

Fair Work Commission

Fair Work Act 2009

Annual Wage Review 2012-13

Submission by the

Australian Catholic Council for Employment Relations

March 2013

Table of Contents

Executive Summary

List of Abbreviations

List of Tables and Graphs

Paragraph

Chapter 1 *Fair Work: an opportunity for reform lost*

A.	Introduction	1
B.	From <i>Work Choices</i> to <i>Fair Work</i>	6
C.	The loss of fairness in safety net wages, 2000 to 2011	16
D.	Why we advocate for low paid workers and their families	40
E.	Current shortcomings in wage-setting	49
F.	The case for an inquiry into the needs of the low paid	121

Chapter 2 Social inclusion, poverty and decent wages

A.	Mr Costigan's five questions	140
B.	What is living in poverty?	151
C.	The social inclusion objective	173
D.	How does the NMW compare to the poverty line?	181
E.	Who are the low paid?	194
F.	The needs of workers include the needs of their families	199
G.	Quantifying the needs of the low paid	231

Chapter 3 Wage-setting has failed low income workers and their families

A.	Introduction	263
B.	Safety net wages have not kept up with price increases	273
C.	Many safety net workers have suffered real wage cuts	286
D.	Safety net workers have not received productivity increases	308
E.	Safety net wages have fallen well behind general wage levels	332
F.	Safety net wages have lost value compared to other arbitrated wages	339

G.	The tax cuts do not justify the real wage cuts	357
H.	Increased family payments have not compensated for wage cuts	373
I.	Safety net wages have fallen behind pensions	398
J.	Low income working families have fallen behind rising poverty lines	408
K.	Safety net wages have not been based on evidence of workers' needs	449

Chapter 4 Conclusions and orders sought

A.	ACCER's claims	458
B.	A contemporary <i>Harvester</i> that supports workers with family responsibilities	468
C.	The wage-setting system has failed low paid workers and their families	491
D.	Award classifications should not constrain a fair NMW	509
E.	Research into the needs of the low paid	529

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, especially those who depend on safety net wage rates at or near the National Minimum Wage.

ACCER's advocacy is informed by the Church's experience as a major employer in Australia with over 150,000 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, and on children in particular, is one that cannot be ignored or glossed over.

The stated object of the *Fair Work Act 2009* is "...to provide a balanced framework for cooperative workplace relations that promotes national economic prosperity and social inclusion for all Australians..." This requires the consideration of a wide range of factors in the making of decisions about setting and adjusting the minimum terms and conditions of employment, including safety net wage rates.

A precondition for social inclusion is a decent wage and a wage that takes into account the needs of workers with family responsibilities. Family payments by the Commonwealth do not, and are not intended to, provide for all of the needs of workers' dependants. The National Minimum Wage and other low wage rates have become poverty wages for low income working families, and the cause of social exclusion. Accordingly, part of this submission is concerned with quantifying the needs of low paid workers and their families.

A major part of this submission is concerned with a detailed analysis of the way in which the setting of safety net wages since 2000 has failed low paid workers and their families. Safety net-dependent workers, who comprise about one-sixth of the Australian workforce, rely on arbitrated minimum wage rates 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 substantially less than the rate of inflation.

ACCER welcomed the Commonwealth's *Fair Work* reforms to the framework of national wage-setting because they provide an *opportunity* to address the inadequacies in the wages safety net. As we said in our submissions in 2010, 2011 and 2012, 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 as best it can if the Fair Work Commission is to discharge its overriding statutory duty to provide a fair safety net.

For reasons that we discuss in some detail, we have now concluded that the *Fair Work Act 2009* has failed to achieve fair outcomes for low paid workers and their families: we argue that the *Fair Work Act* has failed workers employed on or near the rate set by the National Minimum Wage and that it has not reformed the minimum wage-setting so as to overcome the systemic unfairness that has been evident since 2000 and earlier.

In our view, the Fair Work Commission, like its predecessors, has failed to take give sufficient weight to the needs of low paid workers and their families and has failed to set a wage by sufficient reference to relative living standards, including the living standards of those on age and disability pensions. In particular, we point to the position of workers on the National Minimum Wage, or on award classification rates close to that level. Families who depend on these wages are living in poverty. The living standards of many full time low paid workers and their workers are lower than those who depend on the pension safety net. This position is exacerbated for the increasing number of workers who are unable to secure full time employment.

Despite legislation that *commands* the setting of fair wages by reference to, amongst other factors, the needs of low paid workers and relative living standards, we see no serious attempt by the Commonwealth Government and the employer organisations to address these issues.

More concerning is the failure by successive tribunals over the past decade to elicit from these parties, the Commonwealth in particular, relevant data and submissions. As we explain, the Commonwealth's submissions have hindered efforts to achieve an outcome consistent with the terms of its own legislation. This is a matter that we have complained about in past submissions, but nothing has changed.

Our submissions explain the circumstances in which the National Minimum Wage (then called the Federal Minimum Wage) was first set in 1997. It was not based on an examination of the needs of low paid and relative living standards and that there was an expectation that, at some point in time, the adequacy of that measure would be reviewed.

This year marks the 10th anniversary of submissions made by Frank Costigan QC, on behalf of ACCER, for the establishment of a process that would address the needs of low paid workers and a manifestly inadequate Federal Minimum Wage.

In the years since it was established the National Minimum Wage has not been reviewed except as part of a review of all other minimum rates and its increases have been constrained and limited to the decisions made in relation to those other rates. ACCER's submission seeks to end this practice which has had the effect of denying fairness to the lowest of the low paid. The floor of the minimum wage system has to be increased relative to other minimum rates, and not be constrained by them. Once again, ACCER seeks a further increase in the National Minimum Wage, as a first step in providing a fairer wage for low paid workers and their families.

ACCER seeks the following orders in the *Annual Wage Review 2012-13*:

Award wages

ACCER seeks increases in award safety net wage rates on two grounds:

First, a percentage increase to compensate for the published increases in the Consumer Price Index (CPI) since the handing down of the *Annual Wage Review 2011-12* in June 2012, less an adjustment to be made on account of the compensation already provided in respect of the carbon price. As compensation for the carbon price has already been provided by way of Commonwealth budgetary measures on the basis that the tax would increase prices by 0.8%, this percentage should be deducted from the recorded CPI increases. After deducting that amount from the three published CPI increases, which have totaled 2.1%, the CPI-based component of this part of the claim will be not less than

1.3%, with the final percentage to be known after the release of the CPI figure for the March Quarter 2013.

Second, a further increase of 1% on account of productivity increases. It is sought as an interim amount because estimated annual productivity increases in recent years have been more than 1% and because there has been little or no compensation for productivity increases over the past eight years.

ACCER seeks *percentage* wage increases for all award classifications that provide wage rates equal to or more than the base tradesperson's (C10) wage rate, currently \$706.10 per week. For all classifications below that rate, ACCER seeks a *money* increase equal to the money amount by which the base tradesperson's wage will increase as a result of the claimed percentage adjustment. An increase of 3.0%, for example, would amount to \$21.20 per week. This will give the lowest paid workers an increase slightly in excess of the percentage increase in prices and the interim productivity adjustment.

National Minimum Wage

The current NMW of \$606.40 per week is manifestly inadequate. ACCER seeks a further increase in the NMW. In 2013 we ask that the NMW be adjusted in a similar way to award wages and that it be adjusted by a further amount of \$10.00 per week. Our submissions show that the economic cost of this \$10.00 per week first step towards a decent NMW would be negligible.

Our submissions also present the case for the base cleaner's classification rate of pay, currently \$647.80 per week, and \$41.40 per week above the NMW, to be the target rate for the NMW 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 over time.

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
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
FWC	Fair Work Commission
GST	Goods and Services Tax
HPL	Henderson Poverty Line
MTAWE	Male Total Average Weekly Earnings
NMW	National Minimum Wage
OECD	Organisation for Economic Co-operation and Development
SPRC	Social Policy Research Centre
WPI	Wage Price Index

List of Tables and Graphs

	Paragraph
Table 1: Disposable incomes and poverty lines of NMM households, September 2012	187
Table 2: Extract from SPRC Low Cost Budget	234
Table 3: Updated Low Cost and Modest but Adequate budgets December 2012	245
Table 4: Child care costs for NMW-dependent sole parent with two children	255
Table 5: Changes in various national safety net wage rates 2000-2012	273
Table 6: Increases in CPI and safety net wages June 1997 - June 2005	278
Table 7: Increases in CPI and safety net wages June 2005 - June 2012	280
Table 8: Lowest classification rates in various awards December 2012	296
Table 9: Labour productivity 2000-01 - 2011-12	311
Table 10: Safety net rates compared to other wages and incomes 2000-2012	334
Table 11: Comparison of FMW/NMW and relevant State rates.	341
Table 12: Remuneration of Comm. officers and public sector employees 2000-2012	346
Table 13: After-tax changes for safety net wages and AWOTE 2000-2012	357
Table 14: Net income of groups receiving wage increases of 65% 2000-2012	362
Table 15: Income taxation for groups receiving wage increases of 65% 2000-2012	364
Table 16: Family payments 2000-2011	375
Table 17: Safety net-dependent and AWOTE families compared 2000-2012	385
Table 18: Comparison of pensions and safety net wages Dec 2000 - Dec 2012	395
Table 19: Changes in pensions and safety net wages Dec 2009 - Dec 2012	398
Table 20: Relative living standards of pension and NMW families December 2012	405
Table 21: Ratio of disposable income to HPL for single NMW worker 2006-2010	414
Table 22: Changes in incomes relative to Henderson Poverty Lines 2000-2012	416
Table 23: Poverty Commission calculations of poverty margins 1973	420
Table 24: Disposable incomes of safety net families relative to national averages 2000 - 2012	425
Table 25: 60% median poverty line for workers and families 2007-12	434
Table 26: Ratio of disposable income to 60% median poverty line NMW workers and families 2007-12	435
Table 27: Comparison of 60% median poverty lines with disposable income of selected households earning various wage rates, September 2012	438
Table 28: Changes in NMW – dependent incomes relative to 60% Relative Poverty Line 2000-2012.	441
Table 29: Changes in wages and transfer payments in Australia 1973 - 2012	486
Table 30: Losses of safety net workers and their families relative to AWOTE 2000-2012	499
Graph 1: Relative poverty rate in the United States and selected OECD countries	169
Graph 2: Child poverty rate in selected developed countries, 2009	169

Chapter 1 *Fair Work*: an opportunity for reform lost

A.	Introduction	1
B.	From <i>Work Choices</i> to <i>Fair Work</i>	6
C.	Why we advocate for low paid workers and their families	16
D.	The loss of fairness in safety net wages, 2000 to 2012	40
E.	Current shortcomings in wage-setting	49
F.	The case for an inquiry into the needs of the low paid	121

A. Introduction

1. This submission to the *Annual Wage Review 2012-13* of the Fair Work Commission (the Commission) 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 seven 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 past years CCER played an active role in support of low paid workers in State Wage Cases conducted by the New South Wales Industrial Relations Commission. 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.
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 67 member organizations which employ about 12,000 people, engage over 4,000 volunteers and provide about 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. Last financial year the members of CSSA reported expenditure of almost \$700,000,000.

5. Through its many agencies the Catholic Church employs over 150,000 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). We refer to aspects of that teaching later in this chapter.

B. From Work Choices to Fair Work

6. 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.”

7. 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* (F W Act). 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 the Commission 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.
8. The name Fair Work Commission came into operation on 1 January 2013. Previously the Commission was known as Fair Work Australia (FWA). When referring to the tribunal prior to 2013 we will refer to it as FWA, but otherwise we will refer to it as the FWC.

The new legislative framework

9. The Commission is required by the F W Act to set and vary minimum wages. In each financial year the Minimum Wage Panel of the Commission 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. The Act specifies the “minimum wages objective” which requires the Commission 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):

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

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

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

"The FWC 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)

The return of fairness

11. 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.)

12. 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 and fairness underlying these kinds of provisions is important.

13. 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...”

14. 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). These provisions recognise two important matters: the importance of work and the promotion of social inclusion. Increased workforce participation, of itself, is insufficient to promote social inclusion and to ensure an acceptable standard of living for workers and their families. FWA has accepted this kind of approach. In each of its three decisions in 2010 to 2012, FWA accepted that social inclusion encompasses both the obtaining of employment and the pay and conditions attaching to the job concerned; see *Annual Wage Review 2011-12*, paragraphs [191] and [210].
15. The term social inclusion is not defined in the legislation, but it is one of common usage in community debate, academic research and policy-making. 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.

C. Why we advocate for low paid workers and their families

16. 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* was the seminal contribution of the Catholic Church to a range of social, economic and political issues of the late nineteenth and twentieth centuries. *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.

17. *Rerum Novarum* has particular relevance to Australian wage-setting history and in shaping attitudes to the kind of task that is now before the FWC. Indeed, the fact that there is such a task owes something to *Rerum Novarum* and to the continuing relevance of its values. In the inaugural *Bishop Manning Lecture*, delivered on 7 October 2010, the former Prime Minister, the Hon. R J L Hawke AC, spoke about the substantial and positive 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.

Work, wages and human rights

18. 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. 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.
19. The special emphasis on the rights of vulnerable workers is summed up in the following passage by Pope John Paul II, from 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)
20. 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.

21. Understanding the human dimension is vital to the determination of fair minimum rates of pay. Catholic welfare agencies, like other welfare 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 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.
22. 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. We reject the argument that wages should be allowed to find their own level by operation of market forces as a means of addressing the scourge of unemployment.

Social inclusion, justice and the common good

23. The introduction of the social inclusion objective in the legislation is a welcome one because it emphasizes the importance of a decent wage for working people and decent incomes for their families. Social inclusion has much in common with Catholic social teaching on the common good.
24. The Second Vatican Council described the common good as "the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfilment" (*Gaudium et Spes*,74). The social framework that serves and promotes the common good is person-centred; enabling individuals to achieve their own fulfilment through interaction with others. Fulfilment has value and purpose in Catholic theology because it is the expression of development of God-given talents; but fulfilment is also a purpose and consequence of

justice.

25. Justice is essential for the common good because it provides the identification and application of rights and responsibilities between individuals and within society as a whole. Justice also assumes major importance because of its connection to charity. Pope Benedict XVI has written about the interconnectedness of justice, charity and the common good:

"Ubi societas, ibi ius: every society draws up its own system of justice. Charity goes beyond justice, because to love is to give, to offer what is "mine" to the other; but it never lacks justice, which prompts us to give the other what is "his", what is due to him by reason of his being or his acting. I cannot "give" what is mine to the other, without first giving him what pertains to him in justice. If we love others with charity, then first of all we are just towards them. Not only is justice not extraneous to charity, not only is it not an alternative or parallel path to charity: justice is inseparable from charity, and intrinsic to it. Justice is the primary way of charity or, in Paul VI's words, "the minimum measure" of it, an integral part of the love "in deed and in truth" (1 Jn 3:18), to which Saint John exhorts us. On the one hand, charity demands justice: recognition and respect for the legitimate rights of individuals and peoples. It strives to build the earthly city according to law and justice. On the other hand, charity transcends justice and completes it in the logic of giving and forgiving.

To love someone is to desire that person's good and to take effective steps to secure it. Besides the good of the individual, there is a good that is linked to living in society: the common good. It is the good of "all of us", made up of individuals, families and intermediate groups who together constitute society. It is a good that is sought not for its own sake, but for the people who belong to the social community and who can only really and effectively pursue their good within it. To desire the common good and strive towards it is a requirement of justice and charity. To take a stand for the common good is on the one hand to be solicitous for, and on the other hand to avail oneself of, that complex of institutions that give structure to the life of society, juridically, civilly, politically and culturally, making it the *pólis*, or "city". (*Caritas in Veritate* 2009, paragraphs 6 and 7, italics in original, footnotes omitted.)

26. In his subsequent address to the German Bundestag , Pope Benedict XVI addressed the foundations of law, the importance of justice and the role of politicians. His comments on politicians are relevant to all who exercise secular power:

"Through this story, the Bible wants to tell us what should ultimately matter for a politician. His fundamental criterion and the motivation for his work as a politician must not be success, and certainly not material gain. Politics must be a striving for justice, and hence it has to establish the fundamental preconditions for peace. Naturally a politician will seek success, without which he would have no opportunity for effective political action at all. Yet success is subordinated to the criterion of justice, to the will to do what is right, and to the understanding of what is right. Success can also be seductive and thus can open up the path towards the falsification of what is right, towards the destruction of justice. "Without justice – what else is the State but a great band of robbers?", as Saint Augustine once said.

We Germans know from our own experience that these words are no empty spectre. We have seen how power became divorced from right, how power opposed right and crushed it, so that the State became an instrument for destroying right – a highly organized band of robbers, capable of threatening the whole world and driving it to the edge of the abyss.”(*The Listening Heart: Reflections on the Foundations of Law*, Reichstag, Berlin, 22 September 2011.)

27. For many centuries Catholic social teaching has been concerned with the identification of the mutual obligations and responsibilities that are needed to promote the common good. Those obligations and responsibilities are expressions of the *basic justice* that binds together and supports individuals and society as a whole. Catholic social teaching identifies three dimensions of basic justice: commutative justice, distributive justice and social justice; see, for example, *Encyclopaedia of Catholicism* Richard P McBrien ed., 1995, pages 1203-5.
28. Commutative justice requires fairness in private agreements and exchanges between individual and private entities. Distributive justice covers the public relationships in society and addresses the fair allocation of benefits and burdens to individuals and groups in society by reference to their respective capacities and needs. Social justice in modern Catholic social teaching has been expanded beyond earlier concepts of "legal or general justice". Social justice evaluates the social, economic and political institutions and arrangements in terms of their ability to satisfy the minimum needs and basic rights of the citizenry and identifies the ways in which those institutions and arrangements can promote the common good.
29. In commenting on basic justice in a Pastoral Letter issued in 1986 the National Conference of Catholic Bishops of the United States said:

"These fundamental duties can be summarized this way: *Basic justice demands the establishment of minimum levels of participation in the life of the human community for all persons.* The ultimate injustice is for a person or group to be treated actively or abandoned passively as if they were non members of the human race. To treat people this way is effectively to say they simply do not count as human beings. This can take many forms, all of which can be described as varieties of marginalization, or exclusion from social life... These patterns of exclusion are created by free human beings. In this sense they can be called forms of social sin. Acquiescence in them or failure to correct them when it is possible to do so is a sinful dereliction of Christian duty.

Recent Catholic social thought regards the task of overcoming these patterns of exclusion and powerlessness as a most basic demand of justice. Stated positively, justice demands that social institutions be ordered in a way that guarantees all persons the ability to participate actively in the economic, political, and cultural life of society. The level of participation may legitimately be greater for some

persons than for others, but there is a basic level of access that must be made available to all. Such participation is an essential expression of the social nature of human beings and their communitarian vocation. (*Economic Justice for All*, 1986, paragraphs 77-8, footnotes omitted, italics in original.)

30. This passage is not about the term social inclusion *per se*, but it demonstrates why social inclusion in the F W Act is important and how it is linked to justice.
31. A claim for fair minimum wages is not just a claim for a statutory entitlement. It is also a claim for justice that will enable the worker and his or her family to achieve fulfilment and participation. We submit that fairness must include proper regard for the capacity of workers, particularly low paid workers, to participate in the life of the community. Justice requires an income that promotes that end. A wage that results in poverty, marginalisation and exclusion is not a fair and just wage.
32. We do not present a position that is unique to the Catholic Church. Just as it was at the time of *Harvester*, we have the overlapping of Catholic teaching and broad community values. 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. 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.

Economic considerations

33. 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.
34. None of this denies 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 encyclical *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.

35. 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 and they will be assisted to realise their potential.

Assessing the Fair Work Act 2009

36. In May 2011 the Australian Catholic Bishops issued a statement to mark the 120th anniversary of *Rerum Novarum*. The Statement included a reference to the passage on wages in the Bishops's 2005 Statement on *Work Choices* (which was quoted earlier) and concluded:

"On Monday 16 May 2011, almost exactly 120 years after *Rerum Novarum*, Fair Work Australia will begin hearing final submissions in this year's Annual Wage Review. The Australian Catholic Council for Employment Relations has filed extensive submissions in support of low paid workers with family responsibilities. The Tribunal will make a decision under provisions in the *Fair Work Act 2009* that are consistent with the objective stated in the 2005 Statement. However, *it is only by the outcomes of the decisions that the success of the legislation can be measured*" (Emphasis added.)

37. The Bishops recognised that the terms of the *Fair Work* legislation enable the making of decisions that would meet their concerns about wages in 2005, but left open the question of whether the legislation had been a success in providing for low paid workers with family responsibilities.
38. On the question alluded to by the Bishops in their May 2011 Statement, our answer, based on the three decisions to date, is in two parts:
 - The *Fair Work Act* has failed workers employed on or near the rate set by the National Minimum Wage.
 - The *Fair Work Act* has not reformed the minimum wage-setting so as to overcome the systemic unfairness that has been evident since 2000 and earlier.
39. We now turn to the background to the *Fair Work* reforms and the wage decisions of 2010 to 2012, with particular emphasis on the first three decisions of FWA and the effective abandonment of any inquiry into the needs of the low paid.

D. The loss of fairness in safety net wages, 2000 to 2012

40. Our submissions in Chapter 3 are primarily based on the developments in wage-setting since 2000. We show that the loss of fairness in wage-setting over that period was not confined to the *Work Choices* period. The *Work Choices* period covered the four years between the last *Safety Net Case Review* decision by the AIRC in June 2005 and the last decision of the AFPC in July 2009, when the AFPC decided to freeze wages, thereby bringing about a real wage reduction for safety net-dependent workers. As we show later, the adverse impact of the wage freeze on low paid workers and their families has continued. Our concerns about wage-setting since 2000 are not limited to the continuing legacy of the repealed legislation in the current wage rates, but cover some fundamental systemic issues in wage-setting.
41. Since 2000 tribunal decisions on safety net wages have worked against low paid workers and their families. Compared to the rest of the workforce, *all* safety net workers are *relatively* worse off now. This has happened 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 more than \$767.00 per week. In support of these claims, we *establish* a number of key points in Chapter 3:
- (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 \$865.00 per week in December 2012 have had a real wage cut of \$41.75 per week, or 4.6%, 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 74.4%, the base safety net wage for a trade-qualified worker, or a worker with equivalent qualifications and skills, has risen by 43.3%.

- (d) 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. Unlike other workers, safety net workers have been denied the benefit of the increases in their own productivity.
- (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. However, low paid workers have not received benefits in excess of those received by taxpayers generally: the tax cuts over the past decade have not targeted low paid workers. The use of after-tax figures as a justification for real wage cuts, or limited real wage increases, is not justified.
- (f) 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.
- (g) The living standards of families who are dependent on the NMW and other low wage rates have fallen behind the living standards of low income households who depend on government pensions.
- (h) Low paid workers and their families have fallen towards, and sometimes below, the Henderson Poverty Lines (HPLs) and relative poverty lines. Most strikingly, from December 2000 to September 2012 the family of a couple and two children has fallen from parity with the 60% relative poverty line to being 11% below it. Over the same period the single worker's margin over poverty fell from 31% to 14%

Safety net wages as macroeconomic regulators

42. These submissions give emphasis to the needs of low paid workers and relative living standards. Of course, those factors are only part of the factors that must be taken into account by the FWC when setting wage rates. Changes in safety net rates will be influenced by macroeconomic conditions. 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. However, as *safety nets*, these wages must operate according to their nature and purpose, ie to provide an acceptable standard of living for workers and their families.

