes and circumstances. The updated Poverty Lines take into account changes in the average income level of all Australians, reflecting the idea that poverty is relative. Each issue includes a table indicating changes in the purchasing power of the poverty line and a table comparing welfare payment levels with poverty lines of various family types." (Emphasis added)

223. The HPLs have been the *only* evidence that the tribunal had about the needs of workers and their families. ACCER and the Australian Council of Social Services (ACOSS) made repeated requests to the AFPC to undertake or commission research into the needs of low paid workers and their families, but it did not do so. It appears that it was satisfied with the HPLs as a measure of need.
224. After considering the disposable incomes and HPLs for various FMW-dependent households the AFPC concluded in its 2006 decision:

“The income support and family assistance safety net, and its continued improvement over recent years, *allows people with family responsibilities to rely solely on a single wage to support their families.*” (*Wage-Setting Decision October 2006*, page 96, emphasis added.)

225. The AFPC returned to this matter in the following year’s decision, and said:

“It is also worth noting that the original Henderson poverty benchmark for a couple family with one earner and two dependent children was equal to the combined value of the then basic wage and child endowment. In other words, at that time, a family with one earner on the basic wage had an income equal to the HPL. Continued improvements over many years in the extent and coverage of income transfers *for working families have resulted in families now having disposable incomes well in excess of relevant HPLs.*” (*Wage-Setting Decisions and Reasons for Decisions*, July 2007, page 70, footnote omitted and emphasis added.)

226. We wish these conclusions were correct. Much of ACCER's submissions over the following years was concerned with establishing three conclusions which are contrary to the claims about the application of the HPLs that are made in these two passages:

- The wages outcomes were not "well in excess of relevant HPLs", especially in the case of the Henderson Benchmark Family.
- The FMW and family payments do not allow families to rely solely on a single wage.
- The benchmark family is not better off relative to the poverty lines, either by reference to the recent years or to the period since the HPLs were established.

227. These criticisms were not against the use of the HPLs as such, but focussed on the need to identify some shortcomings of the HPLs and the need to adapt them. In our view, the problems are curable and, if adapted, the HPLs are useful tools in estimating the financial needs of low paid workers and their families.

228. There are four significant limitations in the HPLs that require the exercise of caution when using them in wage-setting:

- (a) When the HPLs are published in each quarter they are based on estimates of per capita seasonally adjusted household disposable

income which require review and adjustment. Each edition of *Poverty Lines: Australia* comes with this advice.

- (b) The HPL equivalence scales which are used to calculate relative living standards between various households are significantly different to the commonly accepted equivalence scales, the effect of which is that the HPLs underestimate the needs of a family relative to the single person.
 - (c) The housing costs included in the HPLs are too low and do not reflect the true costs of housing for low income families.
 - (d) The HPLs do not include any recognition of child care costs for sole parents.
229. These are matters that can be addressed in a prudent application of the HPLs to the task of estimating the needs of low paid workers and their families. They demonstrate the need to avoid a rigid application of the HPLs and to avoid treating them as a precise measure of need.
230. We submit that FWA should advise the parties about its view of the utility of the HPLs, in their current form or in some modified form. Unless it does, ACCER and the other parties will be unassisted in preparing their submissions and will be at risk of spending undue resources on matters that are not regarded as germane. We submit that the Melbourne Institute should be given an opportunity to demonstrate the utility of the HPLs in measuring poverty and informing policy decisions, as claimed on its website.

Housing Costs have been underestimated, but the problem is curable

231. The poverty lines published by the Melbourne Institute in *Poverty Lines: Australia* newsletter contain two sets of HPLs for each of the various households: those with housing costs and those without housing costs. In the latest published HPLs (for the September Quarter 2010) the housing costs for the benchmark family are \$181.57 per week and for a sole parent with two children, they are \$167.67 per week. The December Quarter 2010 newsletter will not be available until after the

closing date for this submission. We will provide the updated information to FWA in due course.

232. These figures grossly underestimate housing costs. They underestimate poverty levels and have a consequential impact on the use of HPLs in setting wages.
233. The AFPC also included the maximum amount of rental assistance that is paid to low income families when it calculated the disposable incomes of low income workers and their families. Various low income groups are eligible for rental assistance. Subject to an income test, recipients of FTB A may be paid rental assistance if they are renting privately. Rental assistance is reduced as the rents paid exceed specified levels. The same maximum applies to single and couple parents, although the rental cost over which assistance is reduced varies between the groups. Over the decade the maximum rental assistance for a couple with one or two children rose from \$50.47 to \$67.62 per week. The AFPC's use of the maximum rental assistance was not based on any assessment of rental costs or on estimates of average rental costs. Nor was it consistent with the HPLs. The maximum rental assistance is not payable if the rent is as low as that in the HPLs.
234. The underestimation of housing costs in the HPLs is curable by the use of data that is collected by the Commonwealth from the recipients of rental assistance. The Commonwealth collects this data because applicants for rental assistance have to state how much rent they are paying.
235. Table 14 is based on data in *Year Book, Australia 2009-10* and in earlier Year Books from 2002 to 2008 regarding the rents paid by low income families in receipt of rental assistance for the years 2001 to 2009. The exception is 2008, for which there is no published figures. As we have used the midpoint between 2007 and 2009 to calculate the 2008 figure. The figures are calculated in respect of a particular day in each June. We have used these figures in our calculations for the following December quarters, rent would be underestimated. The figure for 2010 has been calculated by reference to the rental index in *Consumer Price Index December Quarter 2010* in order to estimate the amounts for December 2010. The increase in rents over that period was 4.2%. We expect that the Commonwealth

has collected data on this subject during 2010 and will advise FWA if our estimate is unreasonable.

236. Our re-calculation of housing costs in the HPLs is based on rental costs. Of course, renters have outgoings, such as electricity costs, on their properties. Because they have not been included, our housing costs underestimate the costs of housing for low income families. This is an area that requires further research.

Table 14
Housing Costs for Henderson Benchmark Family
2000-2010
(\$ per week)

	HPL	HPL Housing Costs	Average Rent paid	Difference in Net Housing costs	Housing-adjusted HPL
2000	519.34	117.32	n.a.	-	-
2001	550.80	124.43	164.00	39.57	590.37
2002	553.55	125.05	175.00	49.95	603.50
2003	568.11	128.34	184.00	55.66	623.77
2004	598.21	135.14	196.00	60.86	659.07
2005	617.84	139.57	202.00	62.43	680.27
2006	650.78	147.01	212.00	64.99	715.77
2007	702.68	158.74	228.50	69.76	772.44
2008	779.61	176.11	249.00	72.89	852.50
2009	753.49	170.21	269.50	99.29	852.78
2010	803.79	181.57	280.82	99.25	903.04

The HPL for 2010 is the HPL as published in *Poverty Lines: Australia*, September Quarter 2010, the latest available update. The HPLs for previous years are taken from the relevant quarterly newsletter.

237. The table shows the decline in the HPL and the consequential fall in the estimates of housing costs from 2008 to 2009. This reflects a fall in the underlying estimate of household disposable income as a result of the Global Financial Crisis. Yet the real costs of rental properties were rising. This is because the HPLs reflect the relative nature of poverty. The latest HPLs show a recovery in household disposable income which will overcome this apparent anomaly.
238. Table 15 shows a similar position in respect of a sole parent with two children. The calculations have been made in a similar way to the calculations in Table 14.

239. Tables 14 and 15 show that the financial positions of the Henderson Benchmark Family and the Sole Parent Family are very different to the estimates given in the HPLs. But they show that the problem is curable. They demonstrate why the AFPC's uncritical use of the HPLs, which it relied on, have presented a very different picture of their needs.

Table 15
Housing Costs for Sole Parent with 2 children
2000-2010
(\$ per week)

	HPL	HPL Housing Costs	Average Rent paid	Difference in Net Housing Costs	Housing-adjusted HPL
2000	429.65	108.34	-	-	-
2001	455.67	114.89	138.00	23.11	480.78
2002	457.95	115.47	147.00	59.53	489.48
2003	470.00	118.51	154.00	35.49	505.49
2004	494.90	124.79	160.00	35.21	530.11
2005	511.14	128.88	169.00	40.12	551.26
2006	538.39	135.75	176.50	40.75	579.14
2007	581.33	146.58	190.00	43.42	624.75
2008	644.97	162.63	204.75	42.12	687.09
2009	623.36	157.17	219.50	62.33	685.69
2010	664.98	167.67	228.72	61.05	726.03

Child care costs have been excluded

240. The HPLs for employed sole parents do not take into account child care costs. The couple parent family does not ordinarily need to incur child care expenses, but in sole parent families child care is a necessity and costs may be considerable. That is, in calculating the relative costs of the two kinds of families, no account been taken of the need for a sole parent to provide child care for pre-school and school-aged children. When the HPLs are used without account being taken of child care we get unrealistic comparisons.
241. The failure of the HPLs to take into account child care costs is not an argument against the use of HPLs, but reason for being flexible when dealing with them. This submission does not consider child care costs in depth, but seeks to give some

indication of the impact that they may have on the standards of living of sole parent families.

242. In each of its four decisions the AFPC compared the disposable incomes of sole parent families with one or two children with their HPLs. In each case it was found that they were substantially above their HPLs and had a substantially higher margin above this poverty line than the single person without dependants. An example of this is found in Table 24 in the following chapter. The claim that sole parents have a higher standard of living than single workers without dependants cannot be sustained. It presents a false picture of their situation and, to the extent that their supposed standard of living informs community attitudes to wages and family payments, does them and other low paid workers and their families a disservice.
243. Child care costs can drive low income sole parent families into poverty and/or force sole parents into inadequate child care arrangements. Indeed, it is the prospect of inadequate child care support that is a barrier to increased sole parent participation in the workforce. We are particularly concerned about the impact that inadequate child care has on children
244. There has been much discussion about this matter and considerable Commonwealth expenditure on child care support. However, if the underlying wage rate is insufficient, child care support may not be addressing the needs of low income sole parents. It is important to assist low income sole parents participate in the workforce, but that assistance requires a wage, family transfers and child care support that are adequate for them to participate on an equitable basis and with the proper care of their children. This is a matter that should give emphasis to the interests of children.
245. In Table 16 we have set out child care costs for the NMW-dependent sole parent with two children on the basis of illustrative usage of child care. It does not attempt to draw on general survey material regarding child care costs, if only because low income working sole parents can only spend what they have available. We appreciate that various kinds of averaging is required in factoring in a child care component in the estimation of the needs of low income workers. We submit that this is an issue that should be addressed by FWA on an ongoing basis and one

which presents an opportunity for joint research and/or consultation with a variety of bodies.

246. Table 16 sets out four child care scenarios for a sole parent with two children. The first is where both children have “full time” Before and After School Care and Vacation Care. The full time care is over 48 weeks and is not used when the parent is on annual leave. The other scenarios are 75%, 50% and 25% of full time care. We have based the costs on the modest costs charged in the extensive out of school hours service provided by Centacare Child Care Services which operates some 80 centres throughout the Archdiocese of Brisbane. The rate we have used is \$5.00 per hour. It is a very modest figure. We expect that the Commonwealth has extensive data on the costs of child care by virtue of its procedures for the payment of the Child Care Benefit. The Commonwealth should make available the relevant data on the costs of child care. This is a matter that could be taken up in an inquiry into the needs of the low paid.

Table 16
Indicative Childcare Costs for Sole Parent with Two Children

Usage of Child Care services	Before School Care 2 hour sessions @ \$5.00 per hour over 40 weeks (800 hrs.)	After School Care 3 hour sessions @ \$5.00 per hour over 40 weeks (1200 hrs.)	Vacation Care 10 hours per day @ \$3.50 per hour over 8 weeks (800 hrs.)	Total costs before Child Care Benefit and Child Care Rebate	Child Care Benefit Based on total of 2800 hours	Child Care Rebate	Net Child Care Costs
100%	\$4000	\$6000	\$2800	\$12800	\$9156	\$1822	\$1822
75%	\$3000	\$4500	\$2100	\$9600	\$6867	\$1366.50	\$1366.50
50%	\$2000	\$3000	\$1400	\$6400	\$4578	\$911	\$911
25%	\$1000	\$1500	\$700	\$3200	\$2289	\$455.50	\$455.50

The parent is eligible for a benefit of 104.5% of the nominal rate of \$3.13 per hour, which is \$3.27 per hour.

The Child Care Benefit is the number of hours of child care used multiplied by \$3.27.

The Child Care Rebate is 50% of "out of pocket expenses", which are the costs of child care after deducting the Child Care Benefit.

247. Net child care costs on the full usage of services amounts to \$35.00 per week. This is the pattern of usage that should be taken into account, even though circumstances will change. Even with the modest costs in the table and the substantial governmental support child care can be very expensive (exacerbated by delays in

receiving the full benefits) for a sole parent on or near the NMW, which creates pressures to use latch key arrangements.

248. However, a more important matter to be taken into account is that child care costs may exceed the modest costs in Table 16. If, for example, the costs were to be an extra \$1.00 per hour, the total costs before the Child Care Benefit rise by \$2,800.00 to \$15,600.00. As the Child Care Benefit will remain unchanged, the "out of pocket" expense will rise to \$6444.00. After the 50% Child Care Rebate, this will result in a net cost of \$3,222.00 per year, or \$61.96 per week. The delay in receiving the rebate would particularly prejudice the low paid worker. Sometimes they parents do not have the funds to expend on rebateable services.
249. These are extraordinary costs for low paid workers. Child care costs have the capacity to drive a sole parent into poverty. Indeed, for many higher paid parents who seek to balance work and family, child care costs consume most of the financial benefits of working. In low income families, they deter work in cases where parents would prefer to work (full time or part time) and they create latch key arrangements. Some parents will use latch key arrangements when they shouldn't and can afford child care, but that is no reason to discount wage rates.
250. We do not pretend that these are easy issues to work through, but they do demonstrate that turning a blind eye to child care costs (as the AFPC did) is not an option. The material on child care costs emphasises the inappropriateness of the use of HPLs without flexibility in cases such as these. More work needs to be done on the costs of child care for low paid workers, whether they are sole parents or the secondary income earner in a two parent family. But on the basis of the material to date FWA cannot continue the practice of neglecting child care costs.
251. The Catholic Church is one of the largest employers of women in Australia. Its various agencies have a keen appreciation of the difficulties that all of its workers, women in particular, have in balancing family and work and, especially, in obtaining appropriate child care arrangements. It is also a provider of child care. If FWA is prepared to undertake or commission research on child care costs ACCER will facilitate the participation of Catholic employers and their workers in that research.

252. Our aim in this section has been limited. In our view, a fair safety net wages cannot be set without regard to the child care costs of working parents. We ask that FWA undertakes or commissions research into the hourly and sessional costs of child care in order to better understand the impact of child care costs on the financial circumstances of low paid workers, the usage of child care and the capacity of sole parents to participate in the workforce.

J. Low income working families have fallen behind rising poverty lines

253. Over the past decade increasing numbers of safety net-dependent families have fallen into poverty, whether measured by the HPLs or by relative poverty lines. Even if they haven't fallen into poverty, their margins over poverty have been reduced. All of this has occurred in a most prosperous decade, despite the Global Financial Crisis.

Henderson Poverty Lines

254. Over the period covered by the four decisions of the AFPC, the ratios of disposable income to the HPLs fell in all households. Table 17 illustrates this in respect of the single person. The figures in the first four rows are taken from AFPC decisions. Those years record more than a *one third* decline in the margin above the HPL. The change since then reflects the decline and recovery following the onset of the Global Financial crisis. The latest figures show the decline is almost a third over four and a half years. Similar declines were experienced by other households.