43. 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.
44. 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.)
45. 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 (AWOTE) rose 5.3%, from \$1,100.70 to \$1,158.50 (see Table 10, below). The 2008 decision was a failure of wage-setting in good economic times.
46. 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 and that safety net wages should not be treated as a kind of regulator of wages in the bargaining sector. The wage freeze was imposed even though it was evident at the time that wage increases in the bargaining sector would be substantial. 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 \$1,158.50 to \$1,225.20; and in the following 12 months, they rose another 4.0%, to \$1,274.10 (see Table 10). The 2009 decision

was a failure of wage setting in threatening economic times, with a continuing legacy for safety net-dependent workers.

47. 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.

Flexibility in the bargaining sector

48. 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.

E. Current shortcomings in wage-setting: FWA 2010 -2012

49. Any assessment of the wage decisions under the *Fair Work* legislation must take into account that the new system was established following a pay freeze by the outgoing AFPC. The AFPC was the only tribunal to freeze wages and it did so following an recorded increase in the CPI of 2.4% over the previous 12 months (from March 2008 to March 2009). FWA was required to deal with the real pay cut that followed that decision and, we accept, could not do so in one year.
50. Catholic Social Services Australia's subsequent Media Release pointed out that the AFPC had "flicked a hospital pass to Fair Work Australia" (*Fair Pay Commission Deals Dud Hand to Poorest Workers in Good Times and Bad*, 7 July 2009). It was a hospital pass because it

added 2.4% to the CPI increase of 2.9% over the following 12 months.

51. As we show in Chapter 3, at some levels real wages have been restored by FWA's first three decisions. Further time is needed to complete the process. However, when real wages have been restored for all, safety net wages will have lost substantial relativity to community incomes and safety net workers will be left without the benefit of their own productivity gains. If the future repeats the past, relativities to community wage movements and productivity gains will be lost. We return to these aspects in Chapter 3. Our complaint, on the basis of the evidence in that chapter, is that the national wage-setting system, even outside the *Work Choices* scheme, has failed safety net workers. If the *Fair Work* system is not to fail safety net workers, a significant departure from the past is required.

The National Minimum Wage

52. ACCER's primary concern has been with the lowest safety net wage, the NMW. We have argued that it is manifestly inadequate and that it is a poverty wage. We refer later to the issues raised in the *Safety Net Review Case 2003* where ACCER's advocate, Frank Costigan QC, argued that in order for the AIRC to satisfy its statutory obligation to have regard to the needs of the low paid when setting wages, it needed to ensure that the rates that it sets 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.”

53. It is true that the legislation does not refer to poverty or a poverty line, but it cannot be seriously argued that a safety net rate that produces poverty in the ordinary and expected family circumstances is a fair safety net wage rate within the contemplation of the legislation. As we will show later, low paid workers and their families are living in poverty.
54. Although we refer to the need to avoid poverty, we do not accept that outcomes where families on the poverty line or marginally above it are acceptable. In its inaugural decision in 2006 the AFPC said, with apparent approval, that there was general agreement in the submissions put to it that “...minimum wages should, in combination with cash transfers, provide an income ‘well above poverty’”; *Wage-setting Decision and Reasons for Decision – October 2006*, page 96. That was under legislation that did not have the same injunction for fairness as the current legislation. The objective of the *Fair Work* legislation is, we submit, met when there is a safety net wage that will produce an acceptable standard of living in the ordinary and expected family circumstances. The

Commonwealth Government's term "basic acceptable standard of living" when reforming the pension safety net in 2009 is one that is in excess of poverty, although some would claim that the actual amount set under that standard is insufficient. There are, of course, different ways of expressing an acceptable standard of living for workers (such as a "Living Wage") and others, such as pensioners, but the differences in expression cannot detract from the need to ensure that outcome.

55. When the NMW (then called the Federal Minimum Wage) was first set by the AIRC in 1997 it was set at the same level as the C14 rate. The circumstances of this initial decision are described below at Chapter 3K. It was not set by reference to an estimation of the needs of the low paid. Since that time the increases in the NMW have been determined by the increases in award rates and have moved in line with them. There has been no review of the adequacy of the NMW. It is as if award rates and the NMW are tied together by a Gordian Knot.
56. A fair system of wage-setting also needs to be able to address the adequacy of the current NMW and some of the very low award wage rates. Progress in this regard is hampered by the dearth of contemporary research and data 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. There is no simple answer to that question, but it is the kind of question that must be answered, *as best it can*, in order to discharge the overriding statutory task to provide a *fair* safety net.
57. In our view, reform of the wage-setting system requires a serious commitment to answering, as best we can, the question "what is a fair safety net wage? Our main concern is with the adequacy of the NMW. As we show in these submissions, the NMW is a poverty wage for NMW-dependent workers and their families, an outcome that is inconsistent with the purpose of a safety net wage. Yet we see no, or insufficient, commitment to any process that will provide a basis for the setting of *fair* safety net wages for the lowest paid workers.
58. ACCER submits that more needs to be done for the poorest and most vulnerable workers and their families. The lives of safety net-dependent low paid workers and their families will not improve unless the past defects in wage-setting are recognised and their consequences are addressed over time.

The nature and purpose of safety nets

59. Discussion and research about the assessment of needs raise questions about the nature

and purpose of the wages safety net. Questions about the nature and purpose of a wages safety are preliminary to the quantification issue. One of our major concerns about past wage cases has been the limited attention that has been given to the meaning of the term safety net. Each year we have put forward a view about its meaning and its implications for wage setting, but it is not a matter that has resulted in submissions or reflection.

60. The nature and purpose of a safety net is to provide an acceptable standard of living. A safety net wage, supplemented by family transfers where applicable, should be sufficient to meet the needs of low paid workers, including those with family responsibilities. It should provide an acceptable standard of living and enable them to live in dignity.
61. The wage safety net does not have to cover exceptional cases, but it must cover ordinary and foreseeable cases and circumstances. Having regard to the sizes of Australian families, ACCER has argued that the needs should be calculated by reference to the position of families with two children. 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. Of course, a single worker without family responsibilities is also within the scope of the wages safety net, but because family transfers are not sufficient to cover all of the additional needs of dependants (and are not intended to do so), primary emphasis must be given to workers with family responsibilities.
62. Much of our analysis of wage-setting has looked at changes over time. It will be apparent from our introduction (at paragraph 41) that NMW-dependent workers have done relatively better than other low paid workers since 2000 because of the awarding of money rather than percentage increases over most of this time. But this is no answer to the question of whether the rates of pay for the very lowly paid are fair, as required by the legislation. It does not address the question of whether the NMW is sufficient, nor does it deal with the fact, as we contend, that the NMW and other low rates are poverty wages.

Errors in FWA's 2012 decision

63. The matters ACCER relied on in 2012 in support of its claim for an extra \$10.00 per week increase in the NMW, were the matters that are summarised (and updated) in paragraph 41 of this submission. The arguments in support were based on the needs of the low paid and

relative living standards. We draw attention to them prior to our submissions on the FWA decision in June 2012.

64. The effect of ACCER's NMW claim, if granted, would have been that any award rates within the range of \$10.00 per week would have been increased to the new level of the NMW. No other party had sought this outcome. The situation was similar to the 2007 case in the NSW Industrial Relations Commission, mentioned earlier, where the Catholic Commission for Employment Relations alone sought a further increase in the lowest minimum wage rate in New South Wales. This had the effect that the C14 rate in NSW State awards received a further increase of \$7.00 per week and the margin between between the C14 and C13 rates was reduced by \$7.00.
65. The claim for a further increase in the NMW was rejected by FWA:

“The national minimum wage is currently set at the minimum wage for the C14 classification, the lowest wage level in the Manufacturing Award. No cogent basis was advanced for disturbing that relationship” (*Annual Wage Review 2011-12*, Decision, [2012] FWAFB 5000, paragraph [28], footnote to award number omitted.)
66. ACCER submits that the decision to reject the claim for a further increase in the NMW was without proper foundation and that FWA did not exercise its statutory duty to take into account relative living standards and the needs of the low paid as required by section 284(1) of the F W Act.
67. To explain these contentions it is necessary to set out the way in which FWA considered relative living standards and the needs of the low paid. FWA's recitation of the evidence on these matters, at paragraphs [149] to [179], is under five headings: “Real and relative earnings”, at [150]-[156]; “Income”, at [157]-[175]; “Financial stress and deprivation”, at [176]; “Expenditure”, at [178]-[178]; and “Report on measuring the needs of the low paid”, at[179].
68. The substance of these paragraphs is the recitation of aspects of the evidence. As we explain later, this recitation of the evidence leaves out some important aspects of the evidence and submissions that were before FWA.

The 2012 FWA decision: relative living standards and needs

69. FWA's conclusions on relative living standards and the needs of the low paid are at paragraphs [180] to [189]. The initial passage is:

“[180] Evidence on the needs of the low paid and their relative living standards takes two forms. One is general information on changes in the real and relative

value of the earnings (gross and disposable) of low-paid and award-reliant workers and their families. The other is direct survey evidence on the changing level of indicators of the adequacy of income. We consider these two perspectives in turn.”

70. The first part, which concerned with relative changes over time, is addressed at paragraphs [181] to [188]. The last two paragraphs of this part of the conclusion, paragraphs [187] and [188] concern the special issues of the introduction of the Household Assistance Package following the introduction of a price on carbon and the proposed increases and are not germane to the issues raised in this submission. The relevant paragraphs in the conclusions in regard to real and relative earnings are:

“[181] The real value of the national minimum wage and its equivalents has increased over the past decade, and over the past two years. This is true to a lesser extent for award rates of pay up to and including the C10 level. Award rates of pay above the C10 level have declined in real terms over the decade.

[182] It is a reasonable inference that the ability of most award-reliant workers to meet their needs from their own pay has declined with the fall in the real value of their wages.

[183] Except at the national minimum wage level, the value of all award rates of pay has fallen relative to the various measures of movements in average rates of pay. The national minimum wage has risen over the past decade at about the same rate as the WPI. This implies that the lowest award rate has kept pace with increases in other rates of pay for non-managerial employees. In this sense, their relative position has been maintained. But over the past decade, average earnings have risen faster than individual rates of pay, caused by the workforce moving into higher paid jobs over time. As a consequence, those reliant on award rates of pay have fallen behind the average earnings of workers and, in this sense, have not retained their relative standard of pay.

[184] We note that inequality in the distribution of earnings among all non-managerial full-time workers has also increased over the decade, albeit there has been a small rise in the real value of even the lowest decile of earnings.

[185] Most award-reliant workers do not rely entirely on their own earnings to meet the material needs of themselves and their families. The tax-transfer system plays an important role in supporting the incomes of low-paid workers, including those receiving award rates. The real disposable incomes of a wide range of household types that are reliant on award wages have increased over the past 10 and five years, as a result of changes to the tax-transfer system. The changes have particularly benefited families with children.

[186] The changes to taxes and transfers have led to an improved capacity for award-reliant households to meet their needs, although single adults have had very small, if any, real increases in their disposable income.

71. These conclusions relate to the adjustment of award rates of pay and the NMW. Paragraph [183] specifically refers to the NMW, but it is also relevant to the adjustment of award rates.
72. We do not need to question the findings in the paragraphs [181], [182], [184] to [185] (although we would qualify the last mentioned paragraph by reference to Tables 10 and 17

of the 2012 submission). Indeed, in substance these conclusions reflect the evidence of ACCER and other parties. ACCER had made it clear that the NMW, both gross and net, had increased by more than the CPI, as had family payments. However, the reasoning and the recitation of the evidence at [149] to [179] does not show, either expressly or implicitly, the range of the issues raised in support of the claim for a further increase in the NMW.

73. A striking feature of these conclusions in regard to relative living standards is the finding of increased inequality over the past decade (at [184]) and the absence of any consideration of that fact having regard to, for example, the social inclusion objective of the legislation. This is especially striking because FWA had submissions before it that safety net decisions had been a substantial cause of rising inequality over that period.
74. In regard to the NMW, our criticism of the decision centres on paragraph [183]. This is critical to the conclusion (at [28]) that “No cogent basis was advanced for disturbing that relationship [between the C14 rate and the NMW]”. No other matter relevant to ACCER’s claim was recited or referred to by implication.
75. The finding in paragraph [183] about changes in the WPI also appears to be relevant to FWA’s acceptance of increasing wage inequality. The WPI was, in effect, treated as a benchmark and as a guide as to how far the tribunal needed to address the issues of increasing wage inequality. The WPI was treated as a ceiling on wage increases; but the fact that many award rates of pay had fallen dramatically relative to the WPI over that period was not considered. To illustrate: over the period December 2000 to December 2011 the WPI increased by 49.6% while a safety net wage rate of \$600.00 in December 2000 increased by only 32.4% (see Tables 5 and 10 of ACCER’s submission, March 2012).
76. ACCER submits that FWA gave undue weight to the WPI in its assessment of the merit of the claim for an extra increase in the NMW. This submission also applies to its assessment of the merit of claims for increases to award rates of pay.
77. There is an error in the first sentence of [183] that should be corrected. The sentence claims, in effect, that the increases in the NMW had risen “relative to the various measures of movements in average rates of pay”. In fact, for example, the NMW had fallen relative to average weekly ordinary times earnings (AWOTE) over the period December 2000 to December 2011, and over any other period since 2000, at least. In that 11 year period the NMW had risen by 47.2%, the WPI by 49.6% and AWOTE by 66.9% (see Table 10 ACCER submissions, March 2012). Those figures were not in dispute.

Paragraph [183] shows that the WPI, rather than AWOTE, or some figure or range in between was accepted as the guide for measures in community wage movements.

78. Another matter in paragraph [183] concerns the relative movements in the NMW and the WPI. It is claimed that they have risen “over the past decade at about the same rate” and that “the lowest award rate has kept pace with increases in rates of pay for non-managerial employees” covered by the WPI. From December 2000 to December 2011 the NMW had fallen behind the WPI by 2.4 percentage points (see the previous paragraph) which represented a relative loss of \$9.70 per week over that period. From December 2005 to December 2011, the WPI increased by 25.0% (from 88.3 to 110.4 in Trend Index, A2713851R) while the NMW increased by 21.7% (\$484.40 to \$589.30). This represents a loss relative to the WPI of \$16.20 per week, almost as much as the 2012 NMW increase of \$17.10 per week. These are significant amounts for low paid workers and their families.
79. Our substantive submissions about paragraph [183] fall into two parts. First on the nature of the WPI and, second, the WPI’s relevance to the requirement to take into account relative living standards. The latter is especially important as this was the only basis upon which FWA considered the relative living standards issue.
80. The nature of the WPI was referred to at paragraph 228 of ACCER’s 2012 submissions in the context of difference between it and AWOTE:

“The Wage Price Index (WPI) increased by 49.6% over the 11 years to December 2011, 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 2011*, 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 relative living standards have to be taken into account.” ACCER submission, March 2012, paragraph 228.)

81. FWA’s conclusion in paragraph [183] is that the difference between measures such as AWOTE and the WPI have been “caused by the workforce moving into higher paid jobs”. In the case of AWOTE, this suggests it was the reason for about a quarter of its increase.
82. The WPI seeks to measure changes in the price of labour in jobs that are unchanged between ABS surveys. The price of labour may increase in those jobs because of, for example, an increase in the safety net wage for safety net-dependent workers or an increase in the price of labour as a result of a new collective bargain.

83. The WPI is, therefore, partly determined by FWA and other wage tribunals. A decision to increase wages and the size of the increase will be reflected in the WPI. The very substantial reduction in real safety net wages, recognised by FWA at paragraphs [181] and [182], will be reflected in the WPI.
84. Care must be taken with aggregate changes in the WPI. As we noted in our 2012 submission (at paragraph [227]) when reference is made to community wide measures of wages, it must be kept in mind that a measure such as AWOTE will underestimate the difference in incomes of safety net-dependent workers and the rest of the population. The same is true of the WPI.
85. The widespread reduction in real wages and the awarding of wages that are out of proportion to community movements will affect the WPI. This is evident in the three industries which have a high proportion of workers employed on safety net rates. The WPI “all industries” index (original series, A2603609J) increased by 64.2% from December 1997 to December 2011, well in excess of Accommodation and food services, 49.5% (A2603439C), Administrative and support services, 58.2% (A2603539L), and Retail trade, 53.2% (A2603559W); all of which have a high degree of safety net dependence. The unweighted average of these is 53.6%, 10.6 percentage points behind the WPI. If one were to take out the safety-net dependent workforce, in order to ascertain market-related movements, the difference would be substantially greater.
86. A comparison of the WPI all industries index (original) and the unweighted average of these three industries over the period since December 2005 shows a significant gap to the detriment of safety net-dependent workers: 21.5% for the three industries compared to the all industries figure of 25.1%.
87. If movements in the WPI are to be a useful guide, amongst others, for relative wage movements it is necessary to disaggregate those rates that are within the control of the wage tribunal from those that reflect broader community wage movements.
88. The WPI, in particular the component affected by safety net wage levels, should reflect the decisions to set a fair wage safety net and not constrain it as it has done so by the reasoning in paragraph [183].
89. There is another concern about the nature of the WPI. FWA found (at [183]) that the reason for the growing margin between increases in AWOTE and the WPI is “caused by the workforce moving into higher paying jobs”. The margin between the two was substantial: 17.3 percentage points over the 11 years, 2000 to 2011, with the WPI at 49.6% and AWOTE at 66.9% (see table 10, below). We submit that this approach is

unwarranted. The explanatory notes in the index state that, amongst other matters, “change in the nature of who performed (e.g. different tasks and or responsibilities) is not included in the index.” See *Wage Price Index December Quarter 2012*, 6345.0. Award classification, by contrast, and frequently, is designed to accommodate a significant increase in changes in tasks and responsibilities. To use an index that excludes pay increases that are consistent with classification in awards and collective bargains gives a false picture of the matter. If an argument is to be advanced to the effect that rising wage levels are the result of increasing numbers moving into higher wage levels, then when it should be based on changes in the distribution of workers across the range of work classifications.

90. A more fundamental criticism of the reasoning in paragraph [183] is that the WPI is not a measure or an indicator of relative living standards. The WPI is not a measure of living standards, but a measure of the price of labour in very defined circumstances. It has no dollar value as, for example, the median wage or AWOTE, which have value as indicators of relative living standards.
91. Although the *changes* over time in the level of AWOTE median wages and other measures of wages, net income and disposable incomes are relevant to living standards, it is the *level* of those measures that are most relevant. These are different to the WPI. We accept that WPI trends, properly applied, may be relevant to the setting of a fair safety net under the general assessment of fairness, but that is not a matter encompassed by the requirement to take into account relative living standards.
92. For these reasons ACCER submits that the determination of the claim for an extra increase in the NMW by reference to changes in the WPI was erroneous.

The needs of the low paid in the 2012 decision

93. The second area of evidence referred to in FWA’s conclusions to the needs of the low paid. The conclusion relating to the needs of the low paid is in a single paragraph of very little compass:

“[189] Direct evidence of the extent to which award-reliant families are able to meet their needs is derived from measures of their financial stress and inability to undertake basic activities that are normal for higher paid households. On this evidence: low-paid households show more signs of financial stress than higher paid households; low-paid workers are scattered across the whole of the household income distribution (and more evenly across the distribution of household expenditure); and the differences in degrees of financial stress between lower and

higher paid households, while significant, have not changed in a systematic way in recent years.”

94. The Commonwealth had placed this kind of evidence before FWA, but it was a small part of the material that had been put on the needs of the low paid. It was, as paragraph [189] indicated, a matter of little or no utility in quantifying the needs of the low paid.
95. There was one other passage in the decision that related to the needs of the low paid, but it was not referred to in the conclusions. In the recitation of evidence is the following at paragraph [179]:

[179] On 30 September 2011, the former President of Fair Work Australia directed Senior Deputy President Watson and Professor Richardson to conduct an investigation and prepare a report for the Panel on the most pertinent and valuable proxy measures of the needs of the low paid and how these are changing over time. This investigation involved a request for written submissions, and consultations between the two Panel Members and interested parties. The resultant report, *Measuring the Needs of the Low Paid*, was issued on 14 December 2011 and concluded that:

“[40] The Panel should have regard to a range of relevant data in relation to the needs of the low paid, all of which needs to be considered and weighed up, with the exercise of appropriate judgment. These include the relative position of low-paid individuals and households in the distribution of earnings, of income and of expenditure, and levels of financial stress and deprivation. Changes in all of these indicators can also provide relevant information for the Panel’s consideration.

[41] The current [Henderson poverty line] data and the [Social Policy Research Centre] budget standards data provide little guidance to the Panel because the original research upon which they are based lacks contemporary relevance.”(Footnote omitted.)

96. Two aspects of the opinions in this extract require comment. First, although there was recognition that the needs of the low paid should be informed by a range of relevant material, financial stress was the only one matter addressed in the conclusions. There was a range of material that was not adverted to in the 2012 decision wage review, Second, was the opinion that the Henderson Poverty Line and the budget standards research “provide little guidance...because the original research on which they are based lacks contemporary relevance”. We will return to this aspect.
97. As we have already indicated, there was a range of material put on the needs of the low paid, as well as relative living standards. For example, ACCER made substantial submissions on poverty which were not mentioned or considered. ACCER had argued that the NMW was a poverty wage and produced a range of material to support that

contention. The word “poverty” appears only once in the decision: in parentheses only in the passage just quoted from the section 290 report. Yet poverty is a relevant and accepted consideration in these matters. For example, in the *Safety Net Review Case 2003* the AIRC said:

“...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.” (*Safety Net Review Case 2003*, paragraph [222], italics in original.)

98. The question of whether or not low paid workers and their families are living in poverty is, we submit, one that cannot be avoided in a process for the setting of a safety net of fair minimum wages. An extra \$10.00 in the NMW adjustment would have assisted low paid workers and their families who are living in poverty.
99. Another basis of the claim for an extra \$10.00 per week was the reliance placed on pensions, which had been set on the basis that they would provide a “basic acceptable standard of living”. This was relevant to the consideration of relative living standards and to estimates of what income was needed to achieve a basic acceptable standard of living.
100. ACCER also relied on the budget standards research that was referred to in the passage quoted in paragraph [179] of the decision. There was an issue about the evidentiary value of that material. FWA appears to have simply adopted the view expressed in the passage quoted and did not deal with the arguments advanced by ACCER that were contrary to that conclusion. This was not the first year that FWA had failed to address the budget standards material. In 2011 ACCER referred to shortcomings in the 2010 decision in regard to the budget standards:

“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." (AC CER submission, March 2011, paragraphs 431-434.)
101. In 2012 FWA appeared to treat the section 290 report as conclusive on the budget standards evidence and did not deal with the issues raised. ACCER had claimed that the budget standards research was the "best evidence in Australia about the needs of low income families, referred to the relevant passage in the section 290 report and, after referring to the need for a re-construction of the budgets, argued that "given that the community standards have increased, a re-construction can be expected to raise budgets, not lower them. Our [CPI] adjustments are, therefore, conservative" (see paragraphs 133 to 142. After setting out CPI-adjusted figures (at Table 3), ACCER said:
- "We submit that, while the CPI-adjusted Low Cost budget in Table 3 is not sufficient for the setting of a fully-considered NMW, it demonstrates that the further adjustment to the NMW of \$10.00 per week that we seek in 2012 is a very conservative amount and is justified on the basis of the best available evidence of the needs of the low paid. We rely on it for that purpose" (AC CER submission, March 2012, paragraph 147).
102. This was a substantial issue which, we submit, required demonstrated consideration from FWA.
103. Apart from the reference to the WPI there is reason given for the conclusion that there was no cogent argument for the claim for an extra \$10.00. If no material was advanced, it would be an acceptable conclusion, but that was not the case.
104. FWA's decision does not articulate the basis upon which the claim for a further \$10.00 per week was rejected. In our submission, this is unsatisfactory. Had reasons been given, it would have been possible for ACCER, and any other party, to address those matters and

the identified shortcomings in a subsequent case. We illustrate this by reference to poverty. The decision does not disclose that part of the reason for the extra \$10 per week in the NMW was that families were living in poverty. If, for example, FWA was satisfied that NMW-dependent workers and their families were not living in poverty, or that they were able to enjoy a “basic acceptable standard of living” (or some other test), it should have said so and given reasons. If it didn’t know because of lack of evidence, then it should have said so and, we submit, given the parties an indication of the evidence that would assist it in future cases. It was not an issue that FWA could have been indifferent about.

The legal principles regarding the exercise of a statutory duty

105. ACCER submits that the 2012 decision did not address the needs of low paid workers as required by the legislation or reflect the matters raised by ACCER and other parties. The statement by FWA that there was no cogent reason for awarding a further \$10.00 per week was not sufficient for a proper exercise of statutory authority, both in respect of its obligation to have regard relative living standards and the needs of the low paid when setting the NMW.
106. The issues that we now raise are similar to those which emerged in the 2010 decision when FWA first considered the needs of the low paid in the *Fair Work* legislation and which were addressed in our submissions in March 2011.
107. In its reasons for decision FWA in 2010 considered the terms of the wage-setting provisions in section 284(1) of the F W Act and said "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" and awarded a dollar increase partly on the ground 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."
108. ACCER had two major concerns about the tribunal’s view of section 284(1) and made submissions in March 2011 on the statutory obligation to fix fair minimum wages which are now relevant to the 2012 FWA decision.
109. The first part of the 2011 submission on jurisdiction dealt with the view that "the low paid need the highest level of wages that is consistent with all other objectives". It was argued that this approach was inconsistent with the statutory duty to take into account the needs

of the low paid because the duty cannot be performed if the wages are set by reference to what is available after other factors are taken into account. ACCER argued that he needs of the low paid are not taken into account unless they are considered and estimated, as best they can be.

110. The second part of ACCER's 2011 submission on statutory duty was that wrongly "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".
111. The legal principles addressed in ACCER's 2011 submissions in regard to both aspects are relevant our submissions on the way FWA dealt with relative living standards and the needs of the low paid in the 2012 decision. The following passages are drawn from that submission.
112. The relevant legal principles concerning the exercise of this kind of statutory duty are canvassed in a judgment of a Full Court of the Federal Court of Australia in *Minister for Immigration and Citizenship v Khadgi* [2010] FCAFC 145 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." "

- 113. A proper consideration of needs of the low paid raise for active consideration whether the NMW is sufficient to provide a safety net of fair minimum wages and, in particular, whether an increase in this classification should be more than the increase for the higher paid, but still low paid, classifications.
- 114. 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 in *Minister for Immigration and Citizenship v Khadgi, 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. In 2012 there was no adequate recitation of the evidence on the needs of the low paid, apart from the reference to the financial stress evidence.
- 115. *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 which is obliged to have regard to mandatory considerations, to show through its reasons for decision "an active intellectual engagement with all mandatory criteria".
- 116. 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."

117. 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.
118. 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. 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.
119. An explanation of the evidence and the reasoning 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 or the extent of poverty among workers and their families 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.
120. ACCER submits that the decision of FWA in 2012 to reject the claim for a further increase in the NMW was not consistent with the F W Act because it failed to consider relative living standards and the needs of those employed on that wage rate, failed to consider the material placed before it and failed to set out its reasoning on the matters raised.

F. The case for an inquiry into the needs of the low paid

121. In the *Safety Net Review Case 2003* ACCER and ACOSS asked the AIRC to establish an inquiry into the needs of the low paid (see Chapter 2B), but it failed to gain broader support and was rejected. ACCER repeated that request at various times, the most recent being in 2011. In 2011 FWA established the section 290 process for considering issues

regarding the assessment of the needs of the low paid. The proces included the filing of written submissions and the making of oral submissions at consultations with two members of the Minimum Wage Panel on 4 November 2011. The FWA website page for the *Annual Wage Review 2011-12* included a section entitled "Assessing the needs of the low paid". The section 290 report was published on 14 December 2011 (Print 517718).

122. The request for an inquiry was not pressed in 2012. Instead ACCER welcomed the section 290 process as one that would "assist the development of a body of knowledge about matters that are insufficiently researched and understood" (paragraph 55, March 2012 submission) and proposed that the process "should be an ongoing process with consultations being held during the year" (*Ibid.* paragraph 407), with the capacity to consider issues about the design and methodology of the SPRC budget standards research, relative poverty lines and child care costs (*Ibid.* paragraphs 408-11).
123. Our expectation of an ongoing process concerning the assessment of the needs of the low paid came to nothing. Nothing has flowed from the section 290 process other than the brief passage referred to in the 2012 decision. The website for the current review does not refer to the assessment of the needs of the low paid, as last year's did. Nor did anything come of the review of FWA research in late 2012. The modest proposals by ACCER, where the request for the section 290 process to be an ongoing process was repeated (see ACCER Research Submission, 31 July 2012), have not been accepted. There is now no process that addresses relative living standards and the needs of the low paid.
124. This occurred in the context of some positive development outside FWA. Funding from the Australian Research Council had been secured by the updating of the budget standards research. Catholic Social Services Australia is one of the participating partners to that research and, as such, has committed substantial resources to the project. The updating research will be a three year project.
125. One of the express purposes of the updated SPRC research is to provide relevant evidence in minimum wage cases. Our concern, which we have expressed in past submissions, is that potential concerns about design and methodology should be elicited prior to the conclusion of that expensive research. In our 2012 research proposals we sought a process in FWA that would elicit any relevant views about design and methodological issues of this kind of research. FWA has, we submitted, the capacity under the section 290 procedure to have any issues ventilated and narrowed; and possibly resolved. FWA has not accepted our proposal for some kind of review process within FWA (see ACCER submission, 31 July 2012 paragraph 10) which, we submitted, could be done within the

parameters of a continuing section 290 investigation into the assessment of the needs of the low paid.

126. We are optimistic about the utility of the research in future wage cases, but the review over the next three years cannot be an excuse for inaction on the assessment of the needs of the low paid.
127. In these circumstances, ACCER repeats the request it made in 2011 for an inquiry into the needs of the low paid. We propose that process be directed to considering whether the wage rates set for low paid workers, in particular the NMW, are sufficient to ensure that low paid workers with family responsibilities are able to achieve a basic acceptable standard of living.
128. We propose that this commence by way of a section 290 investigation and report and that it be returned to the Minimum Wages Panel by no later than 30 November 2013.

The role of the Commonwealth

129. An inquiry into the needs of the low paid should involve the active participation by a range of parties in order to address some important issues about the quantification of the needs of the low paid. The active participation of the Commonwealth is vital, especially because it has access to a range of relevant data. We regard the Commonwealth's role in past cases in regard to the assessment of the needs of the low paid with deep concern. Its lack of active engagement has not assisted the tribunal.
130. We have raised this issue before. The Commonwealth's submissions to annual wage reviews were criticised in ACCER's Reply submission of April 2012:

"This is the third year in which the Commonwealth has failed to deal in any meaningful way with the vital issue of the needs of the low paid, despite the fact that the issue was given a key role in the new wages system in the *Fair Work Act 2009*. The Commonwealth's brief reference to this matter (see paragraphs 5 to 8 at page 43 of its submission) essentially adopts all that it said in its principal submission of 2011, including Appendix B of that submission....

The content and tenor of the Commonwealth's [2011] submission was, in our view, inconsistent with the policy underlying this part of the legislation and what might be expected from the Commonwealth given its terms.

We have expected more of the Commonwealth Government, particularly given its commitment to the promotion of social inclusion of low income families and its concern about the needs of workers with family responsibilities. The Commonwealth has a range of material that bears on the identification and quantification of the needs of the low paid. In 2010 and 2011 we complained about its failure to present material and said that the Commonwealth had access to

considerable data on the needs of low income groups, including the costs of children and, as a result of the Commonwealth's 2009 inquiry into pension rates, the costs of pensioners. In 2009 pension rates were increased to provide a "basic acceptable standard of living".

We note that the Commonwealth has made a brief reference to FWA's processes for assessing the needs of the low paid (see paragraphs 9-11 at pages 43-4), but there is nothing in that reference to suggest that it would change the position set out in its 2011 and 2012 submissions. We ask that FWA note the paucity and tenor of the Commonwealth's contribution to this area of fundamental importance. It is a position that bears upon the capacity of FWA to elicit relevant evidence for the purpose of better assessing the needs of the low paid." (Paragraphs 8,9 10 and 13.)

131. The Commonwealth's brief submissions on the assessing the needs of the low paid were echoed later in 2012 in the Senate Inquiry into the adequacy of the allowance payment system for job seekers and others. In its joint interagency submission it said:

"Assessing living standards is highly complex and there is no agreed way to accurately quantify and compare living standards between individuals and households. The concept of 'adequacy' is problematic in that it relies on subjective judgements on an appropriate living standard and there is no conclusive measure of adequacy." (Joint agency submission, page 96)

132. The submission then left the subject and ignored the learning and experience on the, admittedly challenging, task of estimating needs. The identification of income adequacy is very important for public policy generally, but also for wage-setting. The Commonwealth's approach is unreasonably dismissive of a body of international research concerning the setting of effective public policy and safety nets. In particular, we draw attention to the voluminous material on income and poverty by the U.S. Census Bureau and the widespread research and literature in the U.S. on the identification and measurement of needs and poverty. The US Census Bureau is currently undertaking extensive work on the development of a Supplemental Poverty Measure that is designed to address a range of issues, including those raised in National Academy of Sciences Report of 1995, *Measuring Poverty*; see <http://www.census.gov/hhes/povmeas>.

133. The Commonwealth's submissions to the Senate inquiry then deals with "cameos" of different household types and concludes:

"The cameos demonstrate that the greatest amount of transfer payment assistance is provided to households with dependent children. While partly to offset the higher costs experienced by households with dependent children, this weighting reflects *the priority given by successive Governments to ensuring that all children have a basic acceptable standard of living*. Family Tax Benefit plays a significant role in achieving this in that the income test for Family Tax Benefit A commences at an

income level in excess of the threshold point where all individual working age income support payments cease.” (Page 97, emphasis added, footnote omitted)

134. This is a claim that the family payments intend and ensure that all children have a basic acceptable standard of living. Both parts of the claim are without foundation. First, we know of no policy statement or the like by the current or any former Government that shows that the intent of Family Tax Benefit A has this purpose. Adjustments have not been related to any assessment of needs. Second, the costs of children are not covered by family transfers. We know of no research or data which shows that the Commonwealth’s claims are correct. If there is any such material, the Commonwealth should be required to produce it.
135. The attitude of the Commonwealth to the setting of wages and pensions on the basis of needs contrasts with its own actions in setting pensions by reference to an assessment of needs. Despite its claims in FWA and in the Senate about the difficulties with measuring adequacy the Commonwealth adjusted pensions in 2009 by reference to the money needed to achieve a “basic acceptable standard of living”. That is what we are asking for low paid workers and their families.
136. We submit that the Commission should use its powers to elicit from the Commonwealth all data and research that is relevant to these issues. In particular we repeat a suggestion made in our Reply of 2012, although not taken up by FWA:

“We submit that FWA should press the Commonwealth's advocate on these matters in the forthcoming consultations. Using the standard that the Commonwealth applied in the setting of pensions in 2009, i.e. the "basic acceptable standard of living" standard, we suggest that the Commonwealth be asked what amount of disposable income is required for the following to achieve a basic acceptable standard of living: (a) a single person; (b) a couple with two dependent primary school age children; and (c) a sole parent with two dependent primary school age children. In each case it should be assumed that the adult or one of the couple is in full time employment. If it is unable to answer these questions (within a reasonable range of estimation), the Commonwealth should be asked how these questions might be answered.” (Paragraph 14.)

137. We note that in its 2012 decision the Minimum Wages Panel raised an issue which, we submit, requires a response from the Commonwealth:

“In relation to the general operation of the tax transfer system, we note that there is little consensus among the parties about the way in which changes in tax transfer payments are to be taken into account in the context of minimum wages. We would be assisted if these matters were given some consideration by the parties in their submissions in future reviews. We would also encourage the Australian government to discuss such matters with the major parties in an effort to arrive at a consensus as

to the specific effect any future tax transfer changes may have on the variation of minimum wages in a review.” (Transcript PN1107, 1 June 2012)

138. We have addressed the impact of the taxes and transfer system at Chapter 3G, especially in relation to the NMW. But we emphasise that they cannot be addressed in any sensible way unless there is some consensus, and/or a relevant decision by the Commission, on the nature and purpose of a safety net. It is apparent from our current and past submissions that successive tribunals have stepped around a number of hard questions regarding the setting of a fair safety net for workers with family responsibilities. One cannot consider, for example, the impact of wage-setting of the introduction of the Schoolkids Bonus in the 2012 Budget and its abolition, as presently proposed by the Opposition, without addressing the nature and purpose of the wage safety net.
139. We are not aware of any initiative of the Commonwealth to discuss these issues. These are important questions which, we submit, could have been usefully pursued in the section 290 process. The difficulty with the very tight timetable adopted in annual wage reviews is that the process is not conducive to addressing these kinds of matters through an interactive hearing with all parties present.

Chapter 2 Poverty, social inclusion and wages

A. Mr Costigan's five questions	140
B. What is kliving in poverty?	151
C. The social inclusion objective	173
D. How does the NMW compare to the poverty line?	181
E. Who are the low paid?	194
F. The needs to workers include the needs of their families	199
G. Quantifying the needs to the low paid	231

A. Mr Costigan's five questions

140. In the *Safety Net Review Case 2003* 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.”

141. 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?

142. Questions such as those asked in 2003 had been raised from time to time since the FMW was established by the AIRC in 1997. Similar questions had been raised in earlier decades of Australian wage-setting.

143. 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 sought the establishment of a similar inquiry.

144. 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.)

145. The terms *poverty* and *the poverty line* do not appear in the legislation. As the AIRC later pointed out in the *Safety Net Review Case 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]).

146. In each of its submissions to the AFPC during 2006 to 2009, ACCER asked that research on the needs of the low paid be undertaken, but none was undertaken. However, as we explain later, the AFPC used the Henderson Poverty Lines (HPLs) as measures of needs and relative poverty lines as a proxy measure of needs.

147. The enactment of the Fair Work legislation in 2009, with its inclusion of the explicit requirement to take into account the needs of the low paid, promised a break from one of the limitations of *Work Choices*. In 2010 FWA's Minimum Wages and Research Branch commenced a research project on definition and measurement of relative living standards and the needs of the low paid. The report, *Research Report 2/2011, Relative Living Standards and the needs of the low paid: definition and measurement* was released in early 2011. This report is a valuable review of the literature and the issues.
148. One of the sets of measures considered in that report was the budget standards research of the SPRC at the University of New South Wales. That research was initially funded by the Commonwealth during the Keating Government. The ACTU, ACOSS and ACCER have relied on that material at various times, but with the knowledge that the basket of goods and services covered needs to be updated to reflect changing expenditure patterns and rising community standards since the mid-1990s. We will return to this matter.
149. As we explained in Chapter 1, the section 290 process into the assessment of the needs of the low paid which was started in 2011 has come to an end with the result that we are in the same position as we were in 2003 when Mr Costigan made his submissions. There is little to show for the past decade of submissions.
150. As will be apparent from what follows in this chapter, public policy across a range of areas and wage-setting in particular, suffers from the lack of widely-accepted measures of poverty or of basic needs. This presents particular challenges for those advocates who argue for better levels of funding from government or increased safety net wages; but it also means that decision-makers can have limited confidence in the capacity of their decisions to achieve important social goals. We submit that, when setting minimum wages, the Commission must address the issue of income adequacy as best it can and not avoid the issue on that grounds that it is too contentious.

B. What is living in poverty?

151. In its written submission in the *Safety Net Review Case 2004* ACCER proposed a qualitative definition of poverty 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. a lack of necessities;
- b. that necessities are socially defined;
- c. that the lack of necessities is caused by limited material resources.”

152. 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.

Quantitative needs-based measures

153. Quantitative measures of poverty seek to identify money amounts, or poverty lines, below which a household will be in poverty. Quantitative estimates of poverty fall into two categories. The first are those based on an itemised assessment of the costs of basic needs. These needs-based measures are sometimes called "absolute" poverty measures, but this is somewhat misleading as they will vary according to the socio-economic context in which they are set.
154. The two major Australian needs-based quantitative measures are the HPLs and the budget standards research of the SPRC. The HPLs are based on research into basic living costs in the 1960s and some of the work of the Commonwealth Commission of Inquiry into Poverty (Poverty Commission) in the early 1970s. The Poverty Commission described the poverty line that it fixed as being fixed 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.)
155. The SPRC research was initially commissioned in 1995 by the Commonwealth Department of Family and Community Services. It identified two standards of living. The *Low Cost* budget was developed as a standard for unemployed families and for social security purposes. The *Modest but Adequate* budget was developed 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.
156. The SPRC material is not concerned with identifying "poverty", as such, but with identifying and quantifying standards of living. Its Low Cost budgets for several kinds of households identify what might be described as a minimum acceptable standard of living. Although these budgets were developed for social security purposes, they are capable of providing a reference point, but not a standard, for low paid workers and their families.
157. Like all costs-based measures, the HPLs and the Low Cost budgets need to be adjusted to reflect price changes over time and rising community-wide living standards. The

HPLs are updated each quarter by the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute) on the basis of changes in seasonally adjusted per head household disposable income, reflecting the view that poverty is a relative concept. The Melbourne Institute's 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. There is no regular process for updating the SPRC budgets, but ACCER and others have periodically adjusted the SPRC budgets to reflect price changes. The absence of an adjustment mechanism to reflect community standards has reduced the capacity of this SPRC material to reflect rising community standards. We will return to this aspect.

Quantitative measures of relative poverty

158. The second kind of quantitative measures are relative poverty lines which are expressed as a percentage of the national median or mean income. Usually this is done by reference to the national median equivalised disposable household income. Relative poverty lines do not measure actual needs or identify a particular standard of living. However, as poverty is a relative concept to be determined in an economic context, they have been widely used.
159. The 60% of median disposable income relative poverty line was the relative poverty line used by the AFPC, but 60% has not been universally accepted as a measure of poverty and some relative poverty lines are based on lower percentages. The mean average disposable income may also be used, with 50% of the mean as the poverty line. The mean is typically higher than the median.
160. There is no *a priori* reason for accepting any one of these relative 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.
161. Relative poverty lines place low paid workers, and their families, in the national economic context and are a widely accepted tool of analysis and policy-making in member countries of the Organisation for Economic Co-operation and Development (OECD). The major exception to this is the United States where the U.S. Census Bureau uses its own needs-based poverty lines; see *Income, Poverty, and Health Insurance Coverage in the United States: 2011*, published by the Bureau on 12 September 2012.

162. Relative poverty lines are also an important tool in the setting on wage rates with reference to relative living standards, as the Commission is required to do under the minimum wages objective in section 284(1) of the FW Act.
163. Relative poverty lines, in particular, the equivalence scales that underpin them enable comparisons to be made across various household types. As we explain in Chapter 3, NMW-dependent families with children have a lower standard of living than pensioners on an aged or a disability pension. This is important information because it is necessary for a range of public policy decisions.

Estimating and adjusting median income

164. The foundation stone for the construction of relative poverty lines is the median (or mean) equivalised disposable household income. It has to be calculated by appropriate research. In Australia research on disposable incomes is collected and calculated by the Australian Bureau of Statistics (ABS) in accordance with internationally recognised standards. The most recent ABS publication on this aspect is *Household Income and Distribution, Australia 2009-10*, cat. no. 6523.0, published in August 2011, where median and mean disposable incomes were calculated for 2009-10, and estimates for some earlier years were revised.
165. As the ABS collects the relevant data for this purpose every two years and there is a necessary delay between collection and publication, the relative poverty lines generated by this data will be outdated by the time of publication. Accordingly, it is necessary to adopt a suitable adjustment process to generate contemporaneous poverty lines. The AFPC adopted the method used by Melbourne Institute to update the HPLs, ie the quarterly changes in per capita household disposable income as recorded in its *Poverty Lines* newsletters. This has been done by the Commission's Minimum Wages and Research Branch, most recently in Table 8.2 of the *Statistical Report - Annual Wage Review 2012-13*, March 2013.

Equivalence scales

166. Poverty lines for a range of different households can be calculated by the application of equivalence scales. The purpose of equivalence scales is to show the various income levels that will produce the same standard of living across different types of households. The equivalence scales used in the construction of relative poverty lines

are usually based on the "modified OECD equivalence" scales, which were developed by the OECD and which are used by the ABS. Needs-based poverty lines may be based on the underlying research or the adoption of equivalence scales used in similar research.

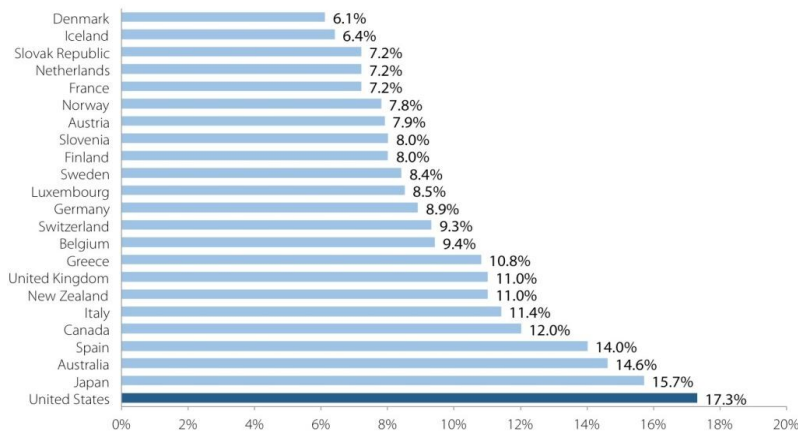
167. ACCER has argued that the equivalence scales used in the HPLs and the relative poverty lines do not take into account the cost of child care for working sole parents. Any assessment of the needs and living costs of parents with family responsibilities, other than those where one parent stays at home to care for the children full time, has to take into account child care costs for pre-school and school-aged children. The equivalence scales between couple and sole parent families do not take this aspect into account. The cost of child care is a matter which requires substantial research because there is presently insufficient evidence about the costs of child care and the frequency with which it is used. This is a priority because, even after government assistance, child care costs can drive low income sole parent families into poverty and/or force sole parents into inadequate child care arrangements. We return to this at Table 4.

International comparisons

168. Relative poverty lines also provide the basis of international comparisons about the distribution of income in different economies. The value of this kind of comparison is that it shows the operation of the labour markets, public finance and various safety nets in the context of particular economies. The following figures are taken from *U.S. Poverty Rates Higher, Safety Net Weaker than in Peer Countries*, Elise Gould and Hilary Wething, Issue Brief 339, Economic Policy Institute July 24 2012. The data is taken from the OECD Stat Extracts (<http://stats.oecd.org>). The OECD has accessible data on Australian poverty rates from the "mid 1990s" to the "late 2000s".
169. Graph 1 compares the extent of relative poverty rates, by reference to 50% of median income, across 23 countries. Graph 2 shows child poverty across 27 countries by reference to the 50% of median relative poverty line. Graphs 1 and 2 explode the myth that Australia is a lucky country for its most marginal workers and citizens. It is apparent from Figure 1 that the extent of poverty in Australia is not limited by the extent of unemployment and underemployment.