Table 17
Ratio of disposable income to HPL for Single NMW Worker
2006-2010

	HPL
July 2006	1.31
December 2006	1.30
December 2007	1.25
December 2008	1.19
December 2009	1.24
December 2010	1.22

The figures for July 2006 to December 2008 were calculated by the AFPC. The figures for December 2009 and December 2010 were calculated by ACCER. In December 2009 the single HPL was \$401.16 and the disposable income was \$497.17; see ACCER submission to *Annual Wage Review 2009-10*, Table 7. The September 2010 HPL (the latest available) for the single person was \$427.94 and the disposable income was \$521.86 (see Table 8)

255. In Table 18 we use the information in Table 14 on housing costs to re-calculate the ratios of disposable incomes to HPLs that were used by the AFPC over the period December 2006 to December 2008. The disposable incomes, as calculated by the AFPC, include maximum rental assistance. We have maintained that inclusion in Table 18, despite our view that it should not be included in the calculation of disposable income. We have extended the table to cover December 2009 and December 2010, using the September Quarter 2010 HPL figures for the latter year and our estimates at Table 12 of disposable income.

Table 18
Housing-adjusted HPL for Henderson Benchmark Family
2006-2010

	Disposable Income	Original HPL	Housing- Adjusted HPL	Original ratio DI:HPL	Re- calculation of DI:HPL
2006	732.42	650.78	715.77	1.14	1.02
2007	758.26	702.68	772.44	1.08	0.98
2008	796.25	779.61	852.50	1.02	0.93
2009	808.41	753.49	852.78	1.07	0.95
2010	840.49	803.79	903.04	1.05	0.93

The disposable income for this family in December 2009 was \$808.41 per week, including maximum rental assistance: see ACCER submission to *Annual Wage Review 2009-10*, Table 16 At December 2010, the maximum rental assistance for this family and the sole parent family in Table 19 was \$67.62 per week.

256. Table 19 is in similar form to Table 18, but covers the position of the NMW-dependent sole parent with two children.

Table 19
Housing-adjusted HPL for Sole parent with Two Children
2006-2010

	Disposable Income	Original HPL	Housing- Adjusted HPL	Original ratio DI:HPL	Re- calculation of DI:HPL
2006	732.42	538.39	579.14	1.36	1.26
2007	758.26	581.33	624.75	1.30	1.21
2008	796.25	644.97	687.09	1.23	1.16
2009	808.41	623.36	685.69	1.30	1.18
2010	840.49	664.94	726.03	1.26	1.16

As noted earlier, the disposable incomes of couple parent and sole parent NMW-dependent families are the same.

257. We have shown that the shortcomings of the HPLs in regard to housing costs can be overcome and that the housing-adjusted HPLs are substantially higher than estimated by the AFPC. Tables 18 and 19 demonstrate the substantial impact that inadequate estimates of housing costs have had on the AFPC's assessment of living standards and the needs of low paid workers and their families.
258. When the HPLs are adjusted for actual housing costs, couple parent and single parent NMW-dependent families are considerably worse off than the AFPC's estimate, with the couple parent family (the Henderson Benchmark Family) being well below the poverty line since 2007 and the sole parent with two dependent children being too close to the poverty. The discrepancy between the housing costs estimates in the HPLs and the real costs of housing is a major one.

Changes in the HPLs over the decade: families have fallen into poverty

259. We can estimate the decade long decline of workers by comparing changes in disposable income with the per capita seasonally adjusted household disposable incomes (HDI) calculated by the Melbourne Institute. The latest *Poverty Lines: Australia* newsletter (for the September quarter 2010) shows that the HDI has increased by 62.9% since December 2010. As we have seen in Tables 8 and 12, disposable incomes of NMW-dependent single workers and Henderson benchmark families have increased by 50.7% and 53.5% respectively.

260. Each *Poverty Lines: Australia* newsletter provides a means of calculating poverty lines, by use of the HDI data, for each quarter back to 1973. Using the formula provided and the figures in the latest newsletter, in Table 20 we have calculated the changes in the position of the single worker and the Henderson Benchmark Family over the decade. The 2000 and 2010 calculations have not been adjusted to reflect true housing rental costs, nor do they include rental assistance.
261. Table 20 demonstrates that very substantial changes have taken place. The family has fallen below the poverty line in one of the most prosperous decades in Australia's history. The single worker without dependants has lost almost a third of his or her initial margin over poverty. Comparing Tables 17, 18 and 19 with Table 20 it appears that this deterioration occurred during the latter part of the decade, largely during the *Work Choices* years.

Table 20
Changes in Incomes Relative to Henderson Poverty Lines
2000-2010

(\$ per week, unless otherwise indicated)

	Single Worker	Henderson Benchmark Family
2000 HPL	262.45	493.33
2000 Disposable income	346.38	503.37
2000 DI:HPL	+32.0%	+2.0%
2010 HPL	427.94	803.79
2010 Disposable income	521.86	772.87
2010 DI:HPL	+22.0%	-3.8%

262. The same kind of calculations can be done for sole parent families and other couple parent families. The trend shown in Table 20 has occurred across the board.
263. For the benchmark family to be at the poverty line in 2010 it would be necessary to have another \$30.92 per week. To have the same position relative to the HPL in 2000 would require a disposable income of \$819.87 per week, an extra \$47.00 per

week. A worker on the base cleaner's rate, which is \$38.70 per week more than the NMW, is virtually on the poverty line after tax is taken out; and worse off at the end of the decade. As demonstrated earlier, the position is much worse when real housing costs are taken into account.

The Poverty Commission's proposals 37 years on

264. The Poverty Commission was concerned to introduce long term systemic changes to better support Australian families, to show a way out of poverty and to prevent them from falling into poverty. The AFPC had an optimistic view of the changes since the Poverty Commission's report, a view that cannot be supported by the facts. In its second decision it said:

“It is also worth noting that the original Henderson poverty benchmark for a couple family with one earner and two dependent children was equal to the combined value of the then basic wage and child endowment. In other words, at that time, a family with one earner on the basic wage had an income equal to the HPL. Continued improvements over many years in the extent and coverage of income transfers *for working families have resulted in families now having disposable incomes well in excess of relevant HPLs.*” (AFPC 2007 Decision page 70, footnote omitted and emphasis added.)

265. The Poverty Commission fixed the HPLs at an “austere low level”. It said that it did this so that “It cannot seriously be argued that those below this austere line, whom we describe as ‘very poor’, are not so.” (*First Main Report*, page 13.) The Poverty Commission’s calculations showed the following at August 1973:

Table 21

Poverty Commission Calculations of Poverty Margins 1973

\$ per week

Income unit	Poverty line	Min wage after tax	Child endowment	Total
Single	\$33.40	\$54.00	-	\$54.00
Couple	\$44.70	\$55.00	-	\$55.00
Couple, 2 children	\$62.70	\$57.00	\$1.50	\$58.50

Extracted from Table 3.14 of the *First Main Report*. The minimum wage used by the Poverty Commission was \$60.00 per week and was fixed by reference to the different male rates that applied throughout Australia. The equal pay decisions had not been implemented at that time.

266. Table 21, when compared with our earlier tables, vividly illustrates the long term changes in wages and family support in Australia. The differences in the net wages reflect the effect of taxation rebates for a dependent spouse and dependent children. The latter rebate has been removed and, in effect, absorbed into family payments. In effect, family payments were \$4.50 in a total disposable income of \$58.50 per week, which was still less than the gross wage. Family payments were 7.7% of disposable income. In December 2010 they were 31.4%. In 1973, the family's disposable income was just less than the gross wage, in December 2010 it was 35.6% above it.
267. The first point that emerges from a comparison of Table 21 with our earlier tables is that the family's position is much the same. In 1973 the family was 6.7% below the poverty line. In Table 20 we see that the family was 3.8% below the poverty line in December 2010. Furthermore, if we assume that the housing costs were realistic in 1973, as we are entitled to do, the proper comparison between 1973 and 2010 is between the Poverty Commission's figures and our housing-adjusted HPLs. That comparison shows that the family has gone backwards. The family is now 7% below the poverty line.
268. The reason why the very substantial increases in family payments have not improved the position of families is to be found in the changes in the wage component. They are paid on a declining base. This is illustrated by the position of the single worker.
269. In 1973 the single worker on the lowest minimum wage was 62% above the poverty line, after tax. As we see from Table 20, this worker was only 22% above it in December 2010.
270. This is a matter of great social and economic importance. It has social importance for safety net-dependent young workers who are seeking to save for family life, but its implications extend to a wide range of safety net-dependent workers; for example, couples without children, older singles and students. The economic cost to them is substantial because, while wages have risen across the community, the safety net-dependent workers have been left behind. Singles have not fallen below the poverty line, but they have moved much closer to it.

271. Some will argue that this trend has been a good one for economic reasons: it has stripped out of the minimum wage some or all of the family support element and has kept down labour costs. There should be a debate about this kind of objective and its social and economic costs, but it has not happened. It should be one of the central and continuing concerns in wage-setting, but it is not.
272. Like the single worker who relies on the safety net, the wages earned by safety net-dependent workers with family responsibilities have fallen dramatically by community standards. They have had to rely more on transfer payments, but substantial as they are, the transfer payments have been inadequate. It is clear from our material that increases in transfers for working families have not resulted in families now having "disposable incomes well in excess of relevant HPLs" as claimed by the AFPC.
273. The AFPC's commentary about the origins of the HPLs were not correct in regard to the position at August 1973. As Table 21 shows, at that time the lowest minimum wage and child endowment for the benchmark family put the family *under* the poverty line: 6.7% below. The level of deprivation in 1972 was enough to prompt a major Commonwealth inquiry. The position of the family has worsened since then because of a failure of the wage-setting system. It calls for a root and branch review of that system and an inquiry by FWA into the needs of low paid workers and their families.

Relative Poverty Lines

274. In 2008 the AFPC introduced a relative poverty line into its consideration of the living standards of low paid workers and their families. The poverty line chosen was 60% of the median equivalised household disposable income. Its 2008 and 2009 decisions contained information about the level of the relative poverty line for each of the ten households considered in its 2007 decision.
275. Relative poverty lines are set at a percentage relationship with a broader measure of community wealth on the basis that poverty is a relative concept. Such a measure has an element of social justice and social equity. There are many poverty lines that may be chosen, but whichever is chosen must be credible if it is to gain broad support. This requires empirical knowledge and proper consideration of the living

standards of those who live on the poverty line. Whether the poverty line should be at, for example, 50% or 60% of the mean or the median requires some knowledge of the costs of living.

276. Our knowledge of the levels and distribution of disposable incomes across the community principally come from surveys conducted by the ABS. The survey used by the AFPC was *Household Income and Distribution, Australia 2005-06*, cat. no. 6523.0, published in 2007. Median disposable income was found to have been \$563.00 per week in 2005-06, with the 60% of that figure being \$337.80. The mean was \$644.00. In order to calculate the poverty lines for December 2007 and December 2008, the AFPC adjusted the ABS figures by reference to the movements in household disposable income as published by the Melbourne Institute in *Poverty Lines: Australia*.
277. The most recent ABS publication on these matters is *Household Income and Distribution, Australia 2007-08*, cat. no. 6523.0, published in August 2009. It provides information that was not available to the AFPC. Median disposable income was found to have been \$692.00 per week in 2007-08, with the 60% of that figure being \$415.20. The mean was \$811.00.
278. The 2009 ABS report describes the methodological changes made in the 2007-08 survey in order to implement new international standards for household income measurement and analysis. It advises that care needs to be taken when making comparisons, even where earlier surveys have been recompiled to reflect the new measures of income.
279. The AFPC used modified OECD equivalence scales to calculate the median equivalised income for the various households. This was a significant departure from the equivalence scales used in the HPLs. The OECD scales have a family of 2 adults and two children at 2.1 times the individual and the family of a sole parent and two children at 1.6 times the individual. The HPLs ratios are 1.88 and 1.55, respectively. The significance of this can be illustrated: if the poverty line for an individual is \$500.00 per week, the HPL scale would produce \$940.00 per week, but if the OECD scale is used the figure would be \$1050.00, another \$110.00 per

week. This is why the AFPC's relative poverty lines present a relatively worse position for families than that shown by the HPLs.

280. The latest ABS publication means that we can re-calculate the AFPC's estimates of relative poverty lines for 2007 and 2008. We can, like the AFPC, use the Melbourne Institute's figures to calculate changes over the subsequent years. In 2007-08 60% of median income was \$415.20 per week, with the poverty line for the family at \$871.92 per week. We have used those figures for December 2007 and applied the Melbourne Institute's figures to them for the subsequent years. Those figures (in the September Quarter 2010 newsletter) have shown the effects of the Global Financial Crisis.
281. Table 22 shows these revised figures, with the figures used by the AFPC in its 2008 and 2009 decisions are in brackets. The revised figures are substantially more than the AFPC's estimates.

Table 22
Revised 60% of median poverty line
2007-2009
(\$ per week)

	Single	2 plus 2 family	1 plus 2 family
December 2007	415.20 (387.48)	871.92 (813.71)	664.32 (619.97)
December 2008	460.46 (421.40)	966.96 (884.93)	736.73 (674.23)
December 2009	451.73	948.65	722.78
December 2010	473.74	994.86	757.99

The cumulative increases over the three years following December 2007 were 10.9%, 8.8% and 14.1%, respectively.

282. Table 23 shows the ratio of disposable income to the relative poverty line. It falls into two parts. December 2007 and December 2008 have been re-calculated using the more recent ABS material as shown in Table 22, with the AFPC's estimates for 2007 and 2008 appearing in brackets. The subsequent years use the estimates for the poverty lines in Table 22 and, for consistency with the AFPC's calculations, maximum rental assistance.

Table 23
Ratio of disposable income to 60% of median poverty line
NMW-dependent workers and families
2007-2010

	Single	2 plus 2 family	1 plus 2 family
December 2007	1.13 (1.21)	.87 (.93)	1.14 (1.22)
December 2008	1.07 (1.17)	.82 (.90)	1.08 (1.18)
December 2009	1.10	.85	1.12
December 2010	1.10	.84	1.11

Disposable incomes used in making the calculations for 2007 and 2008 were taken from the AFPC's decisions in 2008 and 2009. The disposable incomes for 2009 and 2010 are at Tables 17-19, above.

283. It is clear that debate and research is required if we are to address a number of issues that arise out of the use of relative poverty lines. But those issues do not detract from the need to consider them when setting wages. Nor can those issues divert us from the fact that the NMW-dependent family is *living in deep poverty*. Even if the 50% of median poverty line was used the benchmark family, with a disposable income of \$840.49, including maximum rental assistance, would be barely above the poverty line of \$829.05, and below it if rental assistance is excluded.

Conclusion on poverty lines

284. In its 2009 decision the AFPC produced a table (Table 6) that showed that the FMW-dependent family (the Henderson Benchmark Family) was only 2.0% above its HPL, having taken into account maximum rental assistance and totally unrealistic estimates of housing costs. It also produced a table (Table 5) that showed the same family was 10% below the AFPC's chosen relative poverty line. The significance of these were unremarked, and it decided that there should be a wage freeze.
285. One possible, but unacceptable, reason for the failure of the AFPC to consider these implications (and others such as the costs of child care borne by sole parents) was its decision in 2008 to focus on the single person without family responsibilities in

the setting of minimum wages. After setting out in tabular form the ratios of disposable incomes of ten households to the two measures of poverty (HPLs and poverty lines based on 60% of median equivalised disposable income) the AFPC said:

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

286. This passage claims satisfaction with the wage level for single workers, following, what we have seen, was a prolonged reduction in the relative value of safety net wages. We know from the AFPC's own figures in its first two decisions that in July 2006 the single worker was 31% above the HPL and at December 2006 the margin was 30%. Yet in 2008 they expressed satisfaction with the margin having fallen to 25%. Even a 5% change in the margin is a very significant figure for the low paid.
287. Furthermore, the views in this passage take no account of the needs of workers with family responsibilities. Because of the inadequacy of transfer payments, workers on the lowest rates cannot ever achieve a reasonable standard of living. By effectively setting wages by reference to single workers (and at historically low rates), workers with family responsibilities must fall below the poverty line. ACCER complained in its 2009 submissions that this was the unjustified adoption of the single person test, but the submission was not responded to. The matters that we have raised about poverty lines provide further and powerful evidence of the failure of minimum wage setting.

K. Safety net wages have fallen behind pensions

288. As a result of a much needed and overdue review of pensions in 2009 (the Harmer Review), by December 2010 the single pension was \$358.05 per week (including the pension supplement of \$28.85) and the couple pension was \$539.80 per week

(including the pension supplement of \$43.50). These rates apply to the Age Pension and the Disability Support Pension. The supplement is provided in lieu of earlier allowances for the GST, utilities, telephone/internet and pharmaceuticals.