Graph 1

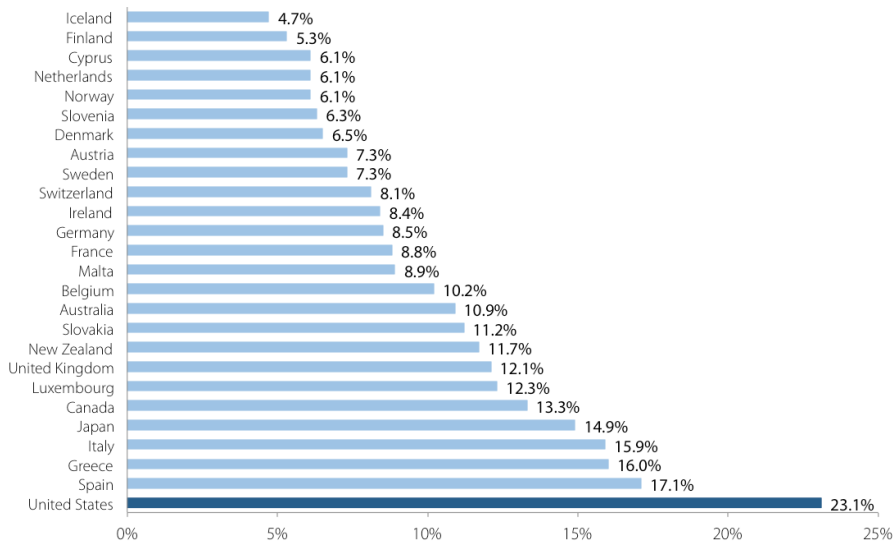
**Relative poverty rate in the Australia and selected OECD countries
Late 2000s**



This is Figure C in Gould and Wething's paper. The relative poverty rate is defined here as the share of individuals living in households with income below half of household-size-adjusted median income. Poverty rates are based on income after taxes and transfers. Source: Gould and Wething's analysis of Organisation for Economic Co-operation and Development *Stat Extracts* (data group labelled "late 2000s")

Graph 2

Child poverty rate in selected developed countries, 2009



This is Figure D in Gould and Wething's paper. The child poverty rate is the share of children living in households with income below half of household-size-adjusted median income. Source: Peter Adamson, *Measuring Child Poverty: New League Tables of Child Poverty in the World's Rich Countries*, UNICEF Innocenti Research Centre Report Card 10, 2012, Figure 1b.

170. The extent of poverty in Australia, even among full time employees has been demonstrated in *Poverty in Australia 2012*, published by ACOSS in October 2012 and based on research commissioned from the SPRC; see *Poverty in Australia: New Estimates and Recent Trends - Research Methodology*, Peter Saunders, Bruce Bradbury and Melissa Wong, 2012.
171. The ACOSS report considers the extent of poverty in Australia by reference to the 50% and 60% relative poverty lines. In particular, it looks at the risk of poverty within different sectors of the population and the composition by sector of those in poverty. The striking feature of this report is the extent of poverty among those in full time employment, at both the 50% and 60% relative poverty levels. The report states: “Since the minimum fulltime wage is above the 50% poverty line for a single adult, it is likely that most employed workers living below that poverty line are either employed part time or are supporting dependent children on a low wage” (page 25). The report shows that amongst fulltime workers 3.8% are below the 50% poverty line (page 23). These are workers with family responsibilities and they comprise almost 1 in 25 of the fulltime workforce. At the 60% poverty line the percentage in poverty rises to 7.1%, which may include a significant number of single fulltime workers. Looking at the profile of those living in poverty, the report finds that 17.7% of those living below the 50% poverty line are in, or rely on, fulltime employment. The estimated total is 401,000. Using the 60% poverty line the figures rise to 20.5% and 760,000, respectively.
172. These are very worrying figures and confirm that the working poor in Australia are not confined to the ranks of the unemployed and the underemployed.

C. The social inclusion objective

173. Over recent decades a broader view of poverty has emerged, based on a greater understanding of the dimensions and consequences of poverty. The term social exclusion may be used to describe this broader view of poverty. Social inclusion is, in substance, the opposite of social exclusion and poverty. Social exclusion and social inclusion are not terms of fixed and certain meanings; but the substance of the meaning of each is clear. Although social exclusion may be the product of a range of factors, it is primarily the result of poverty and low income. The primary means of promoting

social inclusion will be increases in income for those in or near poverty.

174. A number of these matters are brought together and considered in *Measuring Poverty and Social Exclusion in Australia: A Proposed Multidimensional Framework for Identifying Socio-Economic Disadvantage*, R. Scutella et al Melbourne Institute Working Paper Series, Working Paper No. 4/09. An extensive review of social inclusion and associated matters is in a paper published by Catholic Social Services Australia in January 2010: *The Social Inclusion Agenda: Where it came from, what it means and why it matters*.

175. 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)

176. 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.”

177. 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.”

178. 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*)

179. It is clear that strategies for the promotion of social inclusion must be pursued over a wide range of governmental activities. The promotion of social inclusion also requires action by a range of organisations across civil society. For example, the role that can be played by Catholic schools in pursuing social inclusion is discussed in the Research Document *Social Inclusion in Catholic Schools*, published by the Catholic Education Office Melbourne in May 2011. The connection between social inclusion and Catholic teaching on the common good (which we have discussed in Chapter 1C) underpins the document:

"This Research Document builds on a significant body of research, Catholic Social Teaching and government policy, both state and federal. It locates social inclusion in schools at the heart of the mission of Catholic education, which obligates schools to exercise a preferential option for the poor and vulnerable and to work for the common good."

180. As we discussed earlier, social inclusion is one of the two parts of the object of the F W Act. The Act requires that the Commission plays *its part* in the promotion of social inclusion, in accordance with the terms of the legislation. The outcomes that it can affect are limited, ie the terms and conditions of employment. However, within that scope, the exercise of its powers will be fundamental to the reduction of poverty and social exclusion: a decent wage is a pre-condition for the social inclusion of workers and their families.

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

181. In 2003 Mr Costigan put the most basic of propositions: "it is a fundamental need of the low paid not to live in poverty". In its first decision in 2006 the AFPC referred to the various submissions made to it about wages and poverty and said, without any reservation:

"There is general agreement that minimum wages should, in combination with cash transfers, provide an income 'well above poverty'." (*Wage-Setting Decision October 2006*, page 96.)

The AFPC's tabular method of showing poverty levels

182. The AFPC made a substantial and sustained effort to measure living standards of low income families. In each of its decisions the APPC included a table or tables setting out the disposable incomes of various kinds of FMW-dependent households and their respective poverty lines in order to assess the different impacts that the FMW and government transfers payments would have on the living standards of those households. From its first decision in 2006 the AFPC used the HPLs as the guide to its consideration of the adequacy of the FMW 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 disposable household income. These poverty lines were estimates 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 the use of the estimated changes in per capita seasonally adjusted household disposable income published by the Melbourne Institute in *Poverty Lines: Australia*.
183. Although we have questioned aspects of this work by the AFPC, 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. 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. We submit that this is kind of data is essential to a proper evaluation of the needs of the low paid and relative living standards.

The demise of the Henderson Poverty Lines

184. The AFPC placed substantial weight on the HPLs as a measure of needs. ACCER argued in successive submissions that the HPLs underestimated needs. In particular, it argued that the estimates of housing costs (which are specifically quantified in the HPLs) were unrealistic and that child care costs for working sole parents had not been taken into account. ACCER argued that the housing problem was curable by the use of other data on housing costs. In substance, the revised "housing-adjusted" HPLs supported ACCER's claim that the FMW was manifestly inadequate. The argument was developed in FWA in the 2010 and 2011 wage reviews.
185. ACCER placed some weight on the adjusted HPLs in its submissions to the 2010 and 2011 annual wage reviews. In each year FWA was unpersuaded by those figures as a measure of need. In 2011 it said:

"We have been asked to express a view about the utility of the Henderson Poverty Line as part of the range of indicators of relative standards of living. Our view at present is that this measure is not helpful to our task. Its origins in the 1960s, the inconsistency between its original construction and the way it is updated, and its focus on poverty rather than the needs of the low paid reduce its value as a tool for wage-setting." (*Annual Wage Review 2010-11*, paragraph [226])

186. As a result of this view ACCER has not argued for HPLs as a measure of need. However, in Chapter 3 they will be used to show changes in living standards of low income households relative to their HPLs and to the underlying estimates by the Melbourne Institute of per capita household disposable income over the period 2000 to 2012.

Relative poverty lines and the poverty gap

187. In Table 1 we have calculated the disposable incomes of three NMW-dependent households for the purpose of comparing their standards of living with their 60%relative poverty lines.

Table 1
Disposable incomes and poverty lines of NMW households
September 2012

Household type	Disposable Income (\$pw)	Poverty Line (\$pw)	Disposable Income as proportion of Poverty Line	Poverty Gap (\$pw)
Single adult, no	557.15	489.40	1.14	—
Single parent, two children	911.92	783.03	1.16	—
Single-earner couple,	911.92	1027.73	0.89	115.81

The modified OECD equivalence scale sets the single person at 1.0, a second adult at .5 and each child at .3.

188. Table 1 is drawn from Table 8.2 of the FWA *Statistical Report - Annual Wage Review 2012-13*. The poverty gap column has been added to that data. The three household types in Table 1 are included in a larger group of households in the statistical report. The couple parent family is the family in which one parent stays at home to care for the children and who is not eligible for the Newstart unemployment allowance. The last column, which records any poverty gap or any margin over the poverty line, has been added to the information in the statistical report.
189. Table 1 takes into account the most recent data on household disposable income published in *Household Income and Distribution, Australia 2009-10*, cat. no. 6523.0, published in August 2011, where median and mean disposable incomes were calculated for 2009-10. The median was found to be \$715.00 per week, with 60% being \$429.00 per week. Consistent with the practice of the AFPC to use the Melbourne Institute's estimates of quarterly changes in per head household disposable income, we can calculate a figure for the September 2012 (the last month for which data available). Applying that increase, the statistical report shows that 60% of the median equivalised disposable household income had risen to \$489.40 per week by September 2012.

190. The 60% poverty line for a single adult is based on a median equivalised disposable household income of \$815.67 per week. For a family of four, the figure is 2.1 times that figure, ie \$1,712.91, 60% of which is \$1027.74. A similar calculation applies to the sole parent with two children, but with the equivalence scale at 1.6 times.
191. Table 1 shows that the disposable incomes of the two families are the same. The reason for this is that Family Tax Benefit B (FTB B) which is paid to the stay at home parent in the couple family is also payable to the sole parent. FTB B is sometimes referred to as "the stay at home Mums" payment, but it is not because it is also payable to a sole parent. We refer to this payment in more detail later. For present purposes it should be noted that the FTB B has the effect of producing a wide gap in living standards between the two family types. However, we stress the point made earlier: the equivalence scale used to enable the comparison of living standards between these two household types takes no account of the child care costs that will be incurred by the sole parent and which need not be incurred by the couple where one of them stays at home to care for the children.
192. We repeat the point made earlier that the 60% relative poverty line in Table 1 is not universally accepted as a measure of need. However, as wages should be set at a level that gives working families an outcome that is well above poverty, the 60% relative poverty line is a reasonable one to use. Even if we were to set the poverty line at 55%, the family of four would be in poverty. At the updated median equivalised disposable household income of \$815.67 per week, at 55% the family's poverty line would be \$942.10, with a poverty gap of \$30.18. We will return to this in Chapter 3J.
193. 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. The calculations of poverty lines require some rigour, but, in the end, the Commission has to make a broader judgment about the proper margin between disposable income and the poverty line. That judgment is one that also has to be made in a broader context of setting a safety net of fair minimum wages taking into account the other matters referred to in section 284(1) of the FW Act.

E. Who are the low paid?

194. The term "low paid" is not defined in the legislation. In the *Annual Wage Review*

2009-10 the Minimum Wage Panel concluded:

"There is no consensus among the parties and other commentators with respect to a definition of the low paid. Because there is a continuous distribution of wages, there is no wage threshold just below which people are clearly low paid and just above which people are clearly not low paid. Rather, the lower the wage, the more-low paid is the employee. People earning above or near median earnings are clearly not low paid in an absolute sense. In considering relative living standards and the needs of the low paid, we have focussed mainly on those receiving less than two-thirds of median adult ordinary-time earnings . . . We have also had regard in particular to those paid at the C10 rate, in recognition of past practice, on the C14 rate, which is equivalent to the minimum wage, and on those whose full-time equivalent wages put them in the bottom quintile of the wage distribution. Employees on award wages that are above these rates can be considered to be low paid in a different sense." (Paragraph [237])

195. Following further submissions on the matter in 2011 the Panel said:

"There was no consensus with respect to a definition of the low paid, although there was general support for the relevance of award rates and two-thirds of AWOTE [Average Weekly Ordinary Time Earnings] as relevant benchmarks. Consistent with our decision last year, we consider the low paid to be those on award rates, particularly those paid at equal to or less than the C10 rate. We note that two-thirds of AWOTE currently lies between the C3 and C2(a) award rates. In understanding the relative living standards and needs of the low paid, we require a definition that situates the low-paid worker in his or her family. There is also a practical requirement that suitable data be available to identify the standard of living of low-paid workers, or changes therein. (*Annual Wage Review 2010-11*, paragraph [215])

196. The recognition that the term "low paid" requires a definition that places a person in his or her family for the purpose of determining relative living standards and the needs of the low paid is significant. It is relevant to the submissions later in this chapter regarding the needs of workers with family responsibilities.

197. We show in Chapter 3, over the past decade successive wage increases have caused a growing disconnection between safety net wages and prevailing community wage levels. The awarding of "across the board" money increases has compressed relativities and opened large differentials between safety net-dependent workers and those workers doing similar work in the bargaining sector. The impact has been severe on workers with substantial skills and responsibilities, but with little bargaining power. Income inequality within the workforce has increased.

198. Many safety net-dependent workers have fallen into the low paid category over the past decade. We have referred at various times to the trade-qualified, or C10, wage. At \$706.10 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 trade qualification should be a means out of low paid work. Had the trade-qualified rate been adjusted in line with community wage movements, as reflected in average weekly ordinary time earnings (AWOTE) since 2000, the current rate would be \$858.40 per week, \$152.30 more than it is (see Table 13). We do not argue that safety net wages have to be in lockstep with AWOTE nor that we should ignore tax changes, but where there is a statutory duty to take into account relative living standards there needs to be a clearly articulated reason for departing from this kind of measure of relative living standards.

F. The needs of workers include the needs of their families

199. The needs of the low paid include the needs of their families. ACCER's submissions have emphasised a "family wage" approach to wage-setting or, to adopt the more recent terminology, our approach is one that takes into account the needs of "workers with family responsibilities". The provision of a safety net for workers with family responsibilities is one which recognises the need for wages to support families in which due regard is paid to the substantial, but insufficient, family payments received by workers and their families.
200. There have been proposals or suggestions in the past that wages may be set by reference to the needs of the single person and that the support of dependants be left to government. The fact of the matter is that government transfers are insufficient to meet the needs of dependants, and are not intended to do so. As we explain later, the adoption of the "single person test" in setting wages in this context would be discriminatory.
201. Another position is the one advanced last year by ACOSS in its March 2012 submissions to the *Annual Wage Review 2011-12*. It is in similar form to those that it had put in previous wage reviews:

"Our recommendations focus on how the needs of people on low pay can best be assessed and the respective roles of wages and social security in sustaining a

decent standard of living. Our starting point is that the Federal Minimum Wage (FMW) should be designed to at least provide a decent living standard, well above poverty levels, for a single adult and that the tax-transfer system should meet the basic costs of raising children in a low income family. The FMW should not be directly designed to cover the costs of children because that role is best performed by the social security system. However the FMW together with family payments should be sufficient to prevent a family from falling into poverty. The minimum wage itself should be set well above poverty levels in keeping with Australian public policy tradition, and the need to maintain a gap between maximum social security payments and minimum wages to preserve work incentives.

....

ACOSS recommends that:

- In its decision this year, FWA should substantially increase real minimum wages in order to significantly reduce the growing gap between them and median pay levels.
- Decisions on the level of minimum wages should be informed by 'benchmark' estimates of the cost of attaining a 'decent basic living standard' for a single adult according to contemporary Australian standards.
- Research should be commissioned and consultations held with key stakeholders to develop a robust set of indicators of a minimum adequate living standard for low paid workers. This should include
- the updating and revision of 'Budget Standards' research and regular assessment of the living standards of workers on minimum wages against this benchmark as well as median household disposable incomes, poverty lines, deprivation indicators and financial stress indicators.
- The combined effect of the minimum wage and family payments on the extent of poverty among families should also be taken into account in setting minimum wages.
- Minimum wage rates for young people, apprentices and trainees, and people with disabilities under the Supported Wage System, should continue to be increased in line with the rise in the federal minimum wage." (Pages 8-9, footnote omitted.)

202. ACCER opposed this approach replied in the following terms:

"ACOSS appears to propose a modified single person test: the NMW should be sufficient to provide a decent standard of living for single workers, but that it be set to ensure that families will not fall into poverty. If this understanding is correct, ACOSS is not proposing a wage safety net that would deliver a decent standard of living to families, but a lesser standard based on keeping them out of

poverty. We could not agree with such an approach. It is an approach that is inconsistent with more than a century of Australian wage-setting. We have explained in our principal submissions how we see the safety net operating in the "ordinary cases", whether there is one parent or two parents living with the children. Families need to be supported at a decent standard of living. Given the inadequacy of family payments, this objective will mean that the wage of a single person will be more than that needed to provide him or her at a decent standard of living and that there will be a degree of over-compensation. If it is unacceptable from an economic point of view, then it is the function of government to increase transfers to a point where there need be no over-compensation of single workers." (ACCER Reply April 2012, paragraph 16)

203. We submit that the dual standard approach by ACOSS is the product of the intrusion of a long term policy goal into current decision-making. The effect of it would be to have working families sitting on the poverty line unless and until the government topped up their incomes; and continued to do so. ACCER is not opposed in principle to a movement towards a single person test. 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*.
204. The pre-condition for that kind of step is a change in government policy and expenditure, which has not been met. Given the Commonwealth's short and medium term budgetary position, we expect that there will be no significant change in the real value of government transfers to families, let alone the introduction of a transfer payments regime that will cover all of the living costs of the families of low paid workers sufficient not just to get them out of poverty but to provide them with a decent standard of living.
205. For more than a century arbitrated wages in Australia have been fixed on the basis that they will be required to support families. It has always been based on the fact that workers without family responsibilities will have an element of over-compensation in minimum wage rates. The increase in family payments has permitted this over-compensation to be reduced. If the current level of over-compensation is said to be unacceptable from an economic point of view, then it is the function of government to increase family payments. There appears to be neither a capacity nor a desire by the

Government to do this; nor any significant advocacy of interested groups, whether businesses, unions or community organisations.

206. ACCER submits that the proper approach to decision-making is to recognise that the purpose of minimum wages is to set a safety net, after taking into account taxes and family payments, which covers ordinary and foreseeable circumstances. 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 at an acceptable standard of living. The safety net does not have to cover exceptional cases, but it must cover ordinary and foreseeable cases and circumstances.
207. 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. The family (with a sole parent or both parents) with two children is the reference point because it best approximates the size of contemporary Australian families. It would not be acceptable to set a wage that is sufficient for one of these families, but not for the other.
208. We know from data published by the AFPC and FWA that the NMW-dependent family of four is under the greatest economic pressure. Hence it is our primary reference point in advocating wage increases.
209. ACCER, therefore, places particular emphasis on 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 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.
210. We do not accept that the financial position of sole parent families as described in AFPC and FWC data (at Table 8.2 of the Statistical Report, March 2013) is correct because it does not cover the cost of childcare. Hence our concern about the cost of childcare for sole parents.

The scope of family protections

211. Our submission that the needs of workers should include the needs of their families and that the wage should be sufficient to allow a second parent to stay at home to care for the children are based on principle, sound public policy and the legislation under which FWA operates.

212. 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)

213. 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).

214. 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.

215. 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.
216. 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 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.

The Poverty Commission: sound public policy

217. A substantial impetus for the change in Commonwealth financial support for families came from the work of the earlier mentioned 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).
218. One of the Poverty Commission's major concerns was the extent of poverty among single breadwinner families and the policies needed to address their situation. The Poverty Report adopted poverty lines for various household groups. Those poverty

lines, now called 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. This is ACCER's primary reference point.

219. 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.)

220. 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.
221. 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.

222. This policy objective, which was central to the work of the Poverty Commission, remains a valid objective. The objective is to provide a minimum wage which, together with family payments, will enable families to rely *solely* on that wage.

The Newstart allowance

223. 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.)

224. We wish this were the case. It was not the case because the calculation of disposable income underpinning the conclusion in respect to families of two adults and two children had erroneously included income from 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 actively seek work and 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.
225. The inclusion of the Newstart allowance is not a minor matter. Where the breadwinner is paid the NMW, the other parent is currently entitled to \$110.44 per week (from Table 8.2 of the Statistical Report March 2013), subject to compliance with the requirements of the allowance. This amount is reduced on a scale that takes into account the breadwinner's income. Where the partner is receiving the NMW or more, the payment reduces at the rate of 60 cents in the dollar. At this rate the Newstart allowance would cease to be payable when the breadwinner's wage reaches \$790.00 per week.
226. Most fundamentally, what is the rationale for taking into account the Newstart allowance? In substance, the claimed rationale is that if a family is living in poverty, or below an acceptable basic standard of living, the second parent should get a job, just to

get out of poverty, or achieve a basic acceptable standard of living. We note that in the years since the AFPC first included the Newstart allowance in the calculations of disposable income, no party, nor the AFPC, has presented a rationale for its inclusion.

227. Despite the absence of any rationale for its inclusion, the Newstart allowance has appeared in statistical reports and submissions in a way that does not alert the reader to the fundamental issue. ACCER has regularly argued against the inclusion of the Newstart allowance in the calculation of the incomes of "single earner couple families". It is misleading unless the nature and requirements of the Newstart allowance are explained. We most recently expressed our concerns about this issue in our research proposals of 31 July 2012:

“ACCER has supported this kind of comparison, but has expressed concerns about the calculation and use of some of the payments. In particular, ACCER has argued against the inclusion of the Newstart Allowance in the calculation of the incomes of "single earner couple families". Furthermore, in the one household in Table 8.3 where the Newstart Allowance is excluded, the reader would have no real explanation of the relevance and importance of this exclusion. We submit that the Newstart Allowance should be excluded from the calculations and that a footnote be added to the effect that the second parent/adult would be entitled to the Newstart Allowance if he or she is seeking employment and meets the criteria for that allowance. Alternatively, there should be a separate row for each of the households where the second parent/adult is entitled to the Newstart Allowance. ACCER has also drawn attention to the desirability of identifying each component of the transfer payment total and for source documents being available. A notation "modelling by..." is insufficient.” (Paragraph 24)

228. The recently issued Statistical Report continues the past practice. We submit that the practice should change.

Gender neutral advocacy

229. Many Australian families can, and do, choose to live on a single income. Many couples chose to live on a single income for the benefit of their children and many couples find that the best interests of their children can be best served by both of them working, often with one parent working part time. That is a choice that they are entitled to make. But it is harder for lower income families as a result of low wages and limited government support. So much so, that it requires many of them to live in or near poverty.
230. 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*. 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.

G. Quantifying the needs of the low paid

231. 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 take account of 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.

Social Policy Research Centre Budget Standards research

232. Indisputably, the best evidence in Australia about the needs of low income families is in the Budget Standards research of the SPRC, which we briefly described earlier. The

SPRC research was initially commissioned in 1995 by the Department of Family and Community Services. It identifies two standards of living. The Low Cost budget was developed as a standard for unemployed families and for social security purposes. The Modest but Adequate budget was developed 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.

233. The original SPRC budgets were developed for households in Sydney over the period 1995 to 1998 and prices were set at February 1997 prices. Each budget comprises a detailed list of goods and services for a number of households. There are 26 pages of detailed items, grouped under a series of headings; see the *Attachment to Updated Budget Standard Estimates for Australian Working Families in September 2003*, Professor Peter Saunders, SPRC 2004.
234. In Table 2 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 2

Extract from SPRC Low Cost Budget

Low Cost Food Budget for Couple with Two Children										
		Girl aged 6			Boy aged 14		Woman aged 35		Man aged 40	
	Serving unit	Grams per serve	Serves per week	Cost (\$ per week)	Serves per week	Cost (\$ per week)	Serves per week	Cost (\$ per week)	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

AIRC and FWA responses to SPRC research

235. In its past submissions ACCER has argued that the itemised budgets are credible and, with adjustments to cover price increases since 1997, provide a sound basis upon which the needs of low paid workers and their families can be estimated. The SPRC material was first used in a minimum wage case when the ACTU relied on it in the *Safety Net Review Case 2004*. Professor Saunders' abovementioned paper was commissioned by the ACTU for use in that case. Before further explaining this research and how we rely on it, we refer to the responses made to it by the AIRC in 2004 and by FWA in 2010 and 2012.
236. In 2004 the AIRC discussed the evidence and concluded that it could not accept the material as providing the basis for an Australian benchmark. It agreed with some of the parties that there were significant difficulties in adopting the SPRC budget standards as an Australian benchmark. In particular, the AIRC was concerned about the housing component of the budget, which was based on the rental costs in the Hurstville area of Sydney. It added:
- "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.)
237. In its decision in the *Annual Wage Review 2009-10* the Minimum Wage Panel of FWA wrote the following on the budget standards research:
- "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". 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." (Paragraph [243], footnote omitted.)
238. We referred in Chapter 1 to the section 290 report *Measuring the Needs of the Low*

Paid by Senior Deputy President Watson and Professor Richardson. In regard to the HPLs and the SPRC material, they wrote:

"The current HPL data and the SPRC budget standards data provide little guidance to the Panel because the original research upon which they are based lacks contemporary relevance. The proposed research project submitted to the ARC [Australian Research Council] for updating budget standards will, if funded, provide valuable information when focused on the needs of the low paid so long as the information remains contemporary. Budget standards that are based on the needs of the low paid, rather than, for example, set at a level deemed appropriate for social welfare recipients, would be of most value to the work of the Panel. However, it is of concern that the availability of contemporary budget standards data is reliant upon the ad hoc efforts of academic researchers and there may be times, as is currently the case, when reliable contemporary data is not available. There is a widespread view that more regular and consistent primary data as to the needs of the low paid is required and, if available, would better inform the Panel." (Paragraphs [41] - [42])

239. In its 2012 decision the Minimum Wage Panel quoted the conclusion in the first sentence of this extract of the report without comment, but with apparent approval. We have already addressed this matter matter in Chapter 1E.
240. It is apparent that the S P R C material was disregarded for *all* purposes in 2012. For the reasons which follow, we ask that the Commission take it into account for the limited purpose outlined and that it not be rejected for all purposes.
241. The "lack of contemporary relevance" identified by FWA is not merely about price levels. If it were, the adjustment of prices to reflect increases in the CPI, or relevant components of it, would be sufficient. The fundamental concern is that the basket of goods and services are outdated because of the changes in community levels over the past 15 years (and more than 40 years in the case of the HPLs). There is no "growth adjustment" as there is with relative poverty lines. The discrepancy between the two is illustrated by the changes in the CPI and per capita disposable income over the period as set out by the Melbourne Institute in *Poverty Lines: Australia, September Quarter 2012*. From March 1997 to September 2012, the CPI increased by 50.2%. By comparison, seasonally adjusted household disposable income (per head), as calculated by the Melbourne Institute, increased by 115.2% over the same period. This means that a basket of goods and services established in 1997 to reflect a position in community living standards at that time becomes out of date. The mere application of a

CPI adjustment will be insufficient. In this sense it lacks contemporary relevance: it lacks contemporary relevance because it *underestimates needs*.

242. 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 patterns 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.
243. Because community standards have increased, a re-construction of the budgets will raise the budgets, not lower them. Our CPI adjustments are, therefore, conservative. To set a wage by reference to the CPI-adjusted basket, ie to use the budget standards as a ceiling, would be inappropriate. However, it would be quite appropriate to regard the CPI-adjusted figure as a floor when setting of wages. Furthermore, ACCER is not seeking the setting of the NMW by the direct application of the research; rather it is using the research to show that a further \$10.00 per week in the NMW is clearly warranted on the merits.

Updated SPRC research

244. In Table 3 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 2012, save for the adjustment to housing costs which has been made on another basis, as explained below.
245. Table 3 has not been prepared on the basis of it providing a satisfactory benchmark for the setting of minimum wages, but for the purpose of showing that ACCER's claim for an extra \$10 per week in the NMW is justified.

Table 3
Updated Low Cost and Modest but Adequate Budgets
December 2012
(\$ 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	213.39	213.39	213.39	258.85	315.12
Energy	11.89	11.89	15.50	19.88	23.62
Food	77.20	92.83	168.99	217.01	297.57
Clothing & footwear	36.53	27.75	54.99	75.91	90.89
Household goods & services	45.96	45.96	4.52	74.23	62.87
Health	6.71	9.95	16.40	20.92	24.40
Transport	115.41	115.03	129.49	133.62	137.75
Leisure	42.74	49.44	83.40	88.56	131.69
Personal care	34.20	15.11	42.86	45.96	47.51
Total	584.03	581.35	729.54	934.93	1131.43
	<i>Low Cost</i>				
Housing	185.64	188.23	188.23	237.28	315.12
Energy	10.97	11.11	14.72	17.68	20.53
Food	72.82	73.98	133.36	170.41	234.96
Clothing & footwear	21.56	21.95	49.44	62.75	79.13
Household goods & services	36.01	36.66	45.82	58.74	89.85
Health	6.20	6.46	11.11	14.33	17.18
Transport	86.23	87.78	99.40	106.90	106.90
Leisure	29.82	30.35	37.95	45.82	56.80
Personal care	8.27	8.39	18.59	19.62	23.23
Total	457.52	464.90	598.63	733.53	914.91

Housing costs

246. In 2004 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. The budgets were based on housing costs in Hurstville, Sydney, and were regarded as unrepresentative of the national position. In each of the annual cases heard by FWA we have referred to

Commonwealth data showing the average rent paid by recipients of Commonwealth rental assistance. The most recent data, which is found in Year Book Australia 2012 (at Housing Assistance), shows the average rents paid by various groups as at 3 June 2011. In the category of a couple with one or two dependent children who are paid Family Tax Benefit A, the average rent paid was \$297.00 per week. Applying the increase in the CPI rental index over the period June 2011 to December 2012 (6.1%), that figure rises to \$315.12 per week. That figure has been placed in the housing cost cells of the two budgets for the family of four. We have not made changes to the other relevant cells for the other families and those figures have only been adjusted by the CPI. We submit that, in regard to the Low Cost budget this effectively overcomes the major concern in 2004 about the costing of the SPRC budgets.

247. The updated and revised Low Cost budget of \$943.71 per week is significantly above the disposable income (including maximum rental assistance) of the NMW-dependent family, which was \$915.09 per week at the same time (see Table 22). Having regard to the design of the Low Cost budget, which was for social security purposes, the disposable income of these working families should be substantially higher than the budget figure. The Low Cost budget is a reference point, not a standard, and the NMW should provide a standard of living "well above" that level.

The utility of the updated budget

248. We submit that, while the CPI-adjusted Low Cost budget in Table 3 is not sufficient for the setting of a fully-considered NMW, it demonstrates that the further adjustment to the NMW of \$10.00 per week that we seek in 2013 is a very conservative amount and is justified on the basis of the best available evidence of the needs of the low paid. We rely on it for that limited purpose.

A note on Value judgments

249. There were criticisms of the SPRC material in 2004 to the effect that it involved value judgements. Indeed, Professor Saunders had raised them in his paper in support of the ACTU's claim. He 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.” (*Updated Budget Standard Estimates for Australian Working Families in September 2003*, page 9)

250. 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 should not take into account some amount to cover books for the children.
251. 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.

Child care costs are a research priority

252. There is an urgent need for further research into child care costs. As we showed in Table 1, the application of the modified OECD equivalence scale shows that NMW-dependent sole parents with two children appear to have a higher standard of living than singles on the same wage. This kind of comparison was first presented by the AFPC in 2008. It cannot be right. ACCER has pointed out over the years that child care costs need to be taken into account and that these figures give a misleading impression of the true position of working sole parents. It risks giving the misleading impression that sole parents are doing as well as singles and do not need any more help.
253. 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.

254. There has been much discussion about this matter and considerable Commonwealth expenditure on child care support, especially in recent years. 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.

School age childcare

255. In Table 4 we have set out child care costs for the NMW-dependent sole parent with two children using child care before and after school and during vacations.

Table 4
Child care costs for NMW-dependent sole parent with two children
(\$ per week)

	Total cost per week	Child Care Benefit	Out of Pocket Expenses	Child Care Rebate	Net Child Care Costs
Before and After School Care 2 sessions, totalling 5 hours @ \$6.00 per hour per child	300.00	173.20	126.80	63.40	63.40
Vacation Care 11 hours per day for 5 days @ \$39.50 per day per child	395.00	436.38	48.62	24.31	24.31

The calculations are taken from the Centrelink online estimator. The children are aged 11 and 7.

256. Table 4 is based on the fees charged in the extensive out of school hours service provided by Centacare Child Care Services which operates 104 centres throughout the Archdiocese of Brisbane. Based on the current range of fees, we have used \$6.00 per hour for before and after school care and \$39.50 per day for vacation care. They are very modest figures. 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 a child care component into 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.
257. These are substantial costs for low paid workers, which rise significantly with higher hourly fees. Beyond these fees no more is payable under the Child Care Benefit and the parent can only rely on the Child Care Tax Rebate for the recovery of 50% of out of pocket expenses. If the hourly rate is \$1.00 more, at \$7.00 per hour, the weekly out of pocket expenses for before and after school care would increase to \$176.80 and the net child care costs to \$88.40. If vacation care increased by \$5.00 per day, out of pockets would increase by \$48.62 per week and the net cost by \$24.31 per week. Even a small increase in fees can have a major impact on the ability to afford child care.

Pre-school childcare

258. In March 2013 The Australia Institute published *Trouble with childcare: Affordability, availability and quality*, Policy Brief No. 49. The paper, which is concerned with pre-school childcare, has some very relevant findings on the rising costs of childcare, including those in the following passages:

“Despite increased government assistance following two elections in the last decade a greater proportion of families reported cost difficulties in 2010 than in 2001. This situation reflects long-term increases in childcare costs that exceed increases in the Consumer Price Index (CPI). When cost increases exceed CPI the proportion of costs offset by government assistance is reduced. The constant policy catch up between increasing costs and the effective shrinking of assistance payments, which are then increased by government, means affordability remains an issue that will inevitably shape future election campaigns.” (Page v)

“Data reported by Treasury shows that between 1996 and 2005 the price of childcare increased ahead of headline inflation except in the two years following the introduction of the Childcare Benefit.⁷ Barbara Pocock and Elizabeth Hill have cited data that shows that this pattern extends back to 1990, with the cost of childcare rising by double the rate of inflation between 1990 and 2004.⁸ These findings indicate that government policies are failing to arrest the underlying causes of rising costs and the resulting difficulties faced by families.” (Page 2)

The case for research

259. Childcare costs are part of the costs of working and are not the total responsibility of government. These costs are part of the range of factors that must, we submit, be taken into account when the Commission sets safety net wages. These figures in Table 4 and the policy brief from The Australia Institute demonstrate how care must be taken with the estimation of the relative living standards of working sole parents. The data in Table 1, which shows that single parent families have a much higher standard of living than couple parent families, has to be revised. When the purpose is to compare the living standards of working households where the breadwinner is in full time employment, we cannot ignore the need for the sole parent to pay for child care.
260. Child care costs have the capacity to drive a sole parent into poverty. Where both parents work, the costs of child care may consume a large proportion of the income generated by the second job. 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 when employment is obtained. Some parents will use latch key arrangements when they shouldn't and they can afford child care, but that is no reason to discount wage rates.
261. For a number of years ACCER has urged the AFPC and FWA to undertake or commission research into the costs of childcare for working parents. Not only has there been no such research, but the issue has failed to engage the tribunals. In 2012 we made a modest proposal as a first step: a review of the literature and data on this matter:

“The OECD equivalence scales do not take account of child care costs. Any assessment of the needs and living costs of parents with family responsibilities, other than those where one parent stays at home to care for the children full time, has to take into account child care costs for pre- school and school-aged children.

There is insufficient evidence about the costs of child care and the frequency with which it is used. Even after government assistance, child care costs can drive low income sole parent families into poverty and/or force sole parents into inadequate child care arrangements. The capacity of low income parents to obtain suitable child care is sometimes lost in the broader public debate about child care costs.

The top priority in this area is a review of current research data. We expect that the Commonwealth has extensive data on the costs of child care and submit that the Commonwealth should be asked to disclose relevant information to FWA. We ask that research be commenced into the costs of child care and propose that it be of the kind referred to in paragraphs 153 to 160 of ACCER's March 2012 submissions to the last wage review. ACCER is particularly interested in this issue, in part because the Catholic Church is one of the largest employers in Australia of women with family responsibilities and is a provider of child care services around the country." (ACCER submission on research, 31 July 2012, paras. 21-2)

262. Despite our failure to secure this kind of research in 2012, we press it again in 2013 and ask that it be part of an enquiry into the needs of the income workers and their families.

Chapter 3 Wage-setting has failed low income workers and their families

A.	Introduction	263
B.	Safety net wages have not kept up with price increases	273
C.	Many safety net workers have suffered real wage cuts	286
D.	Safety net workers have not received productivity increases	308
E.	Safety net wages have fallen well behind general wage levels	332
F.	Safety net wages have lost value compared to other arbitrated wages	339
G.	Tax cuts do not justify the real wage cuts	357
H.	Increased family payments have not compensated for wage cuts	373
I.	Safety net wages have fallen behind pensions	398
J.	Low income working families have fallen behind rising poverty lines	408
K.	Safety net wages have not been based on evidence of workers' needs	449

A. Introduction

263. In this chapter we give an overview of changes in safety net wages since 2000 to demonstrate that the wage-setting system has failed low income workers and their families. This chapter updates similar chapters in ACCER's submissions to the annual wage reviews of 2011 and 2012 and is part of ACCER's ongoing commentary on the parlous position of low income workers and their families.
264. We have concentrated on the events since the turn of the century because the new century 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 2012. The period 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 Australian economy remained strong despite the Global Financial Crisis and the continuing global economic malaise.
265. We should take a close look at these years and ask whether we have had a fair and balanced way of distributing the benefits of economic growth and sharing the burdens of economic pain. Analysing how the wages system has worked over this period is necessary if we are to assess our current position and establish a fair, balanced 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.

266. Wage-setting since 2000 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 failures in wage-setting that we point to were not limited to the *Work Choices* years.
267. The disposable incomes of NMW-dependent workers and their families have risen by more than the rate of inflation over the past 11 years; but, overall, the tribunal decisions on safety net wages have worked against low paid workers and their families. Many safety net workers have suffered a real wage cut since 2000.
268. Compared to the rest of the workforce, *all* safety net workers are *relatively* worse off in 2012 compared to 2000.
269. In this chapter we establish:
- (a) The number of workers on the NMW is very small and references to improvements in the NMW as an indicator of how safety net changes have affected low paid workers are misleading. Changes in the NMW cannot be used as a guide to the impact of past decisions.
 - (b) The real wages of many safety net workers have fallen since 2000, with the greatest falls being at the higher end of the low paid spectrum; for example, all safety net classifications of more than \$767.00 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 74.4%, the base safety net wage for a trades-qualified worker, or a worker in an equivalent classification, has risen by 43.3%.
 - (d) 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. Unlike other workers, safety net workers have been denied the benefit of the increases in their own productivity.

- (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 period 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 since 2000. The effects of decisions under that legislation are still being felt.
- (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) Safety net wages have fallen behind pensions and are likely to fall further behind pension rates unless wage-setting decisions change.
- (i) Since 2000 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. Many low income working families have fallen behind rising poverty lines.
- (j) Safety net wages have not been based on evidence of workers' needs, despite calls for inquiries or research into those needs.

270. We demonstrate that while Australian workers and their families *as a whole* were much better off in 2012 than they were in 2000, the diversity of circumstances within the workforce have hidden counter-trends that call for rectification. The figures demonstrate the dangers in focussing on aggregates, without regard to the groups within them. Safety-net dependent workers, about one sixth of all workers, rely on the safety net because, typically, they have no ability to bargain for higher wages and they are not union members.
271. 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, overall, 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.

272. Our analysis of the impact of wage-setting decisions is made in the context of their impact on workers in full time employment. Clearly, the position of those who are in irregular casual and part time employment or who are unemployed or under-employed will be worse than the position that we describe in chapter.

B. Safety net wages have not kept up with price increases

273. Table 5 shows safety net wage adjustments over the decade by reference to a range of starting points in 2000. Throughout this chapter we have generally used December of each year for the presentation of data because it overcomes differences in the timing of some wage decisions and the operative dates for transfer payments. Our tables generally reflect how the calendar years finished.

Table 5
Changes in various national safety net wage rates
2000-2012
(\$ 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%
2011	589.30	640.40	686.20	694.10	745.80	794.40	840.60	890.30	36.6%
2012	606.40	659.00	706.10	714.22	767.42	817.43	865.00	916.20	39.5%
\$ Increase	206.00	209.00	213.90	214.00	217.42	217.43	215.00	216.20	-
% Increase	51.4%	46.4%	43.3%	42.8%	39.5%	36.2%	33.1%	30.9%	39.5%

In 2000 the Federal Minimum Wage (FMW) was \$400.40 and the base trade-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 in 2010. The 2011 and 2012 figures are also rounded to the nearest 10 cents, consistent with award practice. The figures are those at December of each year.

274. Table 5 shows the wage increases awarded at various wage levels and changes in the CPI. Each wage adjustment can be compared with the cumulative increases in the CPI. From December 2000 to December 2012 the CPI increased by 39.5%.; see *Consumer Price Index, Australia, December 2012 cat. no 6401.0*, Table 1. There were real increases in the NMW and in some low paid classifications. We can see from the table that from December 2000 to December 2012 real wages were reduced for safety net rates that are now paying more than \$767.00 per week. For example, the classification originally paying \$600.00 per week, and now paying the modest wage of \$817.43 per week, has had a real wage reduction of \$19.57 per week since 2000.
275. A feature of Table 5 is the narrow band in which the wage increases have fallen: from \$206.00 to \$217.43 per week. This has produced sharply contrasting percentage and real wage outcomes.
276. The varying real wage increases were the product of the awarding of money increases, rather than percentage increases, in each wage increase since 2000, save for 2011 and 2012 when FWA awarded percentage increases. Because of a concern for the relativities between wage classifications, in 2001 an extra \$2.00 per week was awarded by the AIRC to classifications above \$490.00 per week, and an extra \$2.00 per week for those above \$590 per week. Yet 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.

From 1997 to 2005 and from 2005 to 2012

277. It is important, however, to put this development in the context of changes that were introduced by the enactment of the *Workplace Relations Act 1996* and the wage-setting function established under that legislation. In its first wage review after the enactment of the legislation the AIRC introduced the FMW, which it fixed at the same rate as the C14 classification rate, the lowest classification rate, in the *Metal Industry Award 1984*.

278. Table 6 shows the increases in the FMW, two other classifications in the *Metal Industry Award* and the CPI over the period June 1997 to June 2005, following the implementation of the AIRC decisions in each of those years. We have used those months because they best reflect the price contexts in which the decisions were made.

Table 6
Increases in CPI and safety net wages
June 1997 - June 2005
(\$ per week, unless otherwise indicated)

	June 1997	June 2005	Increase
Federal Minimum Wage	359.40	484.40	34.8%
C10 classification	451.20	578.20	28.1%
C4 classification	597.20	722.20	20.9%
Consumer Price Index	67.0	82.1	22.5%

The decisions were handed down on 29 April 1997 and 7 June 2005. The 1997 decision relied on the December Quarter 1996 CPI and the 2005 decision relied on the March Quarter 2005 CPI. The CPI numbers are those for December 1996 and March 2005; see *Consumer Price Index, Australia, December 2012 cat. no 6401.0*, Table 1. The March Quarter 1997 figure was 67.1.

279. Table 6 is very important in any assessment of the impact of legislation and wage-setting decisions on the wages of safety net-dependent workers. It shows a substantial increase in real wages for low paid workers; although there was a real wage cut for higher income earners in those pre-*Work Choices* years.

Work Choices and its legacy

280. By contrast, in Table 7 we can see the changes in the same rates since June 2005:

Table 7
Increases in CPI and safety net wages
June 2005 - December 2012
(\$ per week, unless otherwise indicated)

	June 2005	July 2012	Increase
Federal/National Minimum Wage	484.40	606.40	25.2%
C10 classification	578.20	706.10	22.1%
C4 classification	722.20	848.20	17.4%
Consumer Price Index	82.1	99.9	21.7%

The CPI numbers are for March 2005 and March 2011, which were the most recently published figures prior to the respective decisions of the AIRC in 2005 and FWA in 2012; see *Consumer Price Index, Australia, December 2012 cat. no 6401.0*, Table 1.

281. A major explanation for this turnaround was the decision by the AFPC in July 2009 that it would not increase the wage rates that it had set in July 2008 for commencement in October 2008. The 2009 wage freeze, which was not matched in any other wage-setting decision, has had a continuing impact on safety net wages.
282. FWA's decisions in 2010 to 2012 did not overcome the effects of the AFPC's wage freeze in 2009. Over the period between the AFPC's last decision to increase wages in 2008 and FWA's decision in 2012 the published CPI increases, from March 2008 to March 2012, totalled 10.6%. The March quarter figures were the most recent figures prior to each of the 2008 and 2012 decisions, with the respective index numbers being 90.3 and 99.9. The 2008 decision was made in July 2008, with operation from October 2008.
283. FWA's three decisions in 2010 to 2012 meant that the NMW was increased by 11.5% (\$543.78 to \$606.40 per week). The 2012 decision put the NMW ahead of the post-2008 CPI increases, but other low paid workers have received less than those increases. A classification paying a very modest wage of \$770 per week after the 2012 decision had an increase of 10.4%, marginally below the 10.6% rate of inflation. A worker in the last column of Table 5 has had increases totalling 9.7% since 2008. For workers on the higher award rates, the percentage increases over the last two years have mitigated the adverse effect of the money increases prior to that, but as Table 7 illustrates (at the C4 level), the period since June 2005 has seen substantial real wage reductions for modestly paid workers.
284. Despite significant progress, the impact of the AFPC's wage freeze has not been remedied: there are still real wage cuts, and a fairness deficit, as a result of the freeze.
285. From the point of view of low paid workers, the 14 years from the 1997 decision has been a period of two very different parts. In the first eight years there was a substantial increase for low paid workers that might seem to be a reflection of increases in productivity and broader community earnings. But, in fact, in those years the wage improvements came at the cost of real wage reductions (and no productivity increases) for higher skilled classifications. There was a re-allocation of price compensation. In the last seven years (which also had two parts) many safety net workers have had a real wage cut, no

compensation for productivity increases and increased disconnection from community earnings.

C. Many safety net workers have suffered real wage cuts

286. The most common way of describing the impact of wage decisions on safety net wage rates is to refer to changes in the NMW. Table 5 shows that a very different picture emerges when we consider the position of other low and very low wage rates.
287. To understand the operation of a safety net system that is required to take into account the needs of low paid workers there must be emphasis given to the level of the NMW. But the NMW is not the best indicator of the way in which other low paid workers and other safety net workers have been affected by successive wage decisions.
288. ACCER focuses on the NMW because it shows the position of the lowest paid. While we 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 can divert attention away from what has happened to other low paid workers and their families.
289. Changes in the NMW over time are misleading indicators of what has happened to safety net workers in general and low paid workers in particular. The trade-qualified C10 rate is a better guide to the impact that successive wage-setting decisions have had on low paid workers and their families and how those rates have fared by reference to the CPI and community-wide wage increases. A balanced description of changes to safety net rates over time would also require a reference to an award rate such as the C4 classification which currently pays a modest wage of \$848.20 per week. Tables 6 and 7 show that the C4 classification increased by only 42.0% from June 1997 to July 2012, during which time the CPI increased by 49.1% This is a real wage cut of \$42.23 per week.
290. 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 award rate in many wage classifications is well above the NMW. To evaluate the changes in safety net rates by only referring to the NMW is misleading, particularly when the dispersion of the low paid across wage classifications is well-known, and has been for some time.