289. The Harmer Review resulted in the single pension rate being set at 27.7 of Male Total Average Weekly Earnings (MTAWE). Pensions are now indexed twice a year by reference to the highest increase recorded in three measures: the CPI, the pensioner cost of living index and MTAWE.
290. The following is taken from the website of the Department of Families, Housing, Community Services and Indigenous Affairs:

“Maximum base pension rates are adjusted each March and September by the greater of the movement in the Consumer Price Index and the Pensioner and Beneficiary Living Cost Index. After this adjustment is made, the maximum single base pension rate is then compared with 25 per cent of Male Total Average Weekly Earnings (MTAWE). If the base pension rate is below the MTAWE benchmark it is increased to that rate, with flow-ons to the partnered rate. From March 2010 the MTAWE benchmark increased from 25 per cent to an effective 27.7 per cent and 41.76 per cent for couples combined.

Indexation of pensions in line with a living cost index ensures that pensions keep pace with increases in prices. *The MTAWE benchmark guarantees that pensioners share in improved community living standards as measured by wages.*” (Emphasis added)

291. The past decade has seen a substantial increase in pension payments, albeit coming at the end of the decade. Leaving aside the supplement and the allowances it replaced, the couple (base) pension rate increased from \$328.90 per week in December 2000 to \$496.30 in December 2010, a 50.9% increase. The comparable figures for the single pension were \$197.05 to \$329.20, an increase of 67.1%.
292. There are two significant points to be made about the pension safety net and the wage safety net.
293. First, by reference to the equivalence scales used by the ABS, the pension safety net for a couple of \$539.80 per week produces a higher standard of living than that experienced by the NMW-dependent family of two adults and two children with a disposable income. The modified OECD equivalence scales used by the ABS has the family of two adults and two children at 2.1 times the individual, and two adults at 1.5 times the individual. This means that the family has an equivalence scale of

1.4 times the couple without children. The couple pension equates to \$755.72 per week for the family. The NMW-dependent family has a disposable income of \$772.87 per week, but has the costs of work, which would take up more than the difference between the two. This suggests that the family would have a significantly lower standard of living.

294. The second point is that pensions will now rise by *no less than* the increases in MTAW. This will have important consequences for the relative living standards of pensioners and low paid workers and workforce participation. In order to maintain the current relationship between safety net wages and pensions it will be necessary to ensure that wages move by a similar percentage to pensions, which means not less than MTAW. This will require a significant change in the approach to the setting and adjusting safety net wages. It provides another reason for the use of AWOTE in wage-setting.
295. We should note that the review of pensions did not include unemployment benefits. In December 2000 a single unemployed person was entitled to \$175.40. In December 2010 this figure had risen to \$234.85. This was an increase of only 33.9%, only marginally above the CPI (32.5%), but well behind community wage movement of 59.3% (as measured by AWOTE) and, importantly, well under the HPL for an unemployed person, which was \$347.00 in September 2010, a poverty gap of \$112.15 per week. Especially given that the unemployed have to satisfy a work test in order to establish their eligibility, this is an iniquitous situation. It is, of course, a rate that cannot provide any guidance to FWA when setting safety net rates.

L. Conclusion

296. This chapter has provided a comprehensive review of a number of matters that are critical to the setting of a fair wages safety net. The material presented demonstrates that the wage-setting system has failed low paid workers and their families.

297. It is clear that the rectification of the problems that we identify will take several years. If that is to commence and proceed in measured way it will require the ventilation of these issues, and debate about them.
298. We regret the lack of meaningful discussion around these issues in the past and invite debate about them in 2011. The outcomes of a faulty process should not be perpetuated. Some hard and inconvenient questions need to be asked if we are to take the objective that is encapsulated in "social inclusion" seriously. We believe that the major parties have an obligation to provide a considered response to what we claim to be the failures of the past.
299. We submit that FWA should press all of the major parties to address the kind of issues that we have raised.

Chapter 5 Mr Costigan's five questions

A. Introduction	296
B. Who are the low paid?	304
C. What is living in poverty?	306
D. What is the poverty line?	321
E. How does the NMW compare to the poverty line?	330
F. What are the needs of the low paid?	333

A. Introduction

300. In the *Safety Net Review Case 2003* the late Frank Costigan QC, who appeared with Paul O’Grady on behalf of ACCER, urged the AIRC to establish an inquiry into the needs of the low paid. He submitted that, in order for the AIRC to satisfy its statutory obligation to have regard to the needs of the low paid when setting wages, it needed to ensure that the rates that it sets, the FMW in particular, do not fall under the poverty line. He continued:

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

301. Mr Costigan then went on to pose a number of questions:

- (a) Who are the low paid?
- (b) What is living in poverty?
- (c) What is the poverty line?
- (d) How does the FMW compare to the poverty line?
- (e) What are the needs of the low paid?

302. Questions such as these had been raised from time to time since the FMW was established by the AIRC in 1997. Similar questions had been posed in earlier decades of Australian wage-setting.

303. ACCER submitted that the proposed inquiry would enable the AIRC to establish a benchmark for the setting of the FMW. The benchmark was not proposed as one that would involve a particular formula to be applied in an arithmetical way, but, rather, as one that would provide the AIRC with appropriate guidelines within which to judge “needs”. ACOSS also proposed that an inquiry to be conducted by the AIRC into the needs of the low paid.

304. The proposal for an inquiry into the needs of the low paid was not supported by “any party in the proceedings”, as the AIRC noted in refusing the request. The attitudes of the parties were particularly relevant because, in 2003 and at other times when the AIRC set wages, the FMW and other safety net rates of pay were set in the arbitration of disputes between unions and employers; and ACCER and ACOSS were interveners in that process. The AIRC said:

“Our rejection of the proposals for an inquiry should not be taken as a rejection of the utility of empirically determined “benchmarks” such as the poverty line. Indeed, it seems to us that the use of such measures is relevant to an assessment of the needs of the low paid. In this context we also note that in their oral submissions ACCER argued that the Commission must ensure the minimum rates it sets (and in particular the federal minimum wage) do not fall below the poverty line. It was put that this task involved determining questions such as *“what are needs, who are the low paid, what is the poverty line, what is living in poverty and how does the federal minimum wage compare to the poverty line?”* We acknowledge the relevance of the questions posed by ACCER and would be assisted by submissions and material directed to them. As we have already noted empirical studies dealing with these matters would be of more assistance to the Commission in addressing the specific matters mentioned in the Act than the type of illustrative evidence adduced by the ACTU in these proceedings. There is no impediment to ACOSS and ACCER, or any other party, bringing forward such material in any future safety net review. It is not, however, desirable for the Commission to establish a separate inquiry for that purpose particularly in view of the absence of any support for the proposal from any other party or intervener.” (*Safety Net Review Case 2003*, paragraph [222], italics in original.)

305. There has been limited progress in answering these questions and the position of low paid workers and their families is worse than it was in 2003. Our limited progress has not resulted in any demonstrable benefit for low paid workers.

306. The lack of progress is evident from one of the research projects initiated by FWA in 2010. FWA commissioned its own internal research concerning approaches to defining and measuring relative living standards and needs of low-paid employees. Its website states:

“This project will canvass possible approaches to defining and assessing the living standards of low-paid employees. Approaches previously used to derive income benchmarks (e.g. poverty lines, budget standards) and other possible indicators of living standards (e.g. assets, consumption, financial hardship and material deprivation) will be reviewed.”

As we noted earlier, a report has now been published: *Research report 2/2011 - Relative living standards and needs of low-paid employees: definition and measurement*. We welcome this very helpful review, and FWA's initiative to undertake it. However, the questions posed in 2003 are still unanswered by the decision-maker.

307. ACCER asks FWA to establish its own inquiry into the needs of the low paid. As the research report and the this chapter show, there is a firm basis upon which that inquiry may be conducted and research commissioned. An inquiry would present the opportunity for the consideration of the utility of various empirically determined benchmarks and the development of those benchmarks, along the lines mentioned by the AIRC in 2003.

B. Who are the low paid?

308. The term “low paid” is not defined in the legislation. The term is not one that should be defined with precision or narrowly. We take a broad view and would include those who are below what may be described as a “modest” standard of living. We would suggest that a useful rule of thumb would be those who earn less than two-thirds of average weekly earnings. Two-thirds of the latest AWOTE figure of \$1,272.50 is approximately \$850.00 per week. Our top priority is with the lowest paid part of this group.
309. As we have shown in Chapter 4, over the past decade successive "across the board" wage increases have caused a growing disconnection between safety net wages and prevailing community wage levels. They have compressed relativities and opened large differentials between safety net-dependent workers and those doing similar work in the bargaining sector. The impact has been severe on workers with substantial skills and responsibilities. Many safety net-dependent workers have fallen into the low paid category over the past decade. We have referred at various times to the trades-qualified, or C10, wage. At \$663.60 per week it is well within the low paid category. A *skilled* person's classification should not fit so easily into the low paid category. A trades qualification should be a means out of low paid

work. Had the trades-qualified rate been adjusted in line with community wage movements, as reflected in AWOTE, over the past decade, the current rate would be \$784.10 per week, \$120.50 more than it is.

C. What is living in poverty?

310. The terms *poverty* and *the poverty line* do not appear in the legislation. As the AIRC pointed out in 2004, the legislation of the time, like the present:

“...makes no reference to a “poverty line” but rather focuses on the issue of the needs of the low paid... However, we do not accept that the Commission could not rely upon a poverty line as a tool to assist it in determining the needs of the low paid if it had probative evidence by which a poverty line could be accurately identified” (*Safety Net Review Case 2004*, paragraph [287]).

311. Poverty may be defined qualitatively or quantitatively. They are not alternative ways of defining the term. A quantitative measure should be based on, and tested against, a qualitative definition. The qualitative definitions of poverty demonstrate the need for sound quantitative poverty lines.

Qualitative definitions of poverty

312. In its written submission in the *Safety Net Review Case 2004* ACCER adopted a qualitative definition previously advanced by ACOSS:

“Poverty is an enforced lack of socially perceived necessities. This definition, and most others in poverty research, has three core elements:

- a lack of necessities;
- that necessities are socially defined;
- that the lack of necessities is caused by limited material resources.”

313. There are, of course, many other ways to describe poverty. In recent years it has been defined in conjunction with terms such as social inclusion, social exclusion and social or community participation. An extensive review of these matters is in a paper published in January 2010 by Catholic Social Services Australia: *The Social Inclusion Agenda: Where it came from, what it means and why it matters*.

314. There is a discussion of social inclusion in a paper published by FWA in 2010: *Research Report 2/2010 - Literature review on social inclusion and its relationship to minimum wages and workforce participation*,. The following is extracted from the Executive Summary of that report.

“There is no universal or generally accepted definition of either social inclusion or exclusion. Based on how the term has been used, social inclusion could be broadly understood as the process or means by which individuals and groups are provided with the resources, rights, goods and services, capabilities and opportunities to engage in cultural, economic, political and social aspects of life. The concept is still relatively new to Australia, although its significance to research, policy and legislation is growing.

A number of dimensions of social exclusion, beyond exclusion from the labour market, have been identified. Individuals can be affected by multiple and overlapping dimensions of exclusion and some researchers argue that social inclusion should not be confined to a context of paid employment. In this paper, workforce participation has been discussed, as one aspect of social inclusion, in relation to its impacts on other dimensions of social inclusion. Paid work is considered to promote social inclusion by increasing people’s resources (such as income, access to goods and services and human capital), developing their social networks and support, and improving their mental and/or physical health. On the other hand, some aspects of some work (e.g. underemployment, low pay, and long working hours, lack of access to training and career paths) may hamper a person’s opportunities to fully participate in society, as they may provide a worker with an inadequate income, interfere with their capacity to build and maintain human capital and social connections, or affect their health.”

315. The research report notes a definition by Pierson (*Tackling Social Inclusion*, Routledge, London, 2002) “which appears to be favoured by the Australian Social Inclusion Board”:

“Social exclusion is a process that deprives individuals and families, and groups and neighbourhoods of the resources required for participation in the social, economic and political activity of society as a whole. This process is primarily a consequence of poverty and low income, but other factors such as discrimination, low educational attainment and depleted living environments also underpin it.

Through this process people are cut off for a significant period in their lives from institutions and services, social networks and developmental opportunities that the great majority of a society enjoys.”

316. European policies and writings have influenced Australian descriptions and definitions of social inclusion and poverty. The European Union declared 2010 as the *Year Against Poverty and Social Exclusion*. A European definition of poverty which usefully links poverty with exclusion and marginalisation is one which has been used by the Irish government:

“People are living in poverty if their income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living that is regarded as acceptable by Irish society generally. As a result of inadequate income and resources people may be excluded and marginalized from participating in activities that are considered the norm for other people in society.” (*National Action Plan for Social Inclusion 2007-2016*)

Quantitative measures of poverty

317. Quantitative measures of poverty, which seek to identify money amounts below which a household will be in poverty, fall into two categories.
318. The first are those based on an itemised assessment of the costs of basic needs. The two major Australian needs-based measures are the HPLs and the budget standards developed by the Social Policy Research Centre (SPRC).
319. The HPLs, which we discussed in Chapter 4, are based on research into basis living costs in the 1960s and some of the work of the Commonwealth's Poverty Commission in the early 1970s. They are updated each quarter by the Melbourne Institute on the basis of changes in per capita household disposable income, reflecting the view that poverty is a relative concept. The quarterly newsletters (*Poverty Lines: Australia*) also provide data on CPI increases over time, but do not use them in the quarterly adjustments to the HPLs. As we see below, the SPRC budgets have been adjusted to reflect changes in the CPI since they were compiled and priced.
320. The SPRC material is not concerned with identifying poverty, as such, but with identifying and quantifying standards of living. Its Low Cost budget identifies what might be described as a minimum acceptable standard of living. This budget was developed for social security purposes, but is capable of providing a reference point, but not a standard, for low paid workers and their families.
321. The second kind of quantitative measures are relative poverty measures in which poverty lines are expressed as a percentage of, for example, median equivalised household disposable income, using various equivalence scales to adjust for different kinds of households. We discussed aspects of this measure in Chapter 4J.
322. Relative poverty lines do not measure actual needs or identify a particular standard of living. However, as poverty is to be determined in an economic context, this

kind of measure has been widely used. Poverty lines at 50% and 60% of the median are the most frequently used measures. The 60% of median disposable income level was used by the AFPC, but it has not been universally accepted as a measure of poverty. The mean average disposable income is also used, with 50% of the mean being used as the poverty line. The mean is typically higher than the median. There is no *a priori* reason for accepting any one of these poverty lines. Each has to be tested against experience and relevant research. We submit that there is no reason to depart from the AFPC's decision to use the 60% of median relative poverty line.

323. Estimates of equivalised household disposable income from survey-based research are not readily available because comprehensive surveys by the ABS are not conducted each year and there is a lag between the collection of data and the publication of the estimates. However, as discussed earlier, survey-based estimates of income levels may be made by the use of the data that is used by the Melbourne Institute to adjust the HPLs each quarter.
324. Relative poverty lines are also an important tool in the setting on wage rates with reference to relative living standards, as FWA is required to do under the minimum wages objective in section 284(1) of the FW Act.

D. What is the poverty line?

The AFPC's tabular method of showing poverty levels

325. The AFPC made a serious and sustained effort to measure living standards of low income families. Although we have been critical of aspects of that work, it has been important in understanding the needs of workers and their families, the impact that wage levels have on different kinds of households, the interaction of wages, taxes and family payments and the differential impact that wage increases have on various households. We ask FWA to continue this work.
326. From its first decision in 2006 the AFPC used the HPLs as the guide to its consideration of the safety net for low paid workers and their families. It had no other evidence about the needs of low paid workers and their families. In its 2008 Decision the AFPC introduced relative poverty lines based on 60% of median

equivalised household disposable income. This poverty line was estimated by the AFPC using the ABS's *Household and Income Distribution, Australia, 2005-06*, 6523.0. The document was published in 2007 and the figures were updated by the AFPC in its 2008 and 2009 decisions by use of the estimated changes in household disposable income published by the Melbourne Institute in *Poverty Lines: Australia*.

327. In each of its decisions the AFPC produced tables covering nine or (from 2008) ten FMW-dependent household types. Income taxation and transfer payments were taken into account in calculating the disposable incomes of each kind of household. In Table 24 we have combined some of the calculations in the 2009 Decision to show the HPLs and PLs for those households.
328. Table 24 was prepared for, and used in ACCER's 2010 submissions (as Table 13). It was included in the submission to highlight the utility of having these kinds of calculations and comparisons when setting safety net wages. It contains a great deal of information about the incomes of various households, including the relative contributions of the wage packet and the public purse to the two kinds of estimates of living standards. The AFPC's tables from which it is drawn are a valuable tool in addressing minimum wage issues.
329. Rows 6 and 7 of Table 24 deal with the same kind of family: a couple with two children. The difference in disposable income is because the second parent in the row 6 household receives the Newstart allowance, an unemployment benefit that is only payable to the parent if he or she seeks employment. It is not payable to a parent who does not seek employment and who stays at home to look after the children.
330. The Henderson Benchmark Family is the family in row 7, ie family in which the non-employed parent does not seek employment and, accordingly, is not eligible for the Newstart allowance. The family at row 7 was not included in the relevant tables in the AFPC's first two decisions, but was added from 2008 following submissions from ACCER. Table 24 shows that the AFPC also included the Newstart allowance in the households at rows 4 and 5.

Table 24

**Extract from the Australian Fair Pay Commission's 2009 comparison of the
disposable income of FMW-dependent households with
Henderson Poverty Lines and 60% Median Disposable Income Poverty Lines
December 2008**

(\$ per week, unless otherwise indicated)

Household type	Disposable Income (DI) (\$pw)	Henderson Poverty Line (HPL) (\$pw)	DI as proportion of HPL	60% median Poverty Line (PL) (\$pw)	DI as proportion of PL
1. Single adult, no children	494.44	415.06	1.19	421.40	1.17
2. Single parent, one child	707.42	532.86	1.33	547.81	1.29
3. Single parent, two children	796.25	644.97	1.23	674.23	1.18
4. Single-earner couple, no children (Includes Newstart allowance for second person)	657.43	555.24	1.18	632.09	1.04
5. Single-earner couple, one child (Includes Newstart allowance for second parent)	808.38	667.42	1.21	758.51	1.07
6. Single-earner couple, two children (Includes Newstart allowance for second parent)	899.37	779.61	1.15	884.93	1.02
7. Single-earner couple, two children (No Newstart allowance for second parent)	796.25	779.61	1.02	884.93	0.90
8. Dual-earner couple, no children	706.44	633.75	1.11	632.09	1.12
9. Dual-earner couple, one child	819.87	745.93	1.10	758.51	1.08
10. Dual-earner couple, two children	909.36	858.12	1.06	884.93	1.03

The table is adapted from Tables 5 and 6 of the AFPC's 2009 Decision. The following footnotes are extracted from the footnotes to those tables.

Source: AFPCS modelling; ABS, *Household Income and Income Distribution, Australia*, 2005–06, Catalogue No. 6523.0, Canberra, ABS, 2007; and Melbourne Institute of Applied Economic and Social Research, *Poverty Lines: Australia*, December Quarter 2008, University of Melbourne, 8 April 2009.

Assumptions:

FMW = \$543.78 per week. Tax/transfer parameters as at 31 December 2008. Children aged 8–12. Households paying sufficient rent to receive maximum rent assistance, where applicable. [Non-employed partner of] couples on 100 per cent FMW eligible to receive Newstart Allowance, unless otherwise specified. Dual-earner examples assume income is split 2:1.

HPLs include housing costs and dual-earner figures include additional 'cost of work' component of \$78.51 per week.

PLs are based on estimates of median equivalised household disposable income for 2005–06, updated for movements in household disposable income per head as calculated by Melbourne Institute, and adjusted for household composition using modified OECD equivalence scale.

331. There are, however, three aspects of these comparisons that we have concerns about, which we developed in Chapter 4: the discrepancy between the equivalence scales used in the two measure of poverty; unrealistic housing costs in the HPLs and the absence of child care from the HPLs.
332. The advantage of a comparison of the kind in Table 24 is that it conveniently brings together data on benchmarks, which vary from household to household, the relative impact of taxes and transfer payments across those households and the impact that a single wage rate has on a range of circumstances in which NMW-dependent workers find themselves. The NMW has a differential impact on the living standards of various kinds of households and will continue to do so for as long as government transfers do not meet the needs of those or are dependent upon low paid workers.
333. We urge FWA to produce a similar table to Table 24, or tables that are similar to the AFPC's own tables.
334. Table 24 provides summary answers to two of the five questions posed by Mr Costigan: it shows the relevant poverty lines and compares them with the NMW. However, as we explained in Chapter 4, the situation of low income families is much worse than the AFPC's figures suggested.

E. How does the NMW compare to the poverty line?

335. In Chapter 4 we compared the HPLs and the relative poverty lines with the disposable incomes of NMW-dependant workers and their families in the light of evidence that was not available to the AFPC and evidence which was not used by the AFPC (ie in regard to housing costs). Chapter 4, especially at sections I and J, makes it clear that families with children are living below and close to the poverty line, whether the poverty line is the HPL or the 60% of median poverty line. The NMW-dependent family of a couple and two children is in deep poverty. It is unnecessary to repeat those matters.
336. While we have provided detailed calculations of the positions of workers and their families relative to their poverty lines, we stress that this is not a mere arithmetical exercise. In the end, FWA has to make a broader judgment, based on fairness and

the consideration of the variety of matters specified in the minimum wages objective in the legislation. We refer again to a passage in the AFPC's first decision where the tribunal referred to the various submissions made to it and said, without any reservation:

"There is general agreement that minimum wages should, in combination with cash transfers, provide an income 'well above poverty'. The Commission's modelling shows that this is indeed the case for a variety of family types and commonly used definitions of poverty." (*Wage-Setting Decision October 2006*, page 96.)

337. We agree with this view. While the calculations of poverty lines require some rigour, the judgment concerns the setting of a level well above those lines.

F. What are the needs of the low paid?

338. The needs of the low paid may be described in broad or qualitative terms, such as: the need to live in modest comfort, to live with dignity, to receive a living wage, and to live without poverty. These are legitimate considerations in assessing needs, but they depend on measurable economic assessments. The statutory obligation to have regard to the needs of the low paid requires that close attention be given to quantifying the economic needs of the low paid, upon which these kinds of qualitative outcomes depend. Similarly, the obligation to take into account relative living standards requires measurable economic comparisons. The HPLs, with modifications, and the relative poverty lines are useful as measures of need and of relative living standards. However, more is available.

Social Policy Research Centre Budget Standards research

339. The best evidence in Australia about the needs of low income families is in the Budget Standards research of the SPRC. Before explaining this research and how we rely on it, we note that in its decision in the *Annual Wage Review 2009-10* FWA concluded :

"[243] There was support among a number of parties for the view expressed by the Australian Social Inclusion Board that, for the low paid, the "... level of income needs to be of a standard to enable all workers to live in dignity".¹⁷¹ While the concept of living with dignity has a long provenance in Australian wage fixing, it is difficult to translate it into a specific monetary amount. We were presented with little evidence as to what this amount should

be. We were not persuaded that updated measures of Budget Standards derived from the mid 1990s could provide us with useful guidance."

We return to this aspect later, but we note at this point that the basis of the rejection was not explained, save for the suggestion in this passage that material from the mid 1990s would be out of date. As we have discussed, the HPLs, on which the AFPC put such emphasis, were based on research in the 1960s and early 1970s.

340. In the *Safety Net Review Case 2004* the Australian Council of Trade Unions (ACTU) presented evidence from the SPRC on the costs of living for low income Australians in support of its application for an increase in safety net rates. Although the evidence was not relied on in that case, the potential capacity of the research in wage-setting decisions was demonstrated.
341. The SPRC research was initially commissioned in 1995 by the Department of Family and Community Services. It identified two standards of living. The Low Cost budget had been developed as a standard for unemployed families and for social security purposes. The Modest but Adequate budget seeks to describe the situation of a household whose standard of living falls somewhere around the median standard of living within the Australian community taken as a whole. The original budgets were developed for households in Sydney over the period 1995 to 1998 and prices were set at February 1997 prices.
342. Each budget comprises a detailed list of goods and services for a number of households. Professor Saunders' comprehensive paper in support of the ACTU's case in 2004, *Updated Budget Standard Estimates for Australian Working Families in September 2003*, includes 26 pages of detailed items, grouped under a series of headings. Last year we attached four pages from the Low Cost food budget and, in effect, put a challenge to the other parties:

"We submit that the figures in the Attachment are credible. Taking the family of four, is it reasonably arguable that the real costs of any of the cost categories other than housing are less than those shown? Does anyone argue that this food budget is more than is needed? This is a very frugal budget. Penny-pinching will not change this conclusion. The budget and the food budget in particular are reminiscent of what was said by the Poverty Commission when describing the poverty line. It fixed the HPLs at an "austere low level". It said that it did this so that "It cannot seriously be argued that those below this austere line, whom we describe as 'very poor',

are not so.” (*Poverty Report, First Main Report*, page 13.)” ACCER submission, March 2010, paragraph 307)

343. No party took issue with the budget, although ACOSS said that, with the passage of time, it needed to be updated:

"The main advantages of this approach are its transparency (the budgets and the items comprising them are readily understood) and its adaptability (the budgets can easily be changed in the event of disagreement over any item). The main problems include reliance on the judgement of experts as to which items should be included, and the need to update them from time to time to reflect changes in what constitutes a 'basic' living standard. As this has not been done since these Budget Standards were developed in 1996, they would now be out of line with (that is, below) current community expectations of a decent living standard." (ACOSS submission, March 2010, page 17, footnote omitted.)

344. In Table 25 we have extracted the first four items of the Low Cost food budget for a family of two adults and two children, a girl aged 6 and a boy aged 14, to illustrate the detail in the budget.

Table 25
Extract from SPRC Low Cost Budget

Low Cost Food Budget for Couple with Two Children										
	Serving unit	Grams per serve	Girl aged 6 Serves per week	Cost (\$ per week)	Boy aged 14 Serves per week	Cost (\$ per week)	Woman aged 35 Serves per week	Cost (\$ per week)	Man aged 40 Serves per week	Cost (\$ per week)
Cereals										
Boiled rice	½ cup	80	1.3	0.11	1.6	0.13	1.9	0.15	1.7	0.14
Bread roll	½ roll	30					3.8	1.48	6.7	2.56
Bread sliced	1 slice	30	25.1	1.70	35.8	2.43	26.9	1.83	40.7	2.76
Breakfast cereal	2 bix	30	15.1	1.16	16.8	1.29	15.4	1.18	15.5	1.19

345. The SPRC Low Cost budget is not a budget based on the circumstances of the household of a wage earner. Professor Saunders wrote in his paper:

“Thus, while the arguments are by no means clear-cut, the SPRC low cost standard is too low for use in setting minimum wages and the modest but adequate standard is probably too high. However, in general which precise point to choose on the continuum that separates the two standards is a complex decision that involves judgment.” (Page 5)

346. Professor Saunders referred to the transparency of the assumptions and judgments and argued that they provide the basis for an informed debate:

“The most important strength of the budget standards approach is that the method confronts directly the many difficult issues that have to be faced when developing any kind of adequacy standard. The method involves identifying what needs have to be met in order to maintain a given standard of living, what items will meet those needs, and at what cost. This is a complex and formidable task, but one that has to be confronted in order to put a monetary figure on a particular standard of living. The fact that this requires judgements to be made which many will dispute reflects the inherent difficulties associated with obtaining quantitative measures of the standard of living, rather than any fundamental objection to the notion of a budget standard itself.” (Page 9)

347. In 2004 the AIRC discussed the evidence and concluded that it could not accept the material as providing the basis for an Australian benchmark:

"We agree with the submissions of the Commonwealth, ACCI and other parties opposed to the ACTU's applications that there are significant difficulties in adopting the SPRC budget standards as an Australian benchmark. There is substance in a number of ACCI's criticisms of the SPRC budget standards. As noted earlier, the housing component of the budget, based as it is on the cost of rental in the Hurstville area of Sydney, cannot be generalised across Australia. Further, the very construction of the budgets ultimately turns on value judgments. ACOSS's submissions candidly acknowledged the deficiencies of the SPRC budget standards. On the material presently before the Commission, we do not think that we can responsibly attempt to establish such a benchmark.

Nevertheless, in our opinion, the SPRC budget standards provide an indication that for certain household types, the federal minimum wage is significantly below the amount which is necessary to provide a modest living standard for those households in the context of living standards generally prevailing in the Australian community.” (*Safety Net Review Case 2004*, paragraphs 284-5.)

348. The level of housing costs was the principal reason, or at least a major reason, for the AIRC's reluctance to adopt the SPRC material. Housing costs in the Low Cost budget for a family of two adults and two children were estimated at \$221.80 per week in September 2003. We now know that the average rental costs of the relevant group of low income families entitled to rent assistance was \$184.00 per week in June 2003 (*Year Book Australia, 2004* Table 8.21 and Table 14 of this submission). This kind of information was not before the AIRC. These figures

support the AIRC's conclusion about housing costs; but we now have a means of rectifying this matter.

349. There were other criticisms of the SPRC material in 2004. The AIRC raised the issue of value judgments being made in the compilation of the budgets. Professor Saunders had explained (in the above quote from page 9 of his paper) that judgments need to be made, but pointed out their transparency. We accept that where research such as the budget standards is used in cases such as these there should be an opportunity for interested parties to question and contest its value judgments. But the making of value judgments is legitimate in this process, and not a reason for the rejection of this kind of material. For example, whether the cost of children's books be taken into account is an issue that involves a value judgment. We presume that no one would argue that the wages for low income families need not take into account books for the children.
350. In a system that is directed at an ultimate value judgment, the setting a *fair* wage, how can it be said that value judgments about the food, clothing and educational needs of children are impermissible value judgments? The strength of the budget standards approach is that it enables these matters to be identified, discussed and judgments made. FWA has the capacity to have these issues ventilated and determined, either in an inquiry or through a structured research program involving interested parties. In such a forum or process the parties who have an interest in the matter can, and should, raise their concerns in advance of the research being conducted. This is not a case where parties should be allowed to hold their fire until research has been conducted.

Updated SPRC research

351. In Table 26 we have updated a table used in the SPRC evidence to the *Safety Net Review Case 2004* so that it takes into take account of CPI increases from the September Quarter 2003 to the December Quarter 2010. The same percentage has been applied to each item, as was done in the *Safety Net Review Case 2004*. Adjustments have not been made to each section in accordance with the movements in the relevant parts of the CPI. In 2004 Professor Saunders calculated that the

separate adjustment of the main components would have produced a figure only 1.4% below the figure used.

Table 26
Updated Low Cost and Modest but Adequate Budget Standards, December 2010
(\$ per week)

	Family/ household type:				
	Single Female	Single Male	Couple, without children	Couple plus girl aged 6 (G6)	Couple plus G 6 and B 14
	<i>Modest but Adequate</i>				
Housing	202.52	202.52	202.52	245.66	288.91
Energy	11.28	11.28	14.71	18.87	22.42
Food	73.27	88.10	160.38	205.95	282.41
Clothing & footwear	34.67	26.34	52.19	72.04	86.26
Household goods & services	43.62	43.62	4.29	70.45	59.67
Health	6.37	9.44	15.56	19.85	23.16
Transport	109.53	109.17	122.89	126.81	130.73
Leisure	40.56	46.92	79.15	84.05	124.98
Personal care	32.46	14.34	40.68	43.62	45.09
Total	554.27	551.72	692.37	887.31	1063.61
	<i>Low Cost</i>				
Housing	176.18	178.64	178.64	225.19	271.75
Energy	10.41	10.54	13.97	16.78	19.48
Food	69.11	70.21	126.57	161.73	222.99
Clothing & footwear	20.46	20.83	46.92	59.55	75.10
Household goods & services	34.18	34.79	43.49	55.75	85.27
Health	5.88	6.13	10.54	13.60	16.30
Transport	81.84	83.31	94.34	101.45	101.45
Leisure	28.30	28.80	36.02	43.49	53.91
Personal care	7.85	7.96	17.64	18.62	22.05
Total	434.22	441.20	568.13	696.15	868.31

352. Needs based measures can be adjusted by reference to changes in average household disposable income, as is the case with the HPLs, or by changes in the CPI. Since the establishment of the two budgets Australian household incomes have increased by substantially more than the CPI. Professor Saunders referred in his 2004 paper to the need to re-construct budgets after a period of time so that they reflect prevailing judgments, community standards and expenditure patters and said that at that the time limit for applying a simple price adjustment was "close"

(page 26). Clearly some time has passed since then. We have used CPI adjusted figures in this section, mindful of that comment. However, given that the community standards have increased, a re-construction can be expected to raise the budgets, not lower them. Our adjustments are, therefore, conservative.