291. The purpose of this section is to estimate the extent to which safety net wages have diverged from CPI increases over the period since 2000.
292. The overall impact of wage-setting decisions on safety net workers and their families will depend on the spread of wage classifications and the distribution of safety net-dependent workers across those classifications.

ACCI's Effective Minimum Wage

293. 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.
294. 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 was 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).
295. 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, save for the percentage increases in 2011 and 2012, we expect the margin to have been

maintained and that the Effective Minimum Wage at December 2012 would have been approximately \$643.00. This figure is of some significance because it is very close to the cleaner's base rate of \$647.80, which we have nominated as our interim target rate for the NMW.

Award classification rates

296. Another guide to the distribution of workers across the range of safety net rates is to be found in the various classification rates in awards at December 2012. Table 8 sets out a cross section of entry level rates of pay. We do not claim that the rates in Table 8 are necessarily a representative sample, but the data supports the view that the NMW is inadequate by reference to other rates of pay.

Table 8
Lowest classification rates in various awards, December 2012
(\$ per week)

Award	Introductory rate	Lowest Classification Rate
Miscellaneous	\$606.40	\$648.00
Clerks Private Sector		\$644.80
Car Parking		\$638.80
General Retail Industry		\$666.10
Cleaning Services Industry		\$647.80
Hair and Beauty Industry		\$666.10
Restaurant Industry	\$606.40	\$624.00
Hospitality Industry (General) Award	\$606.40	\$624.00
Fast Food Industry Award		\$666.10
Aged Care		\$644.80
Higher Education Industry-General Staff Award		\$649.40
Waste Management		\$642.20
Local Government Industry		\$648.30
Manufacturing and Associated Industries and Occupations	\$606.40	\$624.00
Storage Services and Wholesale	\$648.00	\$656.00
Rail Industry- Operations		\$639.40

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. The introductory rates apply to the first three months.

297. Table 8 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 \$666.10 per week (eg shop assistant) has been increased by \$209.40 per week, or 45.9%, since December 2000. A wage at the base cleaner's rate, now \$647.80 per week, has increased by \$208.80, or 47.6%, over that time. These increases for two significant groups of low paid workers are substantially less than the 51.4% increase in the NMW over the same period. They demonstrate how misleading references to the changes in the NMW are when describing the impact of wage setting decisions on the low paid.

Wage rate dispersion of low paid workers and median safety net workers

298. The second indicator of the inappropriateness of the NMW as a guide to the evaluations of the impact of wage-setting decisions on low paid workers is found in the data on the spread of safety net-dependent workers across work classifications. For this we have drawn on FWA's Research Report 4/2010, *Earnings of employees who are reliant on minimum rates of pay*. This report is based on data collected for May 2006, which very close to the mid-point in our review of the impact of wage decisions over the period since December 2000.
299. 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 in Australia were minimum wage-reliant. Therefore, 47% of about 19% of the workforce would suggest that the group in the adult permanent 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.
300. Tables 2 (adult permanent) and Table 3 (adult casual) of the report show the distribution of adult workers across a range of wage rates by reference to the "metals award" classifications, ie workers covered by a variety of awards were allocated to metals award wage levels. The distribution of these workers provides an indication of the overall spread of workers across the range of work classifications and show that a greater proportion of

permanent workers are employed in the higher paid classifications than was the case with casuals. There are several important points that arise from the data as presented.

Earnings dispersion of adult permanent employees

301. 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 in May 2006. From January 2010 nearly all previously State-covered workers, but not as many in Western Australia, came into a system shaped by the decisions of the AFPC between May 2006 and January 2010.
302. 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 5, which have had increases of 39.5% and 36.2%, respectively, since 2000. The current rates are \$767.42 and \$817.43 per week. The rounded half way point is \$792.00 per week.
303. We can say, therefore, that the median adult permanent safety net worker identified by this survey has had wage increases of about 37.9% since 2000, significantly less than the CPI increase of 39.5%, and, as we shall see, much less than community wage increases. This provides a sound basis for concluding that most full time safety net-dependent workers have suffered a real wage cut since 2000.
304. 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, nevertheless, is a considerable number: about 100,000 workers. This group is our top priority among the permanent employees. These figures support our submission that the economic cost of improving the living standards of the lowest paid will be negligible.
305. Table 1 in the FWA report shows that about 25% of adult permanent workers were employed at rates above the relevant figure in the \$700.00 column in our Table 5 (then \$786.00 per week or \$20.68 per hour). This group of over 250,000 workers have had

increases of less than 30.9% since 2000, ie much less than the rate of inflation of 39.5% over that period. This is a very significant group of workers.

Earnings dispersion of adult casual employees

306. 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 Australian workforce. This represents a substantial number of workers and working families. 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, which equated to \$599.26 per week (without the casual loading). Table 5 shows that classifications in full time rates of \$599.00 to \$636.00 have had a small real increase since 2000, but classifications above that range, ie now above \$20.20 per hour (excluding the casual loading), have had a real wage cut.

Conclusion on the median

307. 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 since 2000. If there is to be a single and fair indicator of the impact of safety net decisions on the low paid workforce, a wage rate at about the median wage of safety net-dependent workers should be chosen. It would present a very different picture; and demonstrate that the median adult permanent employee, who we have estimated to be on a rate of around \$792.00 per week, has received a real wage cut since 2000, especially since 2005.

D. Safety net workers have not received productivity increases

308. The evaluation of the outcomes for NMW-dependent and other low paid safety net workers cannot be judged only by reference to CPI increases. The maintenance of real wages is a necessary, but not a sufficient, condition for the effective operation of a fair safety net wage. Productivity gains have to be taken into account.
309. Productivity and how to improve it are at the centre of economic debate in Australia. Productivity growth is vital for the continuing strength of the economy and the maintenance and improvement of living standards. Productivity growth enables increases

in real wages. Substantial increases in, for example, average weekly ordinary time earnings have occurred without undue inflationary pressures because the economy has generated substantial productivity increases. All workers are entitled to expect that their living standards will increase as a result of national productivity improvements. Safety net workers should not receive less than increases in prices and productivity.

310. While most of the Australian workforce has reaped a productivity dividend in recent years, in the form of increased real wages, many safety net workers have had a real wage cut, thereby depriving them of a productivity dividend, and more. Even in those cases where real safety net wages have been increased, the increases have not been a fair reflection of productivity improvements.

311. The substantial increases in productivity since 2000-01 are shown in Table 9 which contains indexes of chain volume measures of gross product per hour worked for three industries and for all industries. The three industries that have been included in the table are those in which there is a significant proportion of safety net-dependent workers. Across all industries the productivity increase was 18.1% over the 12 year period 1999-2000 to 2011-2012; about 1.5% per year.

Table 9
Labour productivity
All industries
1999-2000 to 2011-2012
(Index of gross value added per hour worked)

99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12
86.6	88.5	92.1	92.3	94.3	95.2	96.0	97.0	97.8	98.6	100.5	100.0	102.3

Source: *Australian System of National Accounts, 2011-12*, October 2012 cat. no. 5204.0., Table 25 and spreadsheet Table 15.

312. On 17 January 2012 the Commonwealth Department of Education, Employment and Workplace Relations released the *Fair Work Act Review Background Paper* (Departmental Background Paper) in which there is commentary on recent changes in productivity. The relevant commentary, without charts and footnotes, is:

"Productivity

Trend labour productivity in the market sector increased by 0.6 per cent in the September quarter 2011 and by 0.3 per cent over the year to the September quarter 2011....

For all sectors, trend labour productivity increased by 0.4 per cent in the September quarter 2011 and by 0.4 per cent over the year to the September quarter 2011.

These quarterly and annual rates should be interpreted with caution. They are prone to volatile and cyclical effects and are often revised in subsequent releases as more information becomes available." (Pages 8-9)

"Productivity cycles

The most reliable estimates of productivity growth over an extended period are those based on productivity growth cycles.

Year to year changes in measured productivity may reflect changes that are conceptually distinct from the notion of productivity. By analysing averages of productivity statistics between growth cycle peaks, the effects of some of these temporary influences can be minimised, allowing better analysis of the drivers of productivity growth in different periods.

Productivity growth cycle peaks are determined by comparing the annual multi-factor productivity estimates with their corresponding long-term trend estimates. The peak deviations between these two series are the primary indicators of a growth-cycle peak, although general economic conditions at the time are also considered.

Chart 5 below shows that during the most recent growth cycle of 2003-04 to 2007-08, annual growth in labour productivity averaged 1.1 per cent per year (in the 'market sector').

This is down on the average annual growth of 2.4 per cent recorded between 1998-99 to 2003-04, and is also below the long-term average growth rate of 1.8 per cent per year (1998-99 to 2007-08). While there has been no completed productivity cycle since 2007-08, average annual growth in labour productivity from the June quarter 2008 to the September quarter 2011 was 1.0 per cent." (Pages 10-11)

313. Table 9 shows that the annual productivity growth across all industries has been, on average, not less than 1.0% per year since 2003-04. The 2003-04 financial year is significant because it was the last financial year considered by the AIRC when dealing with productivity in the *Safety Net Review 2005*. That case was the last wage review before the transfer of the AIRC's minimum wage-setting functions to the AFPC under the *Work Choices* amendments.
314. 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. Not only did the AFPC reduce the real wages of *all* safety net-dependent workers, it also transferred their productivity gains to their employers.

315. 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. In 2005, for example, the ACTU based part of its claim on productivity increases for the 2003-4 year, which was 2.1%, with greater increases in three significant award-reliant industries: retail (6.9%), accommodation cafes and restaurants (3.4%) and health and community services (2.1%).
316. The AIRC also had evidence suggesting that in the calendar year to December 2004 there had been a decline in labour productivity. In its conclusions, it stated:

"Turning to a review of economic indicators in the last year... Prices as measured by the CPI increased by 2.6 per cent over the 12 months to December 2004. Productivity growth has been negative for the last 12 months.

We consider that to grant the ACTU's claim for an increase of \$26.60 per week in all award rates would be inconsistent with our statutory responsibilities. We agree with those who submitted that the claim is excessive. It is clear that there has been a slowing of GDP growth in 2004-05 and that in recent quarters productivity growth has been disappointing..." (*Safety Net Review 2005*, Print PR002005, paragraphs [420]-[421])

317. We now know, with the benefit of hindsight, that across all industries there was an increase in productivity in 2003-4 and in 2004-5; see Table 9 and the Departmental Background Paper. It illustrates the difficulty of trying to fully and finally distribute the productivity gains of the period that has just passed. A longer term view is required, with productivity increases to be distributed by reference to trends over, say, the past five years.

Productivity and enterprise bargaining

318. There was some opposition in 2005 (and in earlier years) to the claim that safety net workers should receive productivity-based increases. It was argued that productivity increases had resulted from bargaining, that increases in safety net wages would remove

the incentive to bargain and that productivity based increases for safety net workers would jeopardise productivity growth.

319. In the earlier 2003 and 2004 Safety Net Review cases the ACTU had relied on 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.)

320. After an extensive review of the data and research, the AIRC concluded in 2005:

“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)

321. 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 the Commission to those that have been raised in the AIRC. We submit that the AIRC’s approach to this matter should be adopted by the Commission and, consistent with the AIRC’s decisions, productivity increases should be distributed across all industries and not on an industry by industry basis.

The failure to distribute productivity increases: 1997 to 2005 and 2005 to 2012

322. In the period 1997 to 2005 there were substantial productivity increases across the economy. The productivity index used in Table 9 (gross value added per hour worked) extends to the whole of this period and shows that the “all industries” index rose from 78.0

in 1995-96 (the last available full year at the time of the AIRC's 1997 Safety Net Wage Review decision) to 94.3 in 2003-04 (the last full year prior to the AIRC decision in 2005), an increase of 20.9%. We can see from Table 6 that there were real wage cuts during this period for workers on or above wage rates that were a little less than the C4 rate. The compensation for price increases for these higher paid workers was re-directed to low paid workers, who received real wage increases.

323. Whether there was any distribution of the large productivity increases over this eight year period of striking productivity gains is unclear. Our earlier discussion on the dispersion of median safety net workers suggests that there was very little of the productivity gains distributed to safety net wage rates and safety net workers. The distribution of productivity gains could only be made by real wage increases and, over the safety net workforce as a whole, there was, at best, a very small real wage increase. Although the AIRC took productivity into account in its decisions, it appears to have distributed very little of the productivity gains to safety net workers.
324. The period since 2005 presents a clearer picture: none of the productivity increases has been distributed. Table 7 confirms that there have been real wage cuts for all but the very low paid workers. On average, workers have not been compensated for price increases and there has been no distribution of productivity increases. Table 9 shows that in the period 2003-04 to 2010-11 (the latest available when the 2012 Annual Wage Review decision was made), the "all industries" productivity index rose from 94.3 to 100, an increase of 6.0% over the 7 years. (At the time of the 2012 decision, the index showed a 5.9% increase over this time; see ACCER submission, March 2012, Table 9.)
325. Looking at the period from 2000, little, if any, of the productivity increases has been distributed to workers, taken as a whole. The resolution of the uncertainty about the overall picture requires an assessment of the dispersion of safety net workers across the classification rates and the quantification of the total wages bill above and below the point where real wage cuts commenced, ie \$767.00 per week. If the total wages bill above that point is greater than the other part then, overall, none of the productivity increases has been distributed. It is unnecessary to resolve this question because the productivity increases of 18.1% over the past 12 years will overwhelm any overall increase in real wages.

326. We submit that safety net workers have lost productivity increases of at least 1.0% per year over the period since 2000. The benefit of these lost labour productivity increases has gone to their employers, not to safety net workers, with the result that safety net workers and their families have fallen into poverty in increasing numbers.

Applying proper principle on productivity increases

327. How can it be fair that safety net-dependent workers have been deprived of these gains in labour productivity? This question is especially important in an environment that stresses the need for productivity increases, the rewards for productivity growth and the linkage between productivity increases and real wage growth.
328. 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 gains are distributed, safety net wages will fall further behind community movements. Failing to distribute productivity gains would perpetuate the systemic failure in wage-setting that has seen the bargaining sector workers take advantage of productivity gains while workers without bargaining power have been denied the benefits of increases in their own productivity.
329. Some will argue that our proposal is inconsistent with a wages system that encourages productivity and wage growth through collective enterprise bargaining. The fundamental point in response is that there is no inhibition on employers that are not covered by a collective agreement from instigating the kind of productivity improving changes that can be made under a formal collective bargaining process. The limitations in awards and the National Employment Standards apply in a similar way to firms that are within and outside the formal bargaining processes. Collective bargaining is not needed to improve productivity and the absence of it does not prevent an employer from implementing productivity enhancing changes. Where collective bargaining operates it has the capacity to engage workers in a cooperative search for productivity improvements and increased wages. There is no reason an employer outside the bargaining system could not introduce the changes in consultation with, and with the assistance of, its workers; but it does not have to. Indeed, employers that have the ability to pay only safety net rates and to

disregard consultations with workers may have more incentive to introduce productivity enhancing changes because they can be introduced without wage increases.

330. The distribution of productivity gains should be done on an annual basis, but it should not be limited by the available data for the most recent year. The 2005 decision of the AIRC is a good example of the difficulties that can be encountered when data has to be revised. In that year it appeared that recent productivity growth had been negative, yet we now know that it was positive. Support for a more flexible approach to the measurement of productivity and its distribution is found for this in the Departmental Background Paper which, as we have noted, stated "quarterly and annual rates should be interpreted with caution. They are prone to volatile and cyclical effects and are often revised in subsequent releases as more information becomes available....The most reliable estimates of productivity growth over an extended period are those based on productivity growth cycles".
331. We submit that FWA should re-examine data that was not available on earlier wage reviews and apply productivity gains over time by reference to trends. We submit that the productivity gains since 2005 and continuing increases in productivity provide a productivity pool that supports the granting of our 2013 claim for a 1% increase in wages specifically on the basis of productivity. As the material demonstrates, this would represent no more than the current estimate of annual productivity growth and be only a small part of the accrued productivity increases since 2005 for which no compensation has been given. It should be treated as an interim amount.

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

332. 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. We now turn to a comparison between safety net wages and various measures of wages and incomes.
333. Table 10 compares the changes in the NMW and the base trade-qualified (C10) rate with broad measures of changes in national wages and incomes since 2000. These broader measures may also be compared with the other safety net rates set out in Table 5. Of particular importance in Table 10 is the comparison between safety net rates and AWOTE.

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

334. The figures show that safety net wage rates have fallen substantially against AWOTE, which increased by 74.4% over the past 12 years. The NMW increase of 51.4% compares unfavourably with the increase in AWOTE. The NMW fell from 50.1% to 43.5% of AWOTE over the 12 years to December 2012. If it had increased at the same rate as AWOTE, the NMW would now be \$668.30 per week, \$91.90 per week more than it is. At the other end of the Table 5 calculations, a safety net rate starting at \$700 per week in December 2000 was increased by only 30.9% over the same period. In 2000 it started at 87.6% of AWOTE and in 2011 it was 65.7%.

Table 10
Safety net rates compared to other wages and incomes
2000-2012
(\$ per week, unless otherwise indicated)

	Cumulative increases in FMW/ NMW	Cumulative increase in trade- qualified rate (C10)	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			798.80			418.53	
2001	3.3%	3.0%	843.10	5.5%	3.4%	451.76	7.9%
2002	7.7%	6.7%	882.20	10.4%	6.9%	448.62	7.2%
2003	11.9%	10.2%	929.60	16.4%	10.8%	477.43	14.1%
2004	16.7%	14.0%	964.90	20.8%	14.9%	505.46	20.8%
2005	20.9%	17.5%	1014.50	27.0%	19.6%	519.37	24.1%
2006	27.8%	23.0%	1045.40	30.9%	24.5%	574.68	37.3%
2007	30.4%	25.1%	1100.70	37.8%	29.5%	622.53	48.7%
2008	35.8%	29.5%	1158.50	45.0%	35.0%	679.86	62.4%
2009	35.8%	29.5%	1225.20	53.4%	39.0%	680.33	62.6%
2010	42.3%	34.8%	1274.10	59.5%	44.3%	724.03	73.0%
2011	47.2%	39.4%	1333.40	66.9%	49.6%	754.32	80.2%
2012	51.4%	43.3%	1393.00	74.4%	54.7%	776.11	85.4%

Save as noted below, the figures are at December of each year. AWOTE figures are trend estimates of full-time adult ordinary time earnings, public and private sectors, at November of the relevant years see *Average Weekly Earnings, Australia, November 2112* cat. no. 6302.0 and earlier publications in this series. Wage Price Index (trend); see *Wage Price Index December 2012* cat. no. 6345.0. Household Disposable Income figures are taken from the Melbourne Institute's *Poverty Lines: Australia September Quarter 2012* and are in respect of December of each year, save for 2012, where the figure for September 2012 is used.

335. We do not argue for a strict arithmetical nexus between the NMW and AWOTE, because 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, the NMW *and* other safety net rates should follow a similar path to these average weekly earnings.
336. It is important to note that AWOTE covers 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 10. 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%.
337. The Wage Price Index (WPI) increased by 54.7% over the 12 years to December 2012, 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”; *Wage Index, December 2012*, 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 relative living standards have to be taken into account.
338. The Melbourne Institute’s quarterly newsletter updates of the Henderson Poverty Lines (HPLs) are based on updated estimates of seasonally adjusted household disposable income per head (HDI). The HDI figures used in Table 10 are taken from the latest newsletter, *Poverty Lines: Australia, September Quarter 2012*. 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 poverty line and the estimated HDI. Table 10 shows that the 85.4% increase in HDI since December 2000 is substantially greater than the 74.4% increase in the AWOTE over the same period. The newsletter advises that the quarterly HDIs are based on data in *National Accounts* (cat. no. 5206.0), September 2012 and *Australian Demographic Statistics* (cat. no. 3101.0), June

Quarter 2012. The figures are subject to revision. The next issue, in respect of the December quarter 2012, is due in April 2013.

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

339. While the AFPC was the primary wage-setting tribunal in Australia over the period 2006 to 2009 State industrial tribunals had 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 introduce 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 (C10), or its equivalent, as the key reference point for establishing consistency between awards.

340. 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

341. The differences between State and Federal tribunals in are illustrated in Table 11, which compares the FMW/NMW and its State equivalents in each December from 2008 to 2012.

Table 11
Comparison of FMW/NMW and relevant State rates
(\$ per week)

	December 2008	December 2009	December 2010	December 2011	December 2012
FMW/NMW	543.78	543.78	569.90	589.30	606.40
New South Wales	552.70	568.20	569.90/592.30	-	-
Queensland	552.00	568.20	588.20	610.20	630.70
Western Australia	557.40	569.70	587.20	607.10	627.70
South Australia	546.65	560.65	580.30	600.00	617.40
Tasmania	546.10	558.10	569.90	589.30	606.00

Note: in 2010 the Tasmanian Industrial Commission adopted the NMW, thereby eliminating the earlier margin between the Tasmanian and Federal rates.

342. Although New South Wales, Queensland, South Australia and Tasmania have now transferred the great bulk of their employment powers to the Commonwealth (as Victoria did in 1997), their industrial tribunals have had a limited role in wage-setting. Apart from New South Wales, each of them made a change to their minimum wages in 2011 and 2012. Western Australia, which has not referred similar powers to the Commonwealth, has continued to operate a broader State minimum wages system. Tasmania has followed the NMW since 2010. In 2010 the four States that set their own rates independently of the level of the NMW, the unweighted average of the State rates was \$17.10 more than the NMW. As a result of legislative changes in New South Wales in 2011 there was no State Wage Case in 2011 and 2012. In 2011 the average of the three States which set their own rates was \$605.77, \$16.47 more than the NMW, with the minimum margin being \$10.70. In 2012, the gap between this average (\$625.27) and the NMW was \$18.87, with the minimum being \$11.00. ACCER's claim for an extra \$10.00 per week increase in the NMW fits within all of these rates.
343. Special reference should be made to the situation in New South Wales. 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 State Minimum Wage increased only slightly to \$569.90 because of the terms of the changes that were made to the State legislation in 2010. Absent that constraint, the tribunal fixed the minimum rate for award workers at \$592.30: the Award Review Classification Rate and the NSW C14 rate were increased to \$592.30. The NSW C14 rate was \$22.40 per week more than the C14 rates in Federal awards.
344. A reason for the Award Review Classification Rate and the New South Wales C14 rate being higher than the Federal rates was that the Catholic Commission for Employment

Relations alone successfully 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. This decision resulted in the C14 rate being increased relative to the C13 rate, so that the margin between them was reduced from \$16.70 to \$9.70 per week.

The Remuneration Tribunal and the Commonwealth's own practices

345. The trend in national safety net wage rates since 2000 may also be compared to the outcomes of decisions of the Commonwealth 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". 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 awarded by the Tribunal are reflected in the PEO rates set out in Table 12. In June 2012 the Tribunal announced that it would increase the remuneration for the holders of public offices by 3%, effective from 1 July 2012.
346. Table 12 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 two PEO bands were increased by 63.9% and 63.8% between 2000 and 2011. SES salaries are not set by the Tribunal, but by governmental processes.