353. Table 26 has the Low Cost budget for the family of four at \$868.31 per week, including housing costs of \$271.75 per week. This item does not include energy costs which are separately calculated. Unlike the position in the 2004 Safety Net Review case, we have a figure that is a sound estimate of housing costs. In Table 14 we estimated that the rents paid by low income families at December 2010 was \$280.82 per week, slightly more than the Low Cost figure of \$271.75. This produces a Low Cost budget of \$877.38. However, if we deducted the maximum rental assistance from the cost of housing, this total figure would fall by \$67.62 to \$809.76 per week.
354. Table 26 enables a comparison to be made between the costs of the identified kinds of households. The Low Cost budget for the family of two adults and two children is almost double the average budget for the single male and the single female; the average is \$437.71. (It is 1.98 times, falling almost halfway between the HPL and modified OECD equivalence scales discussed earlier.) In dollar terms, the difference is \$430.60 per week, much more than the level of family payments available to the family. The substance of this conclusion does not change if we make one or both of the changes referred to in the previous paragraph. This is another illustration of the inappropriateness of the single person test in setting wage rates.
355. In making a comparison between the family of four in our earlier calculations it should be noted that the ages of the children are different; previously both were aged between 8 and 12, here a girl six and a boy 14. We will assume that the costs are the same. However, family payments for the SPRC family are slightly higher than the family in the earlier tables. The 14 year old attracts a further \$24.08 per week (Table 11), bringing the disposable income of his NMW-dependent family to \$796.95 per week.

356. The updated and revised Low Cost budget of \$809.76 per week (with housing costs reduced by rental assistance) is to be compared with the disposable income of \$772.87 (see Table 12).
357. In addition to that gap, it is necessary to provide a substantial margin above the Low Cost budget. The Low Cost budget is a reference point, not a standard, and the NMW should provide a standard of living "well above" that level. Our upward revision of the Low Cost budget has been conservative because it is based on CPI increases and does not reflect rising living standards. A revised calculation is likely to be significantly higher.

Budget standards are part of the mix of factors to be considered

358. ACCER submits that the SPRC Low Cost budget is the best evidence available for the purpose of identifying a *bare* minimum standard of socially perceived necessities in Australia today. We accept that this material has limitations in regard to its capacity to provide a *benchmark* for wage-setting, but they are limitations that can be overcome if FWA is prepared to provide direction on further research.
359. The SPRC's budget standards research has both credibility and acceptance because of its transparency and the underlying research. It is, for example, the basis of the *Westpac-ASFA Retirement Standard* which is used to provide advice about living costs to workers, retirees and financial advisers. Budget standards research has been developed in other countries to inform and guide a range of policy and decision-making.
360. The research has been used in Australia to assist in the formulation of policy on the Child Care Support scheme. Research on the costs of children is found in a report entitled *Costs of children: research commissioned by the Ministerial Taskforce on Child Support*, published by the Department of Families, Community Services and Indigenous Affairs in 2007. The publication contains three separate reports. The Chair of the Taskforce, Professor Patrick Robinson, is a Professor of Law at Sydney University and Chairperson of the Family Law Council of Australia. The Foreword of the report, written by Professor Robinson, includes the following commentary:

“The Taskforce utilised three different methodologies to reach the best and most up-to-date estimates possible of the costs of children in Australian families. The Household Expenditure Survey was used to examine actual patterns of expenditure on children. The Budget Standards approach was utilised to assess how much parents would need to spend to give children a specific standard of living, taking account of differences in housing costs all over Australia. A review was also done of all previous Australian and international research on the costs of children, so that the outcomes of these two studies could be compared with previous research findings.

A consistent theme running through each report is that there are no definitive costs of children. Various methodologies for estimating expenditure on children exist, and each produces a different result. Establishing a robust and defensible overall estimate, therefore, involves the exercise of judgement by experts, using the best available evidence. I am confident there is no better evidence on the costs of children in 21st century Australia than that used by the Taskforce, and presented in this paper.”

361. This makes it clear that the budget standards research cannot be dismissed, certainly not on the basis that it arose out of research in the mid 1990s.
362. The costs of children are a central concern in a range of areas where policy formulation and decision-making require sound research on the costs of children; for example, the costs of foster parents who are caring for children in protection and family law decisions dealing with child maintenance. There is no justification for excluding budget standards material from the mix of matters that are relevant to the proper consideration needs of workers with family responsibilities when setting safety net wages.
363. We do not claim that budget standards evidence can operate to the exclusion of other measures of needs and living standards. We are confident that the SPRC research will provide strong decision-making guidance if FWA permits a testing debate on, and gives full consideration to, this research.
364. We submit that FWA should make or facilitate arrangements for the further review of the SPRC budget standards research in order to address the proper concerns of the parties to the Annual Wage Review.

Chapter 6 Conclusions and orders sought

A. Introduction	365
B. Errors in FWA's 2010 decision	401
C. ACCER's claim	436
D. The first part: \$16.60 per week	442
E. The second part: CPI increases	474
F. FWA inquiry and research into the needs of the low paid	477

365. ACCER's main objective in this and past annual wage reviews has been the increased support of families through the wage packet because we know that employment in work which pays a decent wage will promote the proper care of children, the stability of families, social inclusion and social cohesion.
366. Better wages and other conditions of employment are necessary if we are to deal with the unacceptable degree of family and social dysfunction that we now have in Australia. This goal is complementary to, and not inconsistent with, prudential economic management and the strengthening of employment opportunities.
367. The impact that wage policies have on families, on children in particular, is one that cannot be ignored or glossed over. A precondition for social inclusion is a decent wage. Family payments by the Commonwealth do not, and are not intended to, provide for all of the needs of workers' dependents. The notion that wages should be set by reference only to the needs of a single person without family responsibilities, ie without regard to a worker's obligations to his or her children, has no part to play in the *current* Australian wage-setting system.
368. A major part of this submission is concerned with a detailed analysis of the way in which the setting of safety net wages over the past decade has failed low paid workers and their families. Safety net-dependent workers, who comprise about one-sixth of the Australian workforce, rely on safety net wages because they do not have the ability to bargain for higher rates of pay. Low paid workers who are dependent on safety net wages have seen a substantial decline in their wages relative to wages in the rest of the community. Furthermore, many safety net-dependent workers have had increases of less than the rate of inflation.
369. Another major part of this submission is concerned with quantifying the needs of low paid workers and their families. The NMW and other low wage rates have

become poverty wages for low income working families. Safety net wages have failed to provide a true safety net.

370. The nature and purpose of a safety net is to provide an acceptable standard of living. It should be "well above poverty" and sufficient to meet the needs of low paid workers, including those with family responsibilities. It should enable them to live in dignity.
371. The safety net does not have to cover exceptional cases, but it must cover ordinary and foreseeable cases and circumstances. The wage has to be sufficient to cover a family of two adults and two children, where the second parent stays at home to care for the children, and to cover a sole parent with two children, where the parent will necessarily incur child care expenses. It would not be acceptable to set a wage that is sufficient for one of these families, but not for the other. Both are within the ordinary and expected scope of a safety net. The fact that some low paid workers have lower costs because they live in wealthier households does not justify any reduction in the safety net for those who do not have those resources. Nor should the level of a wage safety net be reduced if only a small proportion of the workforce rely on it.

Wage-setting has failed low paid workers and their families

372. We showed in Chapter 4 that the safety net wages system has failed low paid workers and their families, by
- failing to maintain their living standards relative to the rest of the community;
 - causing real wages to fall for a large proportion of safety net workers; and
 - allowing the incomes of some low paid workers and their families to fall below the poverty line.
373. We have demonstrated the unfairness of the wage-setting system on all safety net workers. The higher the safety net wage rate, the greater has been the departure from community wage movements over the past decade. However, our top priority are those workers who earn less than about \$100 per week above the NMW. Generally, these workers are not union members with access to collective bargaining.

374. The loss of wages relative to the rest of the community is illustrated in Table 27. It summarises the changes from December 2000 to December 2010 for a single person without dependants, a family of two adults and two children and a family of one adult and two children, under three different wage levels: the NMW, a safety net rate that was \$500.00 per week in 2000, and average weekly ordinary times earnings as measured by the ABS's AWOTE series. The \$500.00 safety net wage has risen to \$570.88 per week because of safety net adjustments. The two children are in the 8 to 12 age group.

Table 27
Relative losses of Safety Net-dependent Workers and their Families
2000-2010

Household	Disposable Income 2000	Disposable income 2010	Increase in gross wage	Increase in Disposable Income
NMW single	\$346.38	521.86	42.3%	50.7%
NMW 2+2	\$503.37	772.87	42.3%	53.5%
NMW 1+2	\$503.37	772.87	42.3%	53.5%
\$100 over NMW Single	412.39	671.30	34.3%	46.1%
\$100 over NMW 2+2	570.88	854.81	34.3%	49.7%
\$100 over NMW 1+2	570.88	854.81	34.3%	49.7%
AWOTE Single	\$616.48	48.1%	59.3%	61.6%
AWOTE 2+2	\$688.65	1188.23	59.3%	72.5%
AWOTE 1+2	\$688.65	1188.23	59.3%	72.5%

The figures are drawn from Tables 8 and 12. The family transfers to couple parent and sole parent families are the same.

375. The changes in wage rates occurred in the context of a decade long increase in the CPI of 32.5%. The different outcomes for single workers and workers with family responsibilities are the result of increased family payments, especially for middle income families. Over the decade the gross NMW increased by 42.3%, the net NMW by 50.7% and, for the families, the increase in disposable incomes (net NMW and family payments) was 53.5%. For the average income earner and his or

her family, the increases were 59.3%, 61.6% and 72.5%, respectively. The contrast is even starker when compared to the position of the worker on a rate about \$100.00 per week more than the NMW. The increases were 34.3%, 46.1% and 49.7%, respectively.

376. The relative position of safety net workers worsens as the wage rates increase (see Table 1). Those who are now on a wage over the \$698.00 per week have had a real cut over the decade. Compared to the average weekly ordinary time earnings of \$1,272.50, this is a very modest wage. On the basis of a FWA research report on the distribution of safety net rates (see Chapter 4C, above), we can calculate the proportion of safety net workers who have had a real wage cut. When the survey was conducted in May 2006, the current safety net rate of \$698.00 per week was \$612.72 per week, or \$18.37 per hour. The survey used in the report showed that this wage rate was between the C5 and C6 rates in the series of rates used to distribute safety net workers across the various wage levels. Of the full time adult safety net workers, 38.8% were employed in classifications above that range (see Table 2 of the report).
377. On this material we can say that least 38.8% of this group of about 900,000 workers had a real wage cut. Among adult casuals, 13.4% of about 700,000 workers had a real wage cut (see Table 3 of the report). It was only the increase in family payments for those workers with children that provided any improvement (see Table 12). But this does not remedy the single worker's real wage cut. Of course, workers, and casuals in particular, move from job to job over time, but the point is that the classifications in which people were employed at the end of the decade were worth less in real terms than they were at the start of the decade.
378. None of this takes into account the fact that productivity has increased over the decade. Safety net workers have not received "prices and productivity" increases over this period. With productivity increases in excess of 10% over the decade (see Table 7), not one group of safety net workers has had wage increases equal to prices and productivity over one of the most prosperous decades in Australian history.

379. Increases of not less than prices and productivity should be a fundamental *minimum* objective of a fair wages system. In addition, relative living standards have to be taken into account.

Relative living standards have to be taken into account

380. Our comparison between the standards of living of pensioners and low income working families (at Chapter 4K) showed that the Commonwealth-provided safety net for pensioners provides a higher standard of living than that available to the NMW-dependent family of four. The pension rates were increased in 2009 after a much needed and overdue review of their sufficiency. A pensioner couple now has a disposable income of \$538.05 per week and, without the costs of work, they appear to have a substantially higher standard of living than the working family of four on \$772.87 per week.
381. Our second point in regard to pensions is that under the current arrangements, pensions will increase by no less than the increases in male total average weekly earnings, as measured by the ABS's MTAW series. The decision to link pensions with changes in community average earnings is designed to share the benefits of economic growth and rising living standards and to achieve a degree of social equity. It is a significant and welcome development, but it stands in contrast to the treatment of safety net workers who have not shared in the rising living standards as measured by average weekly earnings (AWOTE and MTAW) over the past decade. If the next decade of wage-setting brings the same kind of outcomes as the past decade, the gap between pensions and safety net wages will widen considerably and demonstrate with even greater clarity the systemic failure in safety net wage-setting.
382. Low paid workers and their families have had their wage increases discounted by reason of tax cuts and increases in family transfer payments (though the amount has not been made explicit in wage-setting decisions) yet, as we have seen from Chapter 4G, the increases in disposable incomes by reason of tax cuts and transfer payments to families have not been targeted at the low paid, and the increase in family benefits over the decade has been greater for higher income earners,

including middle income earners. The better off sections of the community have had greater wage increases, *and* tax cuts *and* increased family benefits.

383. All of these matters are relevant, not just because of social equity and fairness, but because the minimum wage objective in section 284 of the F W Act requires that FWA take into account “relative living standards” when setting wages.

Low paid workers with family responsibilities have fallen below the poverty line

384. FWA is also required by section 284 of the F W Act to take into account the needs of low paid workers. At the least, workers require a wage that will keep them and their families out of poverty. The inevitable result of the decline in living standards has been that safety net workers with family responsibilities have fallen under the poverty line, or, if not yet in poverty, have moved much closer to the poverty line than they were at the start of the decade.

Henderson Poverty Line

385. The changes over the decade are demonstrated by a comparison between the changes in the HPL and the disposable incomes of safety net-dependent workers. Changes relative to the HPL over the past decade have been substantial. In Table 20 we showed that the HPL benchmark family of two adults and two children has fallen from 2% above their poverty line in December 2000, which was unacceptable, to 3.8% below their poverty line in December 2010. Those calculations are based on the HPL's unrealistic estimate of housing costs at \$167.67 per week at 2010. When adjusted for the best estimate of housing costs at December 2010 (\$228.72 per week, and taking into account maximum rental assistance), the family was 7% below poverty (see Table 18). Many others have followed them into poverty.
386. This is the inevitable result of the failure to increase wages to reflect community living standards. Had the NMW wage increased in line with average weekly earnings, as measured by AWOTE, the NMW would now be an extra \$67.94 per week. It represents an average loss of almost \$7.00 per week per year. There is no valid reason for so many workers and their families to have fallen below the poverty line over the past decade.

387. The same decline relative to the poverty line has been experienced by sole parents. They are closer to the poverty line than they were at the start of the decade. Table 27 shows that the income for a family of three and a family of four has been the same over the last decade. The AFPC calculated in each of its decisions that this family of three had a significantly higher margin over poverty than the family of four, but they were based on unrealistic estimates of housing costs in the HPLs and they didn't take into account child care costs. As we have explained in Chapter 4I, the high costs of child care can drive a sole parent and his or her children into poverty and create pressure to adopt latch key or other unsatisfactory child care arrangements. Child care costs must be taken into account.

Relative poverty lines

388. The same parlous state is demonstrated by the relative poverty lines. We know from Table 23 what the current position is in regard to the relative poverty line used by the AFPC, ie 60% of median equivalised household disposable income.
389. On the basis of the ABS data from its 2007-08 survey (*Household Income and Distribution, Australia 2007-08*, cat. no. 6523.0), adjusted by data from the Melbourne Institute (as was done by the AFPC in regard to earlier ABS data), we know that the NMW-dependent family of four was 16% below the poverty line in December 2010 (Tables 22, 23 and 24). Just to get to that poverty line would require an extra \$154.37 per week. This very large amount should not come as a surprise, because, in its 2009 decision, the AFPC found that this family was \$88.68 per week, or 10%, below the relative poverty line in December 2008 (see Table 24). Yet it still imposed a wage freeze on even the lowest of wages. (This comparison is based on the AFPC's practice of including in calculations of disposable income, the maximum amount of Commonwealth rental assistance, a practice with which we do not agree.)
390. When the AFPC started using the 60% of median relative poverty line in 2008, it described the measure as being "the most generous definition of relative poverty commonly used by the OECD and academic researchers" and noted that the 50% of median poverty line was also used as a relative poverty measure (*Wage-Setting Decision and reasons for Decision, July 2008*, page 65). The 50% line is

manifestly too low for working families. If the 50% of median relative poverty line were used (again assuming disposable income included maximum rental assistance), the family would be only 1.4% above it. We accept that the appropriate figure to guide wage-setting may be between the 50% and 60%, but families are clearly well below it at the present time.

SPRC budget standards

391. The best guidance available on the *actual contemporary costs* of low paid workers and their families is found in the budget standards research of the SPRC. At Chapter 5F we modified the SPRC's Low Cost budget (which was designed to cover the needs and circumstances of an unemployed family) in order to take into account changes in prices and current housing costs. The appropriate budget, and standard of living, for a working family would be substantially in excess of this budget. We demonstrated that the NMW-dependent family of four is living on an income that is significantly below the budget that reflects the needs and circumstances of an unemployed family. Any debate about the details of this budget cannot overcome the very substantial gap between the current and acceptable standards of living for low income working families.

The appropriate NMM: doing the best we can

392. Section 284 of the F W Act requires that FWA take into account a number of factors when setting a fair safety net wage. It requires a *fair* safety net wage, not a *bare* safety net wage. In the end, a broad judgment has to be made. So this cannot be a process that turns on the application of an arithmetical formula. Even if we were to discover a precise dollar figure, all of the other factors in section 284(1) will come into play in the decision-making. Benchmarks measuring needs and relative living standards will vary and each will have its own strengths and weaknesses. Any wage-setting tribunal has to do the best it can on the basis of imperfect evidence.
393. Doing the best we can in estimating an *interim* target wage rate (pending further work), we have argued that the NMW should be no less than the base cleaner's rate, which is now \$608.80 per week. We submit that it is supported by the evidence of needs and by reference to relative living standards.

The Australian Family Poverty Line

394. In Chapters 4 and 5 we compared the disposable incomes of NMW-dependent families with two measures of poverty (HPLs and relative poverty lines) and with the SPRC Low Cost budget. At December 2010:

- the HPL (using the latest available figures), after being adjusted for housing costs, was \$903.04 per week;
- the 60% relative poverty line for the family of four was \$994.86 per week and the 50% relative poverty line was \$829.09 per week: and
- the SPRC's Low Cost Budget, after being adjusted for housing costs was \$877.38 per week

395. At December 2010 the disposable income of the family of four was \$840.49 per week, including maximum rental assistance of \$67.62 per week, and \$772.87 per week without rental assistance.

396. The HPLs and the Low Cost Budget identify minimum acceptable standards of living. The AFPC used the 60% median, with a margin. There is no basis for using the 50% relative poverty line. The mid-point between the two measures is \$911.98. We will use that midpoint in these submissions on the basis that it a conservative estimate.

397. The three weekly amounts are \$903.04 (HPL), \$877.38 (Low Cost budget) and \$911.98 (average relative poverty line). The average is \$897.47. For convenience, we will round it to \$897.00. We call this composite poverty line the *Australian Family Poverty Line*.

Are families living in poverty?

398. We have complained in our submission about major parties to the annual wage cases dodging the issue of how much is required for workers with family responsibilities to provide a decent living for themselves and for their families. We submit that FWA should press the other parties to answer questions such as: How much is required to provide a decent standard of living? How much is required to live without poverty? What is the evidentiary basis to your answers to these question?

399. Earlier we quoted former Prime Minister Mr Hawke in regard to the impact of *Rerum Novarum* on Australian industrial relations. In a policy speech during an election campaign in the 1980s Mr Hawke famously said that by 1990 *no child will live in poverty*. He later commented that he might have said that *no child need live in poverty*. Children live in poverty for various reasons. Public institutions have to address issues such as poverty when they arise within the scope of their statutory responsibilities. A wage-setting tribunal is not "an anti-poverty commission", as such.
400. Wage-setting tribunals have an obligation, however, to set a wage that will provide for families and keep them out of poverty in the ordinary and expected cases; and those cases must include families with two dependent children. We submit that FWA has an obligation to ensure that, in these ordinary circumstances, *no child in a working family need live in poverty*. It therefore should ask itself, whether the wages that it sets are sufficient to keep these children out of poverty. It should, given the undeniable importance of this issue, disclose to the readers of its reasons for decision, the conclusion to that question and the evidence and reasoning leading to that conclusion.

B. Errors in FWA's 2010 decision

401. In our submissions to last year's annual wage review we gave some emphasis to the changes in the legislation covering the setting of national safety net wages. In particular, we referred to the statutory obligation on FWA under section 284(1) of the F W Act to set a safety net of *fair* minimum wages, taking into account, amongst others, *relative living standards* and the *needs of the low paid*. But we added:

"We welcome the *Fair Work* reforms to the framework of national wage-setting. As we explain later, the previous system was unsatisfactory. The new legislative framework provides the opportunity to address what we see as significant inadequacies in the wages safety net. Consistent with the concerns of the Bishops [in their November 2005 statement] about *Work Choices*, our judgment on *Fair Work* will depend on whether or not FWA actually sets a fair safety net by reference to the needs of workers and their families and to the living standards generally prevailing in Australia.

Our optimism is tempered, however, by the belief that no progress will be made on behalf of low paid workers and their families unless the major parties to the Annual Wage Review, and FWA, proceed with an enquiring mind. Close attention should be given to questions such as: how much income does the worker and his or her family need to live a decent life? There are no simple answers to that question, but it is the kind of question that must be answered in order to discharge the overriding statutory task to provide a *fair* safety net." (ACCER submission March 2010, paragraphs 26-7, italics in original.)

402. We did not use the term "the overriding statutory task" lightly. We submit that in 2010 FWA did not make its decision consistent with its statutory duty and that it should adopt a different approach to that task in 2011.

403. When it enacted the F W Act, and section 284(1) in particular, Parliament intended that there be a new basis upon which safety net wages would be set. Unlike the position under the repealed *Work Choices* legislation, FWA *must* set fair wages that take into account (amongst others) the needs of the low paid and relative living standards. Section 284(1) provides:

“FWA must establish and maintain a safety net of fair minimum wages, taking into account:

- (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and
- (b) promoting social inclusion through increased workforce participation; and
- (c) relative living standards and the needs of the low paid; and
- (d) the principle of equal remuneration for work of equal or comparable value; and
- (e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.”

404. FWA's consideration of relative living standards and the needs of the low paid in the *Annual Wage Review 2009-10* are at paragraphs [161] to [246] of its Decision ([2010] FWAFB 4000). Paragraphs [161] to [236] recite a range of submissions made by the parties under a number of headings. The conclusions are at paragraphs [237] to [246]. The conclusions fall into four parts: the low paid; relative living standards; the needs of the low paid; and the relationship between minimum wages

and employment levels. The second and third parts of these conclusions are relevant to these submissions.

405. In order to put our submissions about the needs of the low paid we first set out FWA's conclusions on relative living standards. FWA concluded (with emphasis added):

"[239] The parties drew our attention to a range of indicators of relative living standards. These included measures of movements in wages other than award wages, including AWOTE, AWE and the WPI, comparisons between the minimum wage and median earnings, the overall distribution of earnings, the outcomes of enterprise bargaining and international comparisons based on OECD data. None of these directly determines the standard of living of the majority of individual wage earners who live in households with others. *With that qualification, all of these are useful measures of the position of award-reliant employees in relation to employees generally.*

[240] Perhaps the most useful are the AWOTE, AWE and WPI data along with the data relating to enterprise bargaining. They indicate that over the past decade the FMW maintained its position relative to the WPI but lost relativity with other measures of earnings. At higher award classification levels, award rates have declined against each of those measures. *The FMW and all other award wage rates have declined significantly in relative terms since the last general adjustment in 2008.*

[241] Over the last decade, GDP per hour worked rose by 16 per cent and in the market sector it rose by 20 per cent. This compares with the 2.4 per cent growth in the real value of the FMW and falls in the real value of award wages above the C10 rate over the same period. *In the context of productivity growth and increasing community living standards, the maintenance of the real value of award wages alone would not adequately maintain relative living standards. This is one of a number of relevant considerations that we must take into account."*

406. It was in this context that FWA went to deal with the needs of the low paid:

"[242] We agree that minimum wages and the tax/transfer system are both relevant to the maintenance of an effective safety net for the low paid: each has its part to play. Wages play a particularly important role in the maintenance of disposable incomes for households not receiving income support payments.

[243] There was support among a number of parties for the view expressed by the Australian Social Inclusion Board that, for the low paid, the "... level of income needs to be of a standard to enable all workers to live in dignity"[footnote omitted]. While the concept of living with dignity has a

long provenance in Australian wage fixing, it is difficult to translate it into a specific monetary amount. We were presented with little evidence as to what this amount should be. We were not persuaded that updated measures of Budget Standards derived from the mid 1990s could provide us with useful guidance.

[244] Our view is that the low paid need the highest level of wages that is consistent with all other objectives including low unemployment, low inflation and the viability of business enterprises. At the least, this level of wages should enable a full-time wage earner to attain a standard of living that exceeds contemporary indices of poverty. We are open to evidence that there are particular economic developments that are placing unusual and severe strain on the budgets of the low paid."

407. We submit that the first sentence of paragraph [244] discloses an error of law and, more generally, the conclusions on the needs of the low paid demonstrate that FWA has not discharged its duty to take into account the needs of the low paid.

The failure to exercise the statutory duty

408. The legislation requires FWA to take into account the needs of the low paid. In the first sentence of paragraph [244], FWA states that "the low paid need the highest level of wages that is consistent with all other objectives". This is inconsistent with the statutory duty to take into account the needs of the low paid. The duty cannot be performed if the wages are set by reference to what is available after other factors are taken into account. The needs of the low paid are not taken into account unless they are considered and estimated, as best they can be.
409. The approach taken by FWA is, in effect, to re-define needs, so that the need of the low paid is to have as much as is permitted by reference to the other factors. It means, for example, that it wouldn't matter whether workers live in poverty or not, live in dignity or not, or live above or below any other measure of need. Nor would the margin above or below that measure matter. It means that the clear legislative intent in moving away from *Work Choices* to a safety net wage that takes explicit account of the needs of the low paid, has been frustrated.
410. The legislation requires that the wages are set by "taking into account" specified factors. More often legislation of this kind uses the term "having regard to". The law on the duty of a decision-maker who has to have regard to a number of factors

in coming to a decision was summarised by a Full Court of the Federal Court of Australia in December 2010 in *Minister for Immigration and Citizenship v Khadgi* [2010] FCAFC 145. The following appears under the heading "The Relevant Principles".

- "57 Section 109(1)(c) of the Act obliges the Tribunal to "have regard to" the prescribed circumstances set out in reg 2.41. The consideration of those prescribed circumstances is thus a jurisdictional prerequisite to the exercise of the Ministerial discretion to cancel a visa under s 109. In order to comply with that prerequisite, the decision-maker must engage in what has been described as "an active intellectual process" in which each of the prescribed circumstances receives his or her "genuine" consideration: *Tickner* [*Tickner v Chapman* (1995) 57 FCR 451] at 462 (per Black CJ) and *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 [105] (p 540) (per Gleeson CJ and Gummow J).
58. In the absence of any statutory or contextual indication of the weight to be given to factors to which a decision-maker must have regard, it is generally for him or her to determine the appropriate weight to be given to them: *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* 1984 HCA 40; (1986) 162 CLR 24 at 41 (per Mason J). The failure to give any weight to a factor to which a decision-maker is bound to have regard in circumstances where that factor is of great importance in the particular case may support an inference that the decision-maker did not have regard to that factor at all.
59. Similarly, a decision-maker does not take into account a consideration that he or she must take into account if he or she simply dismisses it as irrelevant. On the other hand, it does not follow that a decision-maker who genuinely considers a factor only to dismiss it as having no application or significance in the circumstances of the particular case will have committed an error. A decision-maker is entitled to be brief in his or her consideration of a matter which has little or no practical relevance to the circumstances of a particular case. A court would not necessarily infer from the failure of a decision-maker to expressly refer to such a matter in its reasons for decision that the matter had been overlooked. But if it is apparent that the particular matter has been given cursory consideration only so that it may simply be cast aside, despite its apparent relevance, then it may be inferred that the matter has not in fact been taken into account in arriving at the relevant decision: *Elias v Commissioner of Taxation* [2002] FCA 485; (2002) 123 FCR 499 at [62] (p 512) (per Hely J). Whether that inference should be drawn will depend on the circumstances of the particular case.
60. In some cases it may be apparent that amongst the factors to which a decision-maker is bound to have regard, there is one factor (or perhaps

more than one) which is critical or fundamental to the making of the decision in question. This was true of the particular matter referred to by Mason J in *The Queen v Toohey; Ex Parte Meneling Station Pty Ltd* [1982] HCA 69; (1982) 158 CLR 327 at 338. As his Honour's reasons in *The Queen v Hunt; Ex Parte Sean Investments Pty Ltd* [1979] HCA 32; (1979) 180 CLR 32 at 329 show, the relevant statutory provisions may make clear that a particular factor is "*a fundamental matter for consideration*". But the converse is also true. The relevant statutory provisions may show that a particular matter to which a decision-maker must have regard is not fundamental to the decision-making process in the sense discussed by his Honour: see, for example, *Singh v Minister for Immigration and Multicultural Affairs* [2001] FCA 389; (2001) 109 FCR 152 at [57] (p 164) (per Sackville J).

61. We respectfully agree with Sackville J in *Singh* where his Honour pointed out that the expression "*have regard to*" is capable of different meanings depending on its context. As his Honour said at [54] (p 163):

".... a statutory obligation to have regard to specified matters when making an administrative decision may require the decision-maker to take the matters into account and "give weight to them as a fundamental element in making his [or her] determination": *R v Hunt; Ex parte Sean Investments Pty Ltd* [1979] HCA 32; (1979) 180 CLR 329 at 329 per Mason J. Indeed, this is the meaning that was given to the predecessor of s 501(6)(c) of the *Migration Act* (relating to the character test): *Minister for Immigration and Ethnic Affairs v Baker* (1997) 73 FCR 187 at 194. But the phrase "have regard to" can simply mean to give consideration to something (*Shorter Oxford English Dictionary*). In this sense a direction to a decision-maker to have regard to certain factors may require him or her merely to consider them, rather than treat them as fundamental elements in the decision-making process."

62. In our opinion, the prescribed circumstances to which the Minister must have regard in the present case are of the latter kind. There are 10 different criteria that are prescribed by reg 2.41 for the purposes of s 109(1)(c) of the Act. It is hard to see why a decision-maker should be required to treat each and every one of them as fundamental for the purposes of s 109. Although the Minister must have regard to each and every one of the prescribed circumstances, not all of them will be central or fundamental to every case in which the Minister is called upon to make a decision under s 109(1) of the Act.
63. In *Lafu v Minister for Immigration and Citizenship* (2009) 112 ALD 1, at [47]–[54] (pp 7–8), the Full Court held:

"(a) In circumstances where a decision-maker is required to have regard to several specified or prescribed mandatory considerations,

he or she must genuinely have regard to each and every one of those considerations and must engage actively and intellectually with each and every one of those considerations by thinking about each of them and by determining how and to what extent (if at all) each of those criteria might feed into the deliberative process and the ultimate decision; and

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

"... meant to inform and [are] not to be scrutinised by over-zealous judicial review by seeking to discern whether some inadequacy may be gleaned from the way in which the reasons are expressed [see *Minister for Immigration and Ethnic Affairs v Liang* [1986] HCA 6; (1986) 185 CLR 259 at 272." "

411. ACCER submits that the obligation to take into account the needs of the low paid is “a fundamental matter for consideration” in the setting of fair safety net wages under section 284(1), and that the statutory is not discharged by treating it as the consequence of the application of the other matters in section 284(1), as is indicated in the first sentence of paragraph [244]. Because the wage safety net is, by its very nature, based on the protection of people with needs, the proper consideration of those needs must be a fundamental element in the decision-making process. The use of the term “taking into account” rather than the more “having regard to” adds emphasis to this.