Table 12
Remuneration of Commonwealth officers and public sector employees
2000-2012
(\$ 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)	AWOTE Public sector
2000	92000	209900	132287	160882	194309	887.40
2001	95600	218100	135541	166041	202884	925.60
2002	98800	225300	139948	171672	210725	960.50
2003	102760	234320	154097	187959	229147	1004.70
2004	106770	243460	164981	203410	250607	1046.10
2005	111150	253450	170416	210861	260983	1097.30
2006	113930	259790	177857	220691	276446	1142.60
2007	127060	289700	185606	233526	293404	1177.10
2008	132530	302160	196880	248133	315007	1228.30
2009	136500	311230	202589	255328	324142	1303.50
2010	142100	324000	209274	263754	334838	1371.30
2011	146380	333720	216936	272316	343532	1428.10
2012	150780	343740	-	-	-	1489.50
% increase	63.9%	63.8%	64.0% (2011)	69.3% (2011)	76.8% (2011)	67.8%

The figures are at December of each year. The figures for Principal Executive Officers are taken from determinations and decisions of the Tribunal, supplemented by ACCER calculations. The public sector AWOTE entries are trend figures taken from *Average Weekly Earnings, Australia, November 2012* cat. no. 6302.0 and earlier publications in this series. SES figures are for total remuneration, but do not include performance pay. The SES figures for 2000 to 2008 are taken from decisions of the Remuneration Tribunal. The SES figures for 2009 and 2010 were calculated by applying percentages supplied by the Australian Public Service Commission Remuneration Report for 2010 published in August 2011. The figures for 2011 are contained in the Australian Public Service Commission Remuneration Report for 2011, published in June 2012. Having regard to the increases granted by the Remuneration Tribunal and the increases in the public sector rates (4.3% from November 2011 to November 2012), we expect that the SES increases for 2012 will be at least 3.0%. On this basis the SES Band 1 increase to December 2012 will be to at least \$223,444, a 68.9% increase over the period since 2000. Our estimates for Band 2 are \$280,485 and 74.3% and those for Band 3 are \$343,532 and 82.1%..

347. We have included the SES data in Table 12 because 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. Information about SES remuneration was contained in the Tribunal's 2009 and 2010 decisions. It returned to the subject in 2011:

"The Tribunal has drawn attention, repeatedly, to the magnitude of movements in SES remuneration. The Tribunal's August 2010 Statement noted that median SES Band 3 total remuneration (excluding performance pay) had increased by a compound rate of 6.15% in the ten years since 1998. According to the SES Remuneration Survey as at December 2009 (the latest data available), although the compound rate of increase had decreased a little, it had still been 5.88%, per annum, for the 11 years since 1998. At the 3rd quartile, the compound annual increase was 6.19%.

Sustained increases of this magnitude cannot be overlooked in establishing proper remuneration for public offices. Indeed, the Tribunal is coming to the view that the SES Band 3 level is a useful indicator in gauging appropriate remuneration for higher-level public offices. Such offices tend to be distinguished from positions held by APS SES employees in their having a high degree of autonomy and demanding 'head of agency' responsibilities. Moreover, SES employees are often the direct reports of the holders of such public offices. Factors of these kinds need to be reflected in remuneration and the Tribunal's reviews are directed, in part, to this end"

348. The Australian Public Service Commission Remuneration Report of June 2012 confirms the essential point being made by the Tribunal: SES remuneration, which is within the control of the Commonwealth, has grown at a faster rate than those set by the Tribunal.
349. Table 12 also includes AWOTE for the public sector, which includes more than the Commonwealth. The public sector AWOTE rose from \$887.40 in November 2000 to \$1489.50 in November 2012, an increase of 67.8%. The increase in the public sector AWOTE over the year to November 2012 was 4.3%. This public sector increase over the period since 2000 is 6.6 percentage points less than the combined public and private sector AWOTE that we use elsewhere in this submission.
350. Members of the Fair Work Commission are covered by determinations of the Remuneration Tribunal. There has been a change from the previous arrangements where legislation provided a salary link between the Commission'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 \$323,070 per annum and the salaries of Commissioners have risen from \$141,578 to \$248,000 per annum (see Tribunal Determinations 2000/13 and 2012/12). These are increases are 59.7% and 75.2%, respectively, and, on average, are not outside the range of increases that have been awarded in the senior echelons of the public sector.

351. We do not argue that the Tribunal has awarded excessive increases. In fact, the general increases awarded by the Tribunal, as reflected in the PEO rates, were less than the public sector AWOTE increases. The same cannot be said for all of the SES salaries, which are under Government control.
352. The general level of increases reflected in the PEO rates, SES agreements and the public sector AWOTE contrast markedly with safety net rates. The public sector AWOTE increased by 67.8% while, for example, the trade-qualified rate increased by 43.3%. The contrast is even starker in, for example, classifications that now pay a modest wage of \$865.00 per week. In those classifications the increase since 2000 was 33.1%, less than half the public sector increases.
353. The inconsistency between government employment and the wages for safety net workers was brought home in the social and community sector equal remuneration case which demonstrated the very wide gap between the wages of public sector workers administering government supported programs and the safety net wages of workers delivering those programs through not for profit organisations; a gap that was secured and maintained by government funding being provided on the basis of award rates.
354. 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.
355. 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.
356. It is in this context that we refer again to the Commonwealth's resistance to any serious attempt to ascertain, how best we can, the needs of low paid workers and their families and to estimate what income they need in order to achieve a basic acceptable standard of living. And this is being done by a bureaucracy that has had enormous financial benefits, in wage increases and tax cuts since 2000 (see Tables 12 and Tables 13 and 14, below). We ask, rhetorically, why is it that public sector workers and the most senior members of

government can have such better and sustained outcomes? We submit that we a systemic problem entrenched by unacceptable values.

G. Tax cuts do not justify the real wage cuts

357. Some commentaries on recent safety net wage increases have pointed to the improved after-tax position of safety net-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. Changes in taxation rates for all workers since 2000 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 13
After-tax changes to safety net wages and AWOTE
2000-2012
(\$ per week, unless otherwise indicated)

	NMW		C10						AWOTE
2000 Gross	400.40	450.00	492.20	500.00	550.00	600.00	650.00	700.00	798.80
2000 Net	346.38	378.37	406.53	412.39	446.13	480.38	514.63	548.88	616.55
2012 Gross	606.40	659.00	706.10	714.22	767.42	817.43	865.00	916.20	1393.00
2012 Net	556.87	598.69	636.14	641.82	676.14	708.40	739.08	772.11	1081.37
\$ increase in Gross	206.00	209.00	213.90	214.00	217.42	217.43	215.00	216.20	594.20
% increase in Gross	51.4%	46.4%	43.3%	42.8%	39.5%	36.2%	33.1%	30.9%	74.4%
\$ increase in Net	210.49	220.32	229.61	229.43	230.01	228.02	224.45	223.23	464.82
% increase in Net	60.8 %	58.2%	56.5 %	55.6%	51.6 %	47.5%	43.6%	40.7 %	75.4%
\$ loss in gross relative to gross AWOTE	91.90	125.80	152.30	157.78	191.78	228.97	268.60	304.60	-
\$ loss in net relative to net AWOTE	50.68	64.97	76.91	81.57	106.37	134.19	163.58	190.61	-

The figures are at December in each year. 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 2011/12 the LITO cuts out once a taxpayer's assessable income reaches \$66,667.

358. Table 13 includes the after-tax outcomes since 2000 for the safety net workers covered in Table 5 and AWOTE workers. It 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.
359. 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 for the general outcome, 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 only paid safety net rates.
360. 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.
361. In order to compare the impact of taxation changes on various income groups since it is necessary take into account rising income levels and to use a uniform increase incomes which reflects the general movement in wages. Table 14 shows what has happened to after-tax incomes for various wage groups receiving a 70% wage increase since 2000. Otherwise, it is compiled on the same basis as Table 13. The percentage used to illustrate the changes is just a little lower than the AWOTE increase of 74.4%.
362. Table 14 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 2000/01 after-tax figure by 170% and finding the difference between that sum and the after-tax sum in 2012/13. Clearly, the position of those who have moved by more or less than the 70% used here will have different outcomes, but all will have been advantaged.
363. Table 14 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 cut of \$9.67 per week for incomes that are now at \$1,320 per week stands out from the rest. This column is significant as it represents “middle income earners”. The starting point of \$800.00 per week is close to the AWOTE starting point of \$798.80 and the end point of \$1,360.00 is

only \$33.00 below the most recent AWOTE figure of \$1,393.00. The tax cuts have not favoured this middle income group. However, the tax cuts for high income earners have been very substantial: those with incomes three times that of the middle income earners have received tax cuts that are 18 times greater: \$176.47 per week compared to \$9.67 per week. This divergence between the tax treatment of middle and high incomes has not been the subject of national economic and social discourse.

Table 14
Net income of groups receiving wage increases of 70%
December 2000-December 2012
(\$ 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
2012 Gross	680.00	722.50	765.00	850.00	935.00	1020.00	1360.00	2040.00	2720.00	3400.00	4080.00
2012 Net	615.39	647.17	674.58	729.41	784.23	839.05	1059.59	1485.59	1903.78	2321.99	2689.75
\$ increase in Gross	280.00	297.50	315.00	350.00	385.00	420.00	560.00	840.00	1120.00	1400.00	1680.00
\$ increase in Net	269.27	284.93	296.21	317.02	338.10	358.67	442.21	625.73	839.84	1050.13	1211.89
Net % of Gross 2000	86.5%	85.2%	84.8%	82.5%	81.1%	80.1%	77.2%	71.7%	66.5%	63.6%	61.6%
Net % of Gross 2012	90.5%	89.6%	88.2%	85.8%	83.9%	82.3%	77.9%	72.8%	70.0%	68.3%	65.9%
% increase in Net	77.8%	78.7%	78.3%	76.9%	75.8%	74.7%	71.6%	72.8%	78.9%	82.6%	82.0%
\$ value of tax cuts	27.19	31.60	25.86	28.16	25.94	22.03	9.67	22.91	94.98	159.59	176.47

364. Another way of presenting the essence of these changes is in Table 15, which compares the percentage of tax paid in 2000 and 2012 by four income groups. 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 15
Income taxation for groups receiving wage increases of 70%
December 2000 - December 2012

\$ per week	2000	2012
\$400/\$660	13.5%	9.5%
\$800/\$1320	22.8%	22.1%
\$1600/\$2640	33.5%	30.0%
\$2400/\$3960	38.4%	34.1%

The tax cuts of 2008 to 2011

365. The changes to income taxation rates over the three Commonwealth Budgets of 2008 to 2010 were based on a three year package of tax cuts that the previous and current Commonwealth governments proposed shortly 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 those three years as bi-partisan.
366. The tax cuts varied. For low income earners in the \$20,000 to \$30,000 per year 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 year, for example, received tax cuts of \$77.89 per week over the same period.
367. The 2011 Budget did not include tax cuts. On 10 July 2011 the Commonwealth Government announced major changes to the taxation system to accompany the introduction of the carbon tax. They were implemented, along with a range of related matters, in the 2012 Budget. They are compensatory measures designed to deal with increases in costs that will flow from the introduction of the carbon tax and are not benefits that should be used to reduce wage increases.

Tax cuts and wage increases

368. The question of whether tax cuts should be used to reduce wage increases has been ventilated in various wage cases. The same kind of question came before the AFPC in 2008, following the 2008 Budget, which commenced the three year program of tax cuts. 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.)

369. 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 national benefits of strong economic growth and the resources boom.
370. We submit that it is clear that, since 2000, the low paid have not been targeted for tax cuts any more than the rest of the population, notwithstanding the limited tax cuts to middle income earners. To use their 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. We add the observation that over the same period the Remuneration Tribunal has not discounted increases on account of the very substantial tax cuts received by high income earners. Nor is there any sign that public sector wage rates and the Commonwealth SES rates have been restrained by the presence of tax cuts. In the broader community wages (as measured by AWOTE) have risen by 74.4%, apparently unrestrained by the tax cuts.

371. 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.
372. 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 threefold test is applied, there would have been no basis since 2000 for reducing safety net wage increases on account of the income tax cuts.

H. Increased family payments have not compensated for wage cuts

373. 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 Poverty Commission which we referred to earlier. 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.
374. 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 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.

375. Table 16 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. Table 16 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.

Table 16
Family payments 2000-2012
(\$ 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
07.11	82.32	107.03	26.32	726.35	5.67	70.00	48.79	354.05
07.12	84.84	110.32	27.16	726.35	5.88	72.17	50.33	354.05

The Annual Supplements were frozen in the 2011 Budget for a period of three years, commencing 1 July 2011.

376. Over the twelve year period the weekly rates have increased by 44.6% to 49.8%, which are higher than the CPI increases of 39.5%. 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 and that the days of significant real increases in family payments are over.
377. 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 of net wages we have not included the Medicare levy unless a family is required to pay part or all of it.
378. 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 since before 2000 and has been indexed to reflect price changes. It has not been included in the following Table 17 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.
379. 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 subsequent parts of this chapter 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 the Commission in due course.
380. Our calculations of family payments do not include Child Care Benefits for similar reasons.
381. In the May 2012 Budget the Commonwealth Schoolkids Bonus. The Schoolkids Bonus replaced the Education Tax Refund, which provided a 50% rebate on a very limited range of expenses, such as home computers and laptops. That tax refund had the effect of

reducing the costs of education, provided the family could afford these items in the first place. Low income families have limited capacity to take up these government subsidies. In our Post-Budget submission of May 2012 we said it was "a good initiative because it will assist low income families who have not had the resources to access the Education Tax Refund, in part or in whole" and added "It is important, however, to record that, even with the addition of the Schoolkids Bonus to the family payments, the total payment to families will fall short of the actual costs of children. It doesn't mean that "both ends will meet" [as the Treasurer claimed in the Budget Speech] because many single income families will still be in poverty."

382. We have included the Schoolkids Bonus in our calculations at Table 17, and have done so on the basis that one child is in primary education and one in secondary education.
383. Table 17 shows the impact of changes in wages, taxation and family transfers since 2000 over various income levels by reference the single breadwinner family, with two children. The table enables a comparison to be made between the AWOTE-dependent family and various similar, but safety net-dependent, families.
384. The figures in Table 17 apply equally to a family of a couple and two children, with one of the parents staying home to care for the children, and a family of a sole parent and two children because FTB B is paid to the single parent and to the parent who stays at home to care for the children .
385. This middle income AWOTE family has had a gross wage increase of 74.4% (Table 10), a net wage increase of 75.4% and a disposable income increase of 88.8%, well in excess of similar families who depend on safety net wages. The comparable figures for the NMW-dependent family are 51.4%, 60.8% and 67.7%, respectively. The dollar loss per week that appears in the last row of Table 17 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. Again, we make the point made earlier: the AWOTE percentage would be higher if we excluded safety net-dependent workers from that measure and compared the two groups without any overlapping.

Table 17
Safety net-dependent and AWOTE families compared
(Couple or sole parent with two children families)
2000-2012
(\$ per week, unless otherwise indicated)

	(NMW) (C10)			Safety Net Wages					AWOTE
2000 Gross wage	400.40	450.00	492.20	500.00	550.00	600.00	650.00	700.00	798.80
2000 Net Wage	352.38	385.12	413.91	419.89	446.13	480.38	514.63	548.88	616.55
2000 Family Transfers	150.99	150.99	150.59	150.99	145.25	112.95	85.25	72.17	72.17
2000 Disposable Income	503.37	536.11	564.50	570.88	591.38	593.33	599.88	621.05	688.72
2012 Gross wage	606.40	659.00	706.10	714.22	767.42	817.43	865.00	916.20	1393.00
2012 Net Wage	565.97	608.57	646.73	652.53	685.19	713.19	739.83	772.11	1081.37
2012 Family Transfers	278.21	278.21	278.21	278.21	278.21	278.21	278.21	278.21	219.13
2012 Disposable Income	844.18	886.78	924.94	930.74	963.40	991.40	1008.04	1050.32	1300.50
% Net Wage Increase	60.6%	58.0%	56.2%	55.4%	53.6%	48.5%	43.8%	40.7%	75.4%
% Transfers Increase	84.3%	84.3%	84.3%	84.3%	91.5%	146.3%	226.3%	285.5%	203.6%
\$ Disposable Income Increase	340.81	350.67	360.44	359.86	372.02	398.07	408.16	429.27	611.78
% Disposable Income Increase	67.7%	65.4%	63.9%	63.0%	62.9%	67.1%	68.0%	69.1%	88.8%
\$ Loss per week in Disposable Income of Safety Net family relative to AWOTE family	106.18	125.40	140.84	147.04	153.13	128.80	124.53	167.22	-

Where it is applicable, the Medicare levy has been taken into account when calculating the net wage. At the NMW, for example, the full Medicare Levy exemption adds \$9.10 per week to the net wage. For this reason the net wage entries are not always the same as those in Table 13. Family transfers in 2012 include the weekly value of the annual supplements for FTB A and FTB B and the Schoolkids Bonus on the basis that one child is in primary school and the other is in secondary school. Several columns in 2000 illustrate the high effective marginal rate of taxation for workers with family responsibilities. As a result of the tapering of the Medicare Levy reduction and the family payments, the increase in gross wages from \$550.00 per week to \$650.00 per week resulted in a net increase of \$8.50 per week.

386. Table 17 demonstrates several matters. First, families who qualified for the maximum family payments in 2000 have had increases in these payments of 84.3%, well in excess of the rate of inflation of 39.5%. Second, family payments have been extended to higher income families, resulting in some very large increases. The AWOTE family, which is

beyond the range for maximum payments, has benefited with an increase of 203.6% in its family payments. Third, and importantly, with all aspects taken into account, low income families have fallen further behind higher income families. For example, the family who depends on the base trade-qualified, C10, rate has had an increase of 63.9% in its disposable income, compared to the AWOTE family's 88.8%. This amounts to a relative loss of \$140.84 per week. In terms of disposable income, the C10 family has fallen from 79.4% of the AWOTE family to 71.1%.

387. There is, therefore, nothing in this material that would justify a real wage cut or discounted wage increases for low paid workers on account of changes in transfer payments and taxation rates. There is nothing to support a claim that the relative standards of low income working families are rising. It demonstrates the contrary: since 2000 low paid working families *at or near* the safety net rates wage have fallen behind middle income families. Family payments have not made up for the lack of wages growth.
388. Table 17 compares safety net-dependent families with middle income families who have moved in line with AWOTE. 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 even exceed the AWOTE increase. There are 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.
389. We accept that bargaining outcomes should not be applied automatically to safety net decisions, especially when unusual cyclical factors are in operation. However, there is a need to maintain a reasonable relationship between community wage levels and safety net rates; and that has not been done.

I. Safety net wages have fallen behind pensions

390. As a result of a much needed and overdue review of pensions, new arrangements were introduced in 2009 for the setting and adjustment of pensions. The Commonwealth Government's *Secure and Sustainable Pension Reform* followed the *Pension Review* conducted by Dr Jeff Harmer, the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs. A central part of that review was to identify a pension rate that provides "a basic acceptable standard of living" for those who are reliant on it.

391. The pensions include the Age Pension and the Disability Support Pension. The Treasurer's Press Statement of 12 May 2009 stated:

"3.3 million...will benefit from increases in their pension payments.

These reforms will improve the adequacy of the pension system, make its operation simpler, and secure its sustainability into the future.

These long overdue reforms deliver a stronger and fairer pension system."

392. The new pension system has two components: the base pension and the supplement. The supplement is provided in lieu of earlier allowances for GST compensation, utilities, telephone/internet and pharmaceuticals. The supplement, which replaced a number of pre-2009 allowances, is adjusted by reference to price movements and the base pension is adjusted by reference to wage movements. The following summary of the new scheme 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 increase in the Consumer Price Index or the Pensioner and Beneficiary Living Cost Index. After this adjustment is made, the maximum base pension rate is compared with 41.76 per cent of Male Total Average Weekly Earnings (MTAWE) for pensioner couples combined and around 27.7 per cent of MTAWE for single pensioners. If the pension is below the MTAWE wages benchmark, it is increased to that rate."

393. A significant part of the 2009 changes was an increase from 25% to 27.7% of MTAWE for single pensioners. It followed widespread concern about the severe difficulties experienced by many single pensioners.

Changes in pension and wage relativities

394. The MTAWE benchmark for singles and couples guarantees that single and couple pensioners share in improved community living standards as measured by wages. Increases in community living standards have had an impact on pension rates since 2000 (and earlier) through this linkage.

395. The linkage of base pensions to the MTAWE means that the total pension rate will continue to be adjusted by an amount that is very close to the MTAWE. In Table 18 we compare the changes in base pension rates and two safety net rates, the NMW and the base trade-qualified (C10) rate, over the period 2000 to 2012. We have not included the various

allowances that were payable before 2009 and their successor, the supplementary payment, because there is no consistent measure over the period.

Table 18
Comparison of base pensions and safety net wages
December 2000 - December 2012
(\$ per week, unless otherwise indicated)

	Single Pension	Couple pension	FMW/NMW Gross	FMW/NMW Net	Trades (C10) Gross	Trades (C10) Net	Consumer Price Index
2000	197.05	328.90	400.40	346.38	492.20	406.53	73.1
2012	356.00	536.70	606.40	556.87	706.10	636.14	102.0
% increase	80.7%	63.2%	51.4%	60.8%	43.3%	56.5%	39.5%

396. The substantial divergence in the wages safety net and the pension safety net over the whole period is caused by the linkage of pensions to MTAW. From November 2000 to November 2012, MTAW increased from \$768.00 to \$1,324.30, or 72.4%, considerably more than the NMW increase of 51.4%. This will continue to have important consequences for the relative living standards of pensioners and low paid workers and for workforce participation. If we are to avoid compounding the current problem there must be a significant change in the approach to the setting and adjusting safety net wages.
397. The divergence occurred before and after the 2009 reforms. From September 2000 to September 2008 (prior to the reforms) the single base pension rose from \$197.05 to \$281.05 per week, an increase of 42.6%, while the CPI for the period June 2000 to June 2008 rose from 70.2 to 91.6, an increase of 30.5%. The margin of 12.1 percentage points represented a real increase in the pensions, reflecting the national economic growth. By contrast, over a similar period the NMW increased by 35.8% (see Table 5).
398. Table 19 shows the substantial divergence between pensions and safety net wages since the 2009 reforms, with reference to the CPI, the NMW and the C10 wage.

Table 19
Changes in pensions and safety net wages
December 2009 - December 2012

		December 2009 \$ per week	December 2012 \$ per week	\$ increase per week	Percentage increase
Single	Base	307.90	356.00	48.10	15.6%
	Supplement	28.05	30.30	2.25	8.0%
	Total	335.95	386.30	50.35	15.0%
Couple (combined)	Base	464.20	536.70	72.50	15.6%
	Supplement	42.30	45.70	3.40	8.0%
	Total	506.50	582.40	75.90	15.0%
Consumer Price Index		92.9	100.4		8.1%
National Minimum Wage		543.78	606.40	45.52	11.5%
C10 Wage		637.48	706.10	48.72	10.8%

The figures for the CPI index are those at June 2009 and June 2012, the most recently reported increases prior to the pension changes of September in each of those years. The MTAW figures are at May of each year, the most recently reported figures prior to pension adjustments. Rental assistance is not included.

399. Table 19 covers the period in which the first three decisions under the *Fair Work* reforms were made. The table compares the outcomes of the *reformed wage-setting system* and the *reformed pensions system*. In three years pensions have increased by 3.5 percentage points more than the NMW; and by more than that in comparison with other safety net rates. Over the three years MTAW increased by 15.6% while the NMW increased by 11.5%. The increases in total pension rates were substantially more than the CPI increase of 8.1% from June 2009 to June 2012.
400. The use of the MTAW benchmark guarantees that pensioners share in improved community living standards as measured by wages. It is a market-based mechanism which measures what is happening in the labour market as a whole, and reflects cyclical patterns in the economy. So understood it is the kind mechanism that commends itself to the setting of safety net wages.