412. FWA came back to the question of needs in announcing its decision:

"[337] With some hesitation we have decided on a dollar increase. There are two reasons. The first is that to the extent there is a choice between a percentage increase benefiting the higher levels and a dollar amount benefiting the lower levels we think that the current circumstances favour a greater benefit for the lowest paid. We are required in particular to take the needs of the low paid into account. In light of the fact that award-reliant employees have not had an increase in wages since 2008, it is desirable that we increase award rates by the largest amount consistent with the statutory criteria. Secondly, we have very little data concerning the impact of a percentage increase on costs and employment. We have insufficient information to be confident that a percentage increase would not have disproportionate effects on employment at the higher award levels. Nevertheless in the Annual Wage Review 2010-11 we expect to be addressed on the issues we have raised and to be provided with relevant data, including

cost estimates. We return to next year's review in a later chapter dealing with research."

413. The conclusion shows that FWA treated the consideration of the needs of the low paid as sufficiently discharged by the granting of a dollar amount, which would have greater relative value to the low paid. It set that amount by the largest amount "consistent with the statutory criteria". This is consistent with its position as stated in the first sentence of paragraph [244]. We submit that a proper consideration of needs of the low paid would raise for active consideration whether the increase in the lowest wage classification should be more than the increase for the higher paid, but still low paid, classifications. In the current review we have claimed a further increase for the lowest paid, based on their needs. We submit that FWA, on the proper examination of needs, has to determine if a further amount should be awarded to the lowest paid, ie workers on the NMW or an equivalent award rate.
414. Furthermore, section 284(1) of its nature requires FWA to engage in what has been described as "an active intellectual process" in which each of the prescribed circumstances receives "genuine" consideration. The last case mentioned in the extract from the judgment of the Full Court, *Lafu v Minister for Immigration and Citizenship*, contains, we submit, the requirements of decision-making under section 284(1): FWA must "genuinely have regard to each and every one of those considerations [in section 284(1)] and must engage actively and intellectually with each and every one of those considerations by thinking about each of them and by determining how and to what extent (if at all) each of those criteria might feed into the deliberative process and the ultimate decision". This requires more than a recitation of matters put by the parties. It requires a manifest testing of the arguments and material advanced.
415. *Lafu v Minister for Immigration and Citizenship* also emphasises another aspect of section 284(1). We submit that there is an obligation on FWA, as a decision-maker who is obliged to have regard to mandatory considerations, to show through its reasons for decision "an active intellectual engagement with all mandatory criteria".

416. The obligation to expose the reasoning on matters of substantive importance which comes from the nature of the statutory task is emphasised by the general obligation on FWA under section 577 of the F W Act:

"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."

417. ACCER submits that FWA is obliged to state the basis upon which it makes its decisions in an open and transparent way that would enable the public to know how it came to its decision. The fact that a decision is necessarily based on a range of factors does not justify opaqueness on critical parts of its decision.
418. There is a clear public interest in the public knowing how FWA arrived at its decisions. First and foremost low paid worker have a vital interest in knowing how FWA came to its decision about *their* needs. Many others also have an interest in this information; for example, employers, government, economic commentators and editorial writers. An explanation is also needed because the review of wages is an ongoing process. Those who represent or advocate for low paid workers are entitled to know what FWA has concluded about significant issues so that they can identify contentious issues and evidentiary matters and better prepare material for the future. If evidence about the living costs is rejected, the basis for that rejection should be disclosed so that the shortcomings in that material can be addressed and other evidence can be obtained.

Second sentence of paragraph [244]

419. The second sentence reads: "At the least, this level of wages should enable a full-time wage earner to attain a standard of living that exceeds contemporary indices of poverty."
420. This sentence raises questions that are not answered. The way in which "should" is used is not clear. On one view, it means that the wages (which would include the NMW) are now above poverty levels. On another view, it means that, if this course of wage-adjustment is pursued over time, that result will be achieved. There is nothing in the decision to indicate whether FWA has found that groups of workers

are living under or above the poverty line. ACCER presented evidence last year (and again this year) that some NMW-dependent families, and others on higher safety net wages, are living in poverty. This is a matter that FWA should clarify.

421. Paragraph [242] refers to the "full-time wage earner's standard of living". This view appears to be based on matters referred to in the earlier part of the reasons for decision: transfer payments to working families. It appears that FWA has taken transfer payments into account, but it has not disclosed what transfer payments it has taken into account. This is a matter of some importance because there may be some contention about some of these items. We referred earlier to the AFPC's practice of using the maximum rental assistance in its calculations and its contentious practice of including the Newstart allowance in the income of the stay at home parent in the two-parent family. These are basic matters that need to be disclosed because of their impact on the estimates of the wage that is necessary to avoid poverty and to achieve a minimum acceptable standard of living.
422. The second sentence of paragraph [244] also refers to "contemporary indices of poverty" without disclosing what they are and how they are constructed. The reference in the earlier paragraphs of the decision under the heading "Living standard benchmarks and measurements" (at paragraphs [215]-[228]) Various views were advanced by the parties on benchmarks and poverty lines, but there is no indication of what are the contemporary indices of poverty. ACCER was critical of aspects of the HPLs, but argued that its concerns could be addressed through a "prudent application" of the HPLs (March 20010 submissions at paragraph 173) and updated the 60% relative poverty line. We do not know if they are within the scope of the "contemporary indices of poverty".
423. In order to know whether wage earners and their dependents are above the poverty line it is necessary to know which poverty lines are being referred to and how they have been calculated. They may be contentious. This is important on an ongoing basis because it enables the parties to question, review and address those reference points.
424. There is also a legitimate public interest matter in this aspect. The public should know which indices of poverty are being used and which transfer payments are

being included in the calculations to determine where a working family falls in comparison with the poverty line. How the public and various interest groups view a safety net wage decision by FWA will depend on whether, for example, families are found to be \$50.00 per week below the poverty line or \$50.00 per week above the poverty line. This highlights the difficulty with the view that wage increases should be determined by what is available after taking into account other factors: by that approach it would not matter whether a worker and his or her family is above or below the poverty line, by a large margin or a small margin.

The needs of workers with family responsibilities

425. We should note that it appears implicit in the passages referred to that FWA has taken into account the needs of workers with family responsibilities and has not adopted a single person criteria for the calculation of needs. In paragraph [243] FWA appears to have accepted the legitimacy of the objective that "the level of income needs to be of a standard to enable all workers to live in dignity". We submit that, for a worker to live in dignity, his or her dependants must also live in dignity. We also take it that the reference to the wage earner's standard of living in paragraph [244] is a reference to the wage earner with family responsibilities, and not a wage earner without dependents.

Third sentence of paragraph [224]

426. The third sentence of paragraph [224] refers to the openness of FWA to the consideration of "evidence are particular economic developments that are placing unusual and severe strain on the budgets of the low paid". This process may have a role to play, consistent with the terms of section 284(1), but it cannot relieve FWA of its obligation under the legislation by providing some kind of a "safety valve" to deal with circumstances that have arisen because of the approach described in the first sentence of the paragraph.

Findings in relation to budget standards

427. FWA was presented with a limited amount of evidence about a monetary amount that would be needed to meet the needs of low paid workers. Some of the major parties produced no evidence or submissions on this aspect. ACCER was concerned about the lack of material on this issue, as the quote at the start of this

section shows. This has been the pattern since Mr Costigan posed the five questions in 2003. The limited amount of evidence emphasised the need for FWA to give serious and manifest consideration to the material that was presented. Tribunals and courts have to do the best they can when only limited material is available.

428. ACCER presented updated and modified SPRC budget standards data. The SPRC's Low Cost budget was updated by the application of a CPI adjustment to the February 1997 prices in the original research and modified by the use of housing costs drawn from Commonwealth data regarding rents paid by recipients of rental assistance. In substance, ACCER's 2010 material was the kind of material presented earlier in this submission. The nature, rationale, rigour and methodology of the research is discussed in Chapter 5F, above.
429. The only reference to budget standards are in paragraphs [215], [218], [224], [225] and [244]. The first is merely a mention of the standard. Paragraph [218] describes what they are and gives a footnote to the paper by Professor Saunders that ACCER had referred to: *Updated Budget Standards Estimates for Australian Working Families in September 2003*, SPRC Report 1/04. The paper includes an extensive reference to the nature, rationale, rigour and methodology of the research. A quote from ACCER's submissions on the budget standards is at paragraph [225] without any comment.
430. ACOSS supported the use of budget standards, but did not provide updated data on them (ACOSS submissions, March 2010, pages 17-8). The ACOSS submission is referred to at paragraph [224], which includes the following passage: "The original 1997 figures were deemed out-of-line with contemporary community expectations as to what constitutes a reasonable budget". This is correct because, as ACOSS had said, it underestimated current standards. We have included the full paragraph in the ACOSS's submissions in our submissions on budget standards Chapter 5F, above. IT is no support for FWA's rejection of the material. ACCER had also noted this aspect (ACCER submission March 2010, paragraph 295) and suggested that, apart from applying CPI increases, the figures might be adjusted in the same way as the HPLs, or the basket of goods and services might be adjusted to reflect

living standards. No other party relied on the budget standards material, or responded to it in the replies.

431. The mere fact that the budgets were compiled in the mid 1990s is no reason to reject their application. There is nothing in the reasons for decision, or in the issues raised by the other parties that could lead to and justify FWA's rejection of the material.
432. The budget standards research is the most comprehensive data on the financial needs of the low paid in Australia. We do not expect any claim to the contrary. That does not prevent questioning of them. However, no party argued that they overestimated the needs of families. FWA is not bound to accept them just because no party has been prepared to contest them.
433. We submit, on the basis of the earlier authorities, that the question of the weight, if any, is to be part of "an active intellectual process" in which FWA considers the value of the material. It must receive "genuine" consideration. This means that FWA needs to consider whether the various estimates of needs, food, clothing, shelter and the like in the budget standards, are unreasonable. It must consider whether there is any material that would qualify or contradict those estimates, and, if it does, disclose that material. The process does not require precise arithmetical accuracy.
434. ACCER submits that FWA was obliged last year, as it is in 2011, to do the best it can with the material available. We submit that, having done that, if it comes to the view that the material is of limited or no value, it should make clear the basis of its conclusion. We do not say that every significant point raised by a party has to be treated in this way, but given that the budget standards material is related to a fundamental issue, the needs of the low paid, it is a matter that requires close examination and explanation. Furthermore, in the absence of a transparent process for dealing with this kind of material, those parties who wish to place before FWA evidence of the budgetary needs of workers and their families will have no guidance about the matters that FWA considers are relevant to estimating the needs of low paid workers.

Conclusion

435. We submit that the disclosed basis upon which FWA set the NMW and safety net rates in 2010 was not consistent with the F W Act, did not address the needs of the low paid and was not transparent. We submit that the reasons for the setting of the NMW and award wages should be written in such a way that ordinary citizens can see the significant matters in issue and understand the reasoning for the decision so that they can engage in an informed discussion about the merits of the decision.

C. ACCER's claim

436. Our analysis of wage setting over the past decade has reinforced two points that we have made in past wage reviews.

- First, the rates set for low paid workers are inadequate and should be increased *over time* to meet their basic needs and reflect community wage levels.
- Second, fairness and a proper evaluation of relative work values of higher paid work classifications require that *over time* these safety net wages be brought into a more realistic relationship with community wage levels.

437. Yet in each year we have said this, the position has worsened. If there is to be any meaningful step in 2011 to address the systemic problem, we submit that four changes are needed:

- cost-based percentage increases to award rates;
- a further increase in the NMW;
- an inquiry into the needs of the low paid; and
- an inquiry or other process to address the present inadequacy of safety net award wages relative to contemporary indices of poverty and community wage levels.

Award Wages

438. ACCER seeks increases in safety net wage rates to cover published price increases in the CPI since the handing down of the *Annual Wage Review 2010* in June 2010. Since then the three published CPI increases have totalled 2.3%, with another

adjustment, for the March quarter 2011, to be published prior to the conclusion of this year's wage review.

The National Minimum Wage:

439. The current NMW of \$569.90 per week is manifestly inadequate, and will continue to be if it is only adjusted by the accrued CPI increases. Our submissions present the case for the base cleaner's classification rate of pay, currently \$608.80 per week, to be adopted as the target rate for the NMW, pending the completion of a research program designed to identify the needs of workers and their families. In 2011 we ask that the NMW be increased by \$16.60 per week to \$586.50 and that this amount be increased by the published CPI increases since the handing down of the *Annual Wage Review 2010* in June 2010. This means that the new NMW would be \$600 per week, based on the published CPI increases to date and, for example, \$605.00 per week if the annual inflation rate is 3%. The economic cost to the Australian economy of this first step towards a decent NMW would be insignificant. We foreshadow claims over the next two years to take the NMW to the base cleaner's rate.

Inquiry and Research Program:

440. We propose that Fair Work Australia establish an inquiry into the financial needs of low paid workers and their families and relative living standards. The purpose of the inquiry would be to gather material that is relevant to the exercise of FWA's statutory obligation to have regard to (amongst others) relative living standards and the needs of the low paid when setting award wages and the NMW. The inquiry would be able to take submissions on areas of research and research methodologies, conduct or commission research, and consider the formulation of various kinds of benchmarks to better inform FWA about the financial needs of the low paid.
441. We also propose that FWA establish an inquiry or other process to consult with interested parties on systemic issues such as: the process whereby minimum wages may be adjusted so that workers do not live in poverty; the interaction between any future adjustment to needs-based wages and award classification structures and wages; the desirability and impact of current award relativities; and the relationship between community wage levels and safety net wage rates. We propose a more

interactive process on these issues than the current arrangements. This could be done as part of the inquiry into the needs of the low paid, or separate from it.

D. The first part of the NMW claim: a \$16.60 per week increase.

442. ACCER seeks an increase in the NMW in two parts. First, an increase of \$16.60 per week, to \$586.50 per week, and, second, an increase in that amount to reflect the increase in the CPI over the 12 month period between the wage reviews.

443. This first step is justified by:

- the needs of low paid workers and their families;
- the potential benefit to a significant number of workers and their families, but with insignificant economic costs of such a change; and
- the proper application of principle in wage setting.

444. Before dealing with these reasons we explain why the particular sum of \$16.60 has been chosen. The NMW applies to very few people outside the award system and its major impact is on award provisions. If the NMW is to meet the needs of workers and their families it will have to be increased by more than other award rates. If our claim is granted, the NMW would overtake some current award rates, even after they are adjusted by the generally applicable increase.

445. The NMW equates to the C14 rate in the *Manufacturing and Associated Industries and Occupations Award 2010* (the manufacturing award) and its predecessors. When the FMW was first introduced in the *Safety Net Review - Wages, April 1997* (AIRC Print P1997) it was set at the C14 rate. It was not set by reference to the *needs* of low paid workers. The FMW/NMW has not been the subject of any separate inquiry or adjustment based on its sufficiency, but has always been adjusted in a similar manner to award rates of pay. We seek to break that connection in 2011.

446. An increase of \$16.60 per week would take the NMW to an amount equal to the current wage for the C13 classification in the manufacturing award. The manufacturing award and its predecessor awards have been used as a reference point for a number of other awards. Some awards have rates that equate to these and other rates in the manufacturing award.

447. The C14 rate is, and was before 1997, an introductory rate to cover short term transitional work arrangements involving structured training. The provisions in the current manufacturing award are in similar form to provisions of the *Metal Industry Award 1984 – Part I* as it was amended in 1990 to give effect to the then structural efficiency principle of the AIRC (Print J2043). The C13 classification applies to an employee after the completion of the introductory period: "an employee who has completed up to three months structured training so as to enable the employee to perform work within the scope of this level" (Schedule B.3.4).
448. A number of other awards have introductory transitional provisions. Generally, they take the rate from the equivalent of C14 to the equivalent of C13. We estimate that this occurs in about 23 of the 123 modern awards. In some the award provides for the opportunity for "on the job" training (such as the manufacturing award) and in some the introductory period contains no training. There are other awards where the C14 rate is the base award rate, or one of a number of base rates, but with no time limit on their operation. We estimate that 16 awards have these kinds of provisions. How easily a person may move to the next wage level varies.
449. The effect of our claim for an increase of \$16.60 would be to eliminate the introductory rate and other rates below the C13 rate.

\$16.60 per week is based on demonstrated need and fairness

450. On the basis of the HPLs, relative poverty lines and the SPRC's Low Cost budget we have established a composite *Australian Family Poverty Line* for a family of four which was \$897.00 per week in December 2010. Against this is the reality that in December 2010 the disposable income of the family of four was \$840.49 per week, including maximum rental assistance, and \$772.87 per week without rental assistance.
451. Parents cannot raise and educate their children on a \$840.49 per week. The NMW is a poverty wage. There is a poverty gap of \$56.51 per week. It is against this gap that our claim for an extra \$16.60 per week (over and above CPI adjustments) has to be viewed. Because of the nature of the three measures and the composite poverty line, they are not sufficient standards for working families. The disposable incomes of working families would need to be well above them. The term "well

above" was used with apparent approval by the AFPC when it first considered the margin that disposable income should have over poverty as measured by the HPLs (which we discussed at Chapter 4I).

452. It should also be remembered that the AFPC made its wage-setting decisions by reference to two of these three measures. In its 2008 decision the reliance was quite explicit. After setting out in tabular form the ratios of disposable incomes of ten households to the two measures of poverty (HPLs and poverty lines based on 60% of median equivalised household disposable income) the AFPC said:

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

453. We discussed this passage in Chapter 4J and argued that it was an impermissible approach to wage-setting because it took no account of the needs of workers with family responsibilities, a matter that we canvassed at length in Chapter 3. For present purposes, it is the application of poverty lines that matters.
454. It is clear from this passage, and by its reference to poverty lines in all of its decisions, that the AFPC used poverty lines as part of its decision-making process. In Chapter 4J we showed how the two kinds of poverty lines should, and could, be improved. Most importantly, we showed how they could be used to understand the needs of low-wage dependent families, whether couple or sole parent families. The SPRC research (which we modified at Chapter 5F) adds to that material. The end result is that we have three revised measures which produce figures in a small band and an average of \$897.00 per week.
455. The setting of wages on the basis of relative living standards and need must, we submit, take into account all of these figures. We do not suggest that there is arithmetical precision in them; but they are the best that can be done on the available evidence. We submit that there are no other measures of need or relative

living standards that might limit the use of these figures for the purpose of setting an appropriate NMW.

456. The figures show that, in the broad, NMW-dependent families are living in poverty and below an acceptable standard of living by a large margin. The prima facie case for a significant increase in the NMW is established. At the least, an increase of \$16.60 per week is justified by reference to merit and fairness.
457. We have done the best that we can do on the available material. We expect that there will be criticisms of the HPLs and the Low Cost budget as indicators of need, but they could not contradict the merit of the claim for the \$16.60 per week adjustment. Any criticism would only confirm the need for further research. However, the relative poverty lines cannot be attacked on that basis. They are an appropriate means of comparing living standards and addressing FWA's obligation to take into account relative living standards.
458. We are entitled to rely on material that improves on the kind of data that the AFPC used in setting wages. We have approached the matter consistent with the AFPC's approach to the estimation and use of poverty lines. Any criticism of our use of the HPLs and the relative poverty lines has to deal with the fact that it was used by the AFPC. We have shown why the AFPC had underestimated the poverty lines. If FWA were to now reject the use of these poverty lines it would entrench past errors.
459. If past wage reviews are any guide, the other parties will ignore our submissions. However, they should now be on notice of these matters and in the absence of any, or any adequate, response from one or more of the other parties (in the submissions in reply that are due to be filed on 29 April 2011), we submit that FWA should act on the material that we have put forward.

The benefits and economic costs of the first step

460. The granting of an increase of \$16.60 will be of benefit to a significant number of workers and their families, but with insignificant economic costs. The workers who will benefit will be those who are on the C14, or equivalent, introductory rate and those who work in a substantive classification that pays the C14 rate, or some other rate less than the C13 rate.

461. We referred in Chapter 2C to argument made by ACCI that very few are employed on the minimum wage. The purpose of its argument was to show that the emphasis on the FMW by ACCER and others was misconceived because very few are employed on the FMW. In the *Safety Net Review Case 2005* ACCI said that the material "...show[s], in practical terms, very few employees would ever be employed on the Federal Minimum Wage" (page 5-40). The ACCI material showed that the Effective Minimum Wage is substantially in excess of the FMW.

It said:

"A proper analysis of award rates of pay demonstrates the award dependent employees, while they may be lower paid relative to other groups of employees in the community (e.g. those covered by agreements), are unlikely to be receiving rates of pay such as the Federal Minimum Wage *in almost all instances*" (page 5-46, emphasis added).

462. We also referred in Chapter 2C to the research contained in the FWA's Research Report 4/2010, *Earnings of employees who are reliant on minimum rates of pay*. This report provides a sound basis for estimating the number of workers employed on or around the C14 rate. That research shows that in May 2006 the proportion of full time safety net workers paid less than the C13 rate was 5.9% (Table 2 of the report) and that 16.2% of adult casuals were paid less than the C13 rate (Table 3 of the report). The total number in the former group was about 900,000 workers and the total number in the latter group was about 700,000 in a workforce of 10.2 million. This meant about 53,000 adult full time workers and about 113,000 adult casual workers were paid less than the C13 rate. Together they comprised about 1.6% of the workforce, but less in full time equivalent terms. At January 2011 the workforce had increased to 11,433,700, of which 8,055,000 were full time who worked 85.3% of total hours; see *Labour Force Australia, February 2011*, cat. no. 6202.0, Tables 1 and 18 (trend figures). Other matters remaining the same, this would mean that the numbers would be approximately 12% higher; about 59,360 for full time workers and about 126,560 for casuals.

463. This substantial number of workers will receive a significant boost in their standard of living if our proposal is granted. However, the overall economic impact of a move to the C13 rate would be insignificant in a workforce where full time average weekly ordinary time earnings have reached \$1,272.50 per week (AWOTE, at

November 2010). In full time equivalent terms, the group represent less than 1% of the workforce and the \$16.60 claim is equal to 1.3% of wages as measured by AWOTE. The product of the two is insignificant.

464. We are asking FWA to do something significant for the lives of about 60,000 of the lowest paid full time employees and about 126,000 casual workers. It will not be a way out of poverty for those workers and their families who depend on the NMW, but it will be a significant step towards that goal.

The application of principle

465. We submit that the provisions of current awards should not constrain the proposed increase. The minimum wage objective in the F W Act operates with the intent that the awards will give effect to decisions about what is a fair wage rate, not hinder it. Current award rates are not based on the evaluation of the needs of low paid workers. The establishment of a new system of national modern awards, as part of the Commonwealth's *Fair Work* reforms, was a process of award-making on uneven ground. As a result, the modern awards contain a variety of minimum rates for unskilled and basic entry level work.
466. There are classifications in awards that are at the current NMW/C14 level, but a substantial number of them are only transitional introductory rates. Even if the current award rates had the potential to constrain a NMW increase, account would have to be taken of the fact is that there are many unskilled and basic entry level jobs with higher award wages than the proposed NMW. The following list contains awards where the lowest wage rate is well above the C14 rate and where that rate applies to basic entry level work.

- *Aboriginal Community Controlled Health Services Award*: \$633.00
- *Aged Care*: \$606.00
- *Airport Employees Award*: \$591.65
- *Car Parking*: \$600.40
- *Cleaning Services Industry*: \$608.80
- *Educational Services (Schools) General Staff*: \$586.50
- *Higher Education Industry – General Staff Award*: \$610.30 (Year 1)
- *Fast Food Industry*: \$626.00
- *Gas Industry Award*: \$591.00
- *General Retail Industry*: \$626.00
- *Hair and Beauty Industry*: \$626.00

- *Local Government Industry*: \$609.30
- *Passenger Vehicle Transportation*: \$615.00
- *Premixed Concrete Award*: \$586.20
- *Security Services Industry Award*: \$640.40
- *Storage Services and Wholesale*: \$609.00
- *Waste Management Award*: \$603.60
- *Water Industry Award*: \$609.30

467. The *Manufacturing and Associated Industries and Occupations Award* contains provisions that are clearly directed to the establishment of a meaningful introductory program prior to payment under the C13 classification. In some awards the introductory rate is not, or barely, related to a training process. For example, in the *Restaurant Industry Award 2010* the introductory rate is the same as the C14 rate, with a rate that is equal to the C13 rate payable after 3 months, although that period may be extended by mutual agreement. Schedule B includes the following definitions:

“B.1 Introductory level

Introductory level means a worker who enters the industry and is unable to meet the competency requirements of Level 1. Such an employee will remain in this level for a maximum of three months. Provided that an additional three months may be served at this level by mutual agreement between the employer and the employee. Further, if any disagreement arises from this provision it will be determined in accordance with clause 9—Dispute resolution.

B.2 Food and beverage

B.2.1 Food and beverage attendant grade 1 means an employee who is engaged in any of the following:

- (a) picking up glasses;
- (b) general assistance to food and beverage attendants of a higher grade not including service to customers;
- (c) removing food plates;
- (d) setting and/or wiping down tables; and
- (e) cleaning and tidying of associated areas.”

468. It will be seen that the work covered by the Grade 1 (C13) classification is unskilled work that needs no training. These are ordinary life skills that people have and, even if the worker had little opportunity to observe their application in a restaurant, would be quickly learned. Furthermore, the provision enabling the period of lower pay to be extended to six months creates a circumstance where

vulnerable workers will be faced with the prospect of agreeing to an extension or losing their job.

469. The award's introductory rate is also contrary to the general principle of setting wages according to the work performed and the equal pay provisions of subsection 284 (1) of the F W Act, which provides that “FWA must establish and maintain a safety net of fair minimum wages, taking into account [amongst others]...the principle of equal remuneration for work of equal or comparable value...”.
470. The equal pay provision is not limited to discrimination, such as gender discrimination, but operates to ensure that the wages are fair. If the safety net provides different rates of pay for work of equal or comparable value it will not be a fair safety net, especially where there is no valid ground for distinguishing between the two kinds of work. The work performed in the introductory period in the *Restaurant Award* is work that is equal to or comparable with the work performed after that period and the introductory rate cannot be justified.
471. Another example of an introductory rate based solely on the period of employment is in the *Miscellaneous Award 2010*. It also has the C14 rate of \$569.90 as its lowest rate, with an increase to \$609.00 after 3 months. This award was made in the award modernisation process to cover a wide range of employees who are not covered by other awards. It was a "new" award in the sense that it had no predecessor in the earlier award system. The substantive rate after 3 months employment, which is well above the C13 rate, is significant because it indicates what the AIRC regarded as an appropriate minimum wage over a miscellany of jobs and industries, not otherwise covered by an award.. That wage is 20 cents per week over the base cleaner's rate, which we have identified as an interim target rate for the NMW. The relevant provisions of Schedule B of this award provide:

“Level 1

An employee at this level has been employed for a period of less than three months and is not carrying out the duties of a level 3 or level 4 employee.

Level 2

An employee at this level has been employed for more than three months and is not carrying out the duties of a level 3 or level 4 employee.”

472. ACCER's proposed increase would result in a NMW that is of a similar order to the lowest minimum wage rates in State jurisdictions, which we discussed at Chapter 4E. Leaving aside the two cases where the States have followed the NMW (in Tasmania and in NSW for the minimum wage applying to workers not covered by an award), the State minima, including the Award Review Classification Rate in NSW, remain substantially above the NMW. The unweighted average of the four jurisdictions is currently \$587.00 per week, \$17.10 more than the NMW.
473. The NMW is a single rate to be applied to ongoing employment. The NMW is not capable under the legislation of being split into an introductory rate and an ongoing rate. In these circumstances, the NMW should be based on the factors that are relevant to the setting of an ongoing rate. The C14 rate, as an introductory rate, is not such a rate.

E. The second part of the NMW claim: CPI increases

474. ACCER seeks increases in safety net wage rates to cover published price increases in the CPI since the handing down of the *Annual Wage Review 2009-10* in June 2010. Since then the three published CPI increases have totalled 2.3%, with another adjustment, for the March quarter 2011, to be published prior to the conclusion of this year's wage review.

More than CPI increases needed over time

475. For the reasons set out earlier, we believe that the awarding of across the board money increases over the past decade have not delivered fair outcomes for low paid and higher paid safety net workers.
476. We are very conscious of the fact that the granting of percentage wage increases in 2011 would not start to remedy the loss that has been suffered by award-dependent workers. The worker on \$100 per week more than the NMW in Table 27 is a case in point. A CPI increase will not reverse the real wage cuts of those in higher paid, but still low paid, classifications; it will not provide productivity-based increases to safety net-dependent workers who have not received them; and it will not address the increasing gap between safety net rates and community wage levels. This is

one of the reasons we are proposing a process to address what we have described as a systemic failure in wage-setting.

E. FWA inquiry and research into the needs of the low paid

The Needs of the low paid

477. Further and better information is needed on the needs of low paid workers and their families if FWA is to be sufficiently informed to carry out its obligation to take into account the needs of low paid when setting safety net wages. It is a process that FWA needs to direct following consultation with interested parties. The research could be undertaken by the FWA research section, commissioned by FWA or commissioned by one or more of the parties. If parties are to commission their own research, it should be possible for it to be done in a framework identified by FWA. If necessarily expensive research is to be undertaken it is highly desirable that potential issues about relevance, design and methodology be canvassed beforehand.
478. Research is needed to fully address the question of how much income a worker needs in order for the worker and his or her family to live a decent life. This research is not a precondition for the step that we ask FWA to take in 2011, but it is essential for the future setting of wage rates that take proper account of the needs of the low paid.
479. The FWA research section has recently published a very helpful review of a range of issues concerning the measurement of needs, poverty levels and associated matters; Research report 2/2011 - Relative living standards and needs of low-paid employees: definition and measurement. The report provides a basis upon which the parties can usefully address the views in that report and its implications for the future. In particular, there should be a process to elicit submissions on the utility of the HPLs, relative poverty lines and budget standards research.
480. In regard to budget standards research, Catholic organisations have been prepared to commit resources, in association with the SPRC, to update the budget standards research. This is an expensive exercise and it is highly desirable to have a process that would identify potential issues, and to resolve them if possible. The absence of

any such process may prejudice the opportunity of raising funds and engaging other partners.

Inquiry into systemic and policy issues

481. We also ask that the proposed FWA inquiry, or another inquiry or other process, consult with relevant parties about systemic issues such as: the process whereby minimum wages may be adjusted so that workers do not live in poverty; the interaction between any future adjustment to needs-based wages and award classification structures and wages; the desirability and impact of current award relativities; the relationship between community wage levels and safety net wage rates; increasing wages by the use of percentages *and* money increases; adjusting wages by the use of percentages that take into account prices, productivity and community wage movements; and the impact on wage-setting of the adjustment provisions of the new pension safety net arrangements.
482. This process would also provide the opportunity for FWA to consult with parties on the formulation of a set of principles dealing with the way in which FWA will consider and make decisions. They would perform a similar function to that provided by the AIRC's *Statement of Principles*.
483. These matters are best addressed in conference format rather than by written submissions, and in a process spread over the whole of the review year. We propose that FWA convene a conference in July 2011 so that these matters can be raised and considered over the full course of the *Annual Wage Review 2011-12*.