401. It is clear that the consensus in the community is that the pension safety net should move in line with community earnings. In these circumstances, why shouldn't the wage safety net be move in a similar way, subject, to the proper consideration of unusual circumstances?
402. These matters have added importance because the Commission has to take into account relative living standards when setting safety net wages. It makes sense to establish consistency across safety net incomes, especially where there are large numbers involved. In our comparison of safety net wages and pensions we are not comparing small segments of the community. As the Treasurer said in the Press Release quoted earlier, 3.3 million were covered by pensions in 2009. This is to be compared with about half this number for workers on safety net wages.

Assessing the current pension and wage relativities

403. In addition to measuring changes and forecasting future movements, judgments need to be made about the fairness of current relative living standards. A fair wage system needs to produce fair outcomes for safety net-dependent workers and their families compared to other relevant groups in the community and the community as a whole. There should be fairness as between wage safety net outcomes and pension safety net outcomes.
404. In Table 20 we have compared the living standard outcomes for various households by reference to the modified OECD equivalence scales which are used by the ABS. The modified OECD equivalence scales have the family of two adults and two children at 2.1 times the individual, and two adults at 1.5 times the individual. The family of two adults and two children is at 1.6 times the couple without children.
405. It is important to keep in mind that the pensions were set on the basis that they would provide a *basic acceptable standard of living*. We accept that this may be contested, ie that some will argue that pensions are insufficient, but it is not a point that arises in this analysis. Table 20 is not concerned about identifying poverty lines or lines of income adequacy, but with comparing the present outcomes for working families and for families who rely totally on government transfers.

Table 20
Relative living standards of pension and NMW-dependent families
December 2012

Household	Disposable income \$ per week	Modified OECD equivalence scale	Equivalised income \$ per week	Disposable income as percentage of median disposable income
NMW-dependent family, second parent not seeking employment, 2 children	911.92	2.1	434.25	53.2%
Sole parent on disability pension, 2 children	735.42	1.6	459.63	56.4%
Couple, each on disability pension, 2 children	933.52	2.1	444.49	54.5%
Single person on disability pension	446.80	1	446.80	54.8%
Couple on age pension	639.30	1.5	426.20	52.3%
Single person on age pension	446.80	1	446.80	54.8%

The disposable income of the NMW-dependent family is taken from Table 8.2 of the FWC Statistical Report of 6 March 2013. The amount of \$911.92 includes maximum rental assistance, which was \$70.91 per week in December 2012.

ACCER's calculation of a disposable income of \$844.18 per week (see Table 17) plus maximum rental assistance produces a figure of \$915.09 per week. The Statistical Report does not provide details of its calculations. We have adopted the figure in the Statistical Report. The Statistical Report has figures at September 2012, based on *Poverty Lines Australia: September Quarter 2012*, which we have used for December 2012.

Relevant pension data is taken from the *Centrelink Estimator* and the *Family Assistance Estimator*. Pensioner incomes include the pension supplement. Family payments are calculated on the basis that the children are in the 8 to 12 age group, with one at primary school (age 8) and the other at secondary school (age 12). Maximum rental assistance has been included in the incomes of pensioner households.

Median equivalised disposable household income used for December 2012 is \$815.67 per week.

406. The purpose of the last column in Table 20 is to put each of the households in a community-wide context by reference to the household's income relative to the community as a whole. We will return to the underlying methodology later, but it can be seen that, for example, the single person on the Aged Pension or a Disability Pension has an outcome that is 54.8% of national median disposable household income. He or she would be, for example, 5.2 percentage points below the 60% relative poverty line and 4.8 percentage points above the 50% relative poverty line.
407. Table 20 shows, by reference to the equivalence scales used by the ABS, that the pension safety net for a couple of \$639.30 per week produces a standard of living that is only

slightly less than that of NMW-dependent family of two adults and two children with a disposable income of \$911.92. The family of four is only \$16.90 per week above parity with the pensioner couple. The NMW-dependent family has the costs of work, which pensioners do not have and would have a substantially lower standard of living than the pensioner couple. The same conclusion applies, but with more force, in a comparison with single pensioners. These comparisons leave aside the considerations of the reward for work and the impact that the relatively low wage outcomes have on work participation.

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

408. For more than a 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 have not fallen into poverty, for many families their margins over poverty have been reduced. All of this has occurred in a most prosperous decade, despite the Global Financial Crisis.

409. A problem such as poverty cannot be solved unless it is measured, as best it can be. Despite widespread awareness and concern about the reality of poverty in Australia, public policy and wage-setting, in particular, have been hindered by the absence of data; and by some who have no interest in trying to measure the dimensions of poverty.

410. We have already referred to FWA's view of the HPLs in the *Annual Wage Review 2010-11*. The relevant passage is:

"[226] We have been asked to express a view about the utility of the Henderson Poverty Line as part of the range of indicators of relative standards of living. Our view at present is that this measure is not helpful to our task. Its origins in the 1960s, the inconsistency between its original construction and the way it is updated, and its focus on poverty rather than the needs of the low paid reduce its value as a tool for wage-setting."

411. We accept that there is a need for contemporary research on the needs of low paid and are hopeful that the renewed budget standards research by the Social Policy Research Centre which is now under way will address those issues and enable the setting of wages that provide a standard of living that is above poverty; or, to use the terminology in the 2009 pension review, a *basic acceptable standard of living*.

412. Having regard to FWA's views on the HPLs, we do not attempt to argue in the following pages for the HPLs to be adopted as a measure of income adequacy, whether in their

current form or in a modified form, but we do rely on the HPLs to show the extent of the drift in the relative position of low paid workers. In this section we compare the changes in the disposable incomes of various kinds of NMW-dependent households relative to their respective HPLs and relative poverty lines.

Henderson Poverty Lines

413. The HPLs, while originally set on research conducted in the 1960s, are adjusted by reference to the movements in the disposable incomes of various household types and movements in a measure of community income, viz. household disposable income per head and seasonally adjusted, as calculated by the Melbourne Institute. Relative changes in the HPLs and the incomes of various household types provide a valid measure of changes in living standards, even where there is dispute about the adequacy of the HPLs as a measure of poverty.
414. Over the period covered by the four decisions of the AFPC, the ratios of disposable income to the HPLs fell in all households. Table 21 illustrates this in respect of the single person.

Table 21

**Ratio of disposable income to HPL for single NMW worker
2006-2012**

	HPL
July 2006	1.31
December 2006	1.30
December 2007	1.25
December 2008	1.19
December 2009	1.17
December 2010	1.16
December 2011	1.16
December 2012	1.15

The figures for July 2006 to December 2008 were calculated by the AFPC. The figures for 2009, to 2012 were calculated by ACCER. The HPLs for each of these latter years were calculated for each December in accordance with the formula set out in *Poverty Lines Australia: September Quarter 2012*, and were \$423.84, \$451.06, \$469.94 and \$483.51, respectively. The last figure is the figure for the September quarter 2012, the latest available. The disposable incomes over those four years were \$497.17, \$521.86; \$547.39 and \$556.87 (see past ACCER submissions and Table 13, above).

415. The figures in the first four rows of Table 21 are taken from AFPC decisions. Those years record a decline of more than a third in the margin above the HPL. Yet there is no commentary on the figures in the AFPC's decisions. The change since the last AFPC decision reflects the decline and recovery following the onset of the Global Financial crisis. The latest figures show a decline of more than half in the margin over poverty during the six and a half years from July 2006. Because the HPLs for the various households are based on movements in per head household disposable income, similar declines have been experienced by all households.
416. Table 21 presents a summary of a longer term trend, which we have summarised in Table 22. The trend shown in Table 22 has occurred across all households.

Table 22
Changes in incomes relative to Henderson Poverty Lines
2000-2012
(\$ per week, unless otherwise indicated)

	Single Worker (NMW)	Couple and 2 children (NMW)
2000 HPL	260.74	489.75
2000 Disposable income	346.38	503.37
2000 DI:HPL	+32.8%	+2.8%
2012 HPL	483.51	908.17
2012 Disposable income	556.87	844.18
2012 DI:HPL	+15.2%	-7.0%

Each of the HPLs for 2000 are calculated by the formula provided in *Poverty Lines Australia September Quarter 2012*. The figures are calculated at December 2000 and September 2012, the latest available figures. Disposable incomes are from Tables 13 and 17, above. The rent assistance to which the family may be entitled has not been included. Maximum rent assistance for this family increased from \$50.47 to \$70.91 per week over the period December 2000 to December 2011.

417. Table 22 demonstrates that very substantial changes have taken place. The family has fallen below the poverty line in one of the most prosperous periods in Australia's history; and by a very large margin. In 2000 it was 2.8% above the poverty line and in 2012 it was

7.0% below the poverty line. The single worker without dependants has lost more than half of his or her initial margin over poverty.

418. We note from Table 21 that in July 2006, the margin above poverty for the single worker was 31%, just below the 32.8% margin at the start of the decade (see Table 22). This demonstrates that almost all of the deterioration occurred during the *Work Choices* years.
419. For the benchmark family to be at the poverty line in December 2012 it would have been necessary to have another \$63.99 per week; and an extra \$88.99 to obtain the margin over the poverty line that it had in December 2000.
420. These changes have put the family back to a similar position to that which it had in 1973. The Poverty Commission was established in 1972 with bi-partisan support to find a solution to poverty among working households. It proposed the introduction of long term systemic changes to better support Australian families, to show a way out of poverty and to prevent them from falling into poverty. Calculations by the Poverty Commission for August 1973 are summarised in Table 23.

Table 23
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

The figures are 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.

421. 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.). These poverty lines are updated by the Melbourne Institute to reflect changes in household disposable income. In 1973 the family was 6.7% below the poverty line. Table 22 shows that it was 7.0% below in 2012. Even if we add in the maximum rental assistance that is now payable (\$70.91 per week), the family is only about \$7.00 per week above the poverty line. The descriptions used to

describe the poverty line in 1973 are appropriate to describe the position of these low income *working* families in 2013. Where is their reward for work?

422. It is important to draw attention to the changes for the single worker. The single worker has fallen from a margin of 61.7% to 15.2% above the poverty line. This reflects the long term decline of the lowest minimum wage (now the NMW) relative to community incomes. This change has clear economic consequences (especially in regard to the cost of labour), but it has social implications for single workers, including their capacity to save and prepare for their futures, whether in a family or in retirement. The figures show that, for families, the decline in their wages has been broadly met by an increase in government support.

This is not just about the HPLs: the underlying data from the Melbourne Institute

423. The pattern that we have seen with the HPLs reveals a substantial change in the share of national income that goes to safety net-dependent workers through their wage packets. What we have described requires serious reflection even if one disregards the HPLs as a useful contemporary measure of need. Because of the basis upon which the HPLs are calculated we know that the share in the national wealth of the lowest paid minimum wage workers, and their families, has been falling since 2000. We now turn from the HPLs to the underlying data.
424. The Melbourne Institute's calculations of per head household disposable income (HDI), which underpin the HPLs, are important because they provide information about changes in national per head income and provide a basis for comparing the relative position of safety net workers and their families, which is a required consideration in wage-setting. This data can show, for example, the increase in disposable income that the NMW-dependent family of four requires in order to restore their December 2000 position relative to the rest of the community. The same kind of calculations can be done for sole parent families and other couple parent families.
425. The latest calculations by the Melbourne Institute show that safety net wage outcomes have lagged behind increases in the HDI. Table 24 compares HDI changes with the disposable incomes of two households. It demonstrates that the distribution of national household

disposable income to NMW workers and their families has reduced substantially since 2000. The discrepancy is even greater in the case of safety net workers employed in higher work classifications. We repeat the point made earlier: measures such as HDI, by their inclusion of safety net workers and their households, understate the changes that have taken place in the position of safety net workers relative to the workforce as a whole.

Table 24
Disposable incomes of safety net families relative to national averages
2000- 2012
(\$ per week, unless otherwise indicated)

	Single Worker (NMW)	Families with two children (NMW)	Household Disposable Income (Per head)
December 2000	346.38	503.37	418.53
December 2012	556.87	844.18	776.11
% increase	60.8%	67.7%	85.4%

Household disposable income is from calculations of the Melbourne Institute and is seasonally adjusted. The most recent calculation is for September 2012 in *Poverty Lines Australia September Quarter 2012*. That figure has been used for December 2011. The disposable incomes of NMW-dependent couple parent and sole parent families are the same, as explained in Chapter 3H. Rental assistance is not included.

Relative Poverty Lines

426. 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 disposable household income. Its 2008 and 2009 decisions contained information about the level of this relative poverty line for each of ten households. Apart from the AFPC's work, we do not have in Australia an established relative poverty line to inform public policy. The AFPC's work provides a sound basis for its development.
427. 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, social equity and, relevant to the statutory obligation to set fair safety net wages, fairness. 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.

428. The fundamental task in setting a relative poverty line is identifying the median equivalised disposable household income.

Household surveys by the ABS

429. Our knowledge of the levels and distribution of disposable incomes across the community is based on surveys conducted by the ABS. The survey used by the AFPC in 2008 was *Household Income and Distribution, Australia 2005-06*, cat. no. 6523.0, published in 2007. Median equivalised disposable household 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 Disposable Household Income as published by the Melbourne Institute in *Poverty Lines: Australia*, which we have discussed earlier.
430. Since 2008 we have had two ABS publications on these matters: *Household Income and Distribution, Australia 2007-08*, cat. no. 6523.0, published in August 2009 and *Household Income and Distribution, Australia 2009-10*, cat. no. 6523.0, published in August 2011. The first provides information that was not available to the AFPC in 2009. The second was published after the AFPC was abolished.
431. The 2009 ABS publication enables a re-calculation of the AFPC's estimates of relative poverty lines for 2007 and 2008. In the 2007-08 survey the median disposable household income was \$692.00 per week; and 60% of it was \$415.20 per week. In Table 25 we have used the latter figure for December 2007 and applied the Melbourne Institute's figures in *Poverty Lines Australia: September Quarter 2012* in order to set a figure for December 2008. It produces a 9.2% increase.

432. According to the latest ABS survey, for 2009-10, the median equivalised disposable household income was \$715.00 per week and 60% of it was \$429.00 per week. This modest rise was the result of the economic downturn. We have used \$429.00 for December 2009 and updated it by the application of the Melbourne Institute's figures in *Poverty Lines Australia: September Quarter 2012*: for 2010 by 6.4% and for 2011 by 4.2%.
433. For 2012 we have used the figure sum of 489.40 at Table 8.2 of the *Statistical Report - Annual Wage Review 2011-12*, which is also based on the data in *Poverty Lines Australia: September Quarter 2012*. We have used the Statistical Report's September 2012 figures to show the position at December 2012 and will revise our figures and advise the Commission if the next publication by the Melbourne Institute produces a significantly different set of figures for December 2012.
434. Table 25 shows these various calculations, with the figures used by the AFPC in its 2008 and 2009 decisions in brackets. The revised figures are substantially more than the AFPC's estimates, for the reasons discussed.

Table 25
60% median poverty line for workers and families
2007-2012
(\$ per week)

	Single	Couple and 2 children	Sole parent and 2 children
December 2007	415.20 (387.48)	871.92 (813.71)	664.32 (619.97)
December 2008	452.57 (421.40)	950.37 (884.93)	724.11 (674.23)
December 2009	429.00	900.90	686.40
December 2010	456.46	958.56	730.33
December 2011	475.63	998.82	761.00
December 2012	489.40	1027.73	783.03

435. Table 26 shows the ratio of disposable income to the 60% relative poverty line. The figures in brackets were those used by the AFPC in its 2008 and 2009 decisions. The new figures for those years draw on the revised figures in Table 25. In order to provide

consistency with the AFPC figures, we have included, in the case of the families, maximum rental assistance in the calculations of disposable incomes.

Table 26
Ratio of disposable income to 60% median poverty line
NMW-dependent workers and families
2007-2012

	Single		Couple plus 2 children		Sole parent plus 2 children	
	\$ per week	Ratio	\$ per week	Ratio	\$ per week	Ratio
December 2007	467.70	1.13(1.21)	758.26	.87(.93)	758.26	1.14(1.22)
December 2008	494.44	1.09(1.17)	796.25	.84(.90)	796.25	1.10(1.18)
December 2009	497.17	1.16	808.41	.90	808.41	1.18
December 2010	521.86	1.14	840.49	.88	840.49	1.15
December 2011	537.49	1.13	864.46	.87	864.46	1.14
December 2012	557.15	1.14	911.92	.89	911.92	1.17

Disposable incomes for the two kinds of families include maximum rental assistance. Maximum rental assistance over the six years was (per week and respectively): \$61.88, \$64.68, \$65.66, \$67.62, \$70.07 and \$70.91. Disposable incomes for 2007 and 2008 are taken from the AFPC's decisions in 2008 and 2009. Disposable incomes for 2009 to 2011 are taken from ACCER submissions in 2010 to 2012. The disposable incomes for 2012 are taken from Table 8.2 of the Statistical Report, March 2013. ACCER has calculated slightly different amounts; see Tables 13 and 17 (above), with the addition of rental assistance in the case of families. As explained earlier, the disposable incomes of the two families because the government transfers to couple parent and sole parent families are the same.

436. Table 26 demonstrates that the family of four is very much below the widely recognised 60% relative poverty line. The median equivalised disposable income for a family of this composition is \$1,712.90 per week and the family's income is only 53.2% of that figure.
437. In Table 27 we have adapted Table 8.2 in the recently published FWA *Statistical Report - Annual Wage Review 2012-13*. We have also taken the opportunity to include in this table the row in the original table that deals with the position of the two parent family where the second parent is seeking the Newstart allowance. In Chapter 2F we made submissions about this aspect and set out the reasons why the Newstart allowance should not be taken into account when setting the NMW.

438. Table 27 confirms the dire position of low income working families and the enormous pressure on them to have both parents working just to avoid poverty and make ends meet. Even at the C10 rate the single breadwinner family of four is still below the poverty line.

Table 27
Comparison of 60% median poverty lines with disposable income
of selected households earning various wage rates,
September 2012

Household type	60% median income PL (\$pw)	Disposable income (\$pw)				Disposable income as proportion of PL (%)			
		C14	C13	C10	C4	C14	C13	C10	C4
Single adult	489.40	557.15	571.14	636.41	728.88	1.14	1.17	1.30	1.49
Single parent, two children	783.03	911.92	926.18	992.68	1076.99	1.16	1.18	1.27	1.38
Single earner couple, two children Second parent cares for children	1027.73	911.92	926.18	992.68	1076.99	0.89	0.90	0.97	1.05
Single earner couple, two children Second parent seeks employment	1027.73	1022.36	1028.16	1045.46	1076.99	.99	1.00	1.02	1.05

This table is extracted from Table 8.2 of the Statistical Report Annual Wage Review – 2012-13. The single earner couple is a family in which the second parent stays at home to care for the children and, accordingly, does not qualify for the Newstart unemployment allowance. Where the second parent is seeking employment, the Newstart allowance is payable, subject to the usual requirements, at a rate that reflects the other parent's income. At the C4 level the Newstart allowance is not payable to a second parent who seeks paid employment.

Calculating changes in relative poverty levels: 2000 to 2012

439. We have described how the relative poverty lines were developed from 2008. The work of the AFPC was innovative and provided a basic tool for analysis and public policy. As Table 26 shows, we are now able to track changes in relative poverty lines since December 2007.
440. There would be substantial value in constructing relative poverty lines for earlier years, but this task would be constrained by the limitations in the data. ABS surveys of household

income in the *Household Income and Income Distribution* series is available back to 1994-95. However, there have been changes over time which limit the comparability of the material. The following appears in the latest publication of August 2011, which covers 2008-09:

"Estimates presented from 2007-08 and 2009-10 are not directly comparable with estimates for previous cycles due to the improvements made to measuring income introduced in the 2007-08 cycle. Estimates for 2003-04 and 2005-06 have been recompiled to reflect the new treatments of income, however not all new components introduced in 2007-08 are available for earlier cycles." (*Household Income and Distribution, Australia 2009-10*, cat. no. 6523.0, page 16.)

441. In Table 28 we have taken this caution into account and calculated the 60% relative poverty lines for December 2000 by two different methods in order to make a comparison with the position in September 2012.

Table 28
Changes in NMW-dependent incomes relative to 60% Relative Poverty Line (PL)
December 2000 - September 2012
(\$ per week, unless otherwise indicated)

	Single Worker (2009-10 survey)	Couple and 2 children (2009-10 survey)	Single Worker (2003-04 survey)	Couple and 2 children (2003-04 survey)
2000 PL	263.92	554.23	262.94	552.17
2000 Disposable income (DI)	346.38	553.86	346.38	553.86
2000 DI:PL	1.31	1	1.32	1
2012 PL	489.40	1027.73	489.40	1027.73
2012 Disposable income (DI)	556.87	911.92	556.87	911.92
2012 DI:PL	1.14	.89	1.14	.89

Maximum rental assistance available to families is included in both years. In December 2000 it was \$50.47 per week.

442. Both of the calculations of the December 2000 poverty line use the estimates of changes in household disposable income published by the Melbourne Institute in *Poverty Lines Australia: September Quarter 2012*. For 2012 we have used the figures in Table 8.2 of the Statistical Report of March 2013, which also uses the Melbourne Institute's estimates in the

same publication in order to update the 2009-10 data. In each case we have used the established method of estimating changes in relative poverty lines. The near coincidence of the two kinds of calculations for 2000 means that we can act upon them with some confidence.

443. Table 28 demonstrates a dramatic decline in the position of these low paid workers that calls out for action. Single breadwinner families have fallen into poverty and low paid single workers have lost more than half of their margin over poverty.
444. We can make similar calculations for the single parent with two children. The margin over poverty in December 2000 was 31.7%, but in September 2012 the margin was 12.7% above the poverty line.
445. Table 28, like our submissions as a whole, focuses on the position of full time workers, but we are acutely aware that casuals and part time workers who are seeking more work are suffering as well from these changes.
446. As we have explained, the economic value of the work has declined for many workers because of the reduction in real wages and the failure to give them the benefits of labour productivity growth. The *social value of work* has also been diminished by these changes; that is, the capacity of these workers to engage and participate in society is reduced by these major changes in the relative value of their work. In the case of a single young worker, the capacity to save and prepare for family life has been diminished. In the case of parents it is so much harder to provide for their children with the opportunity to participate in education and social development.
447. In order to restore the family with two children to its previous position an increase in disposable income of \$116.00 per week would be required. The mere mention of that figure would prompt derision in some quarters simply because it would appear to be incredible to those who do not know the facts. When put another way, the change means that the value of the breadwinner's work has been reduced by \$116.00 per week over the past 12 years, over the most prosperous period in Australian history, the injustice of the situation is evident.
448. Yet this has happened without any significant discussion or debate by those parties and institutions who are charged with promoting and maintaining some part or parts of the common good. On what basis can this be ignored by the parties to the annual wage review

and the FWC itself? If, for example, one or more parties believe that the relative living standards enjoyed by these low paid workers and their families in 2000 were excessive and increased inequality since then is justified, they should make out their case so that the FWC can decide. We would welcome that debate. We submit that, in any event, these are not issues that the FWC can avoid.

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

449. An extraordinary feature of Australian minimum wage-setting since the FMW was introduced in the *Safety Net Review April 1997* has been the lack of any serious attempt to set wages by reference to the needs of the low paid, despite the presence most of this time of an explicit obligation on the decision-maker to take into account the needs of the low paid.

450. In 1997 the majority of the Full Bench of the AIRC did not undertake a review of the adequacy of the C14 classification rate in the *Metal Industry Award 1984* when it decided to use that rate to set the level of the FMW. Nor had the C14 rate been set by reference to a review of evidence about needs and relative living standards. At the time it was set, the C14 rate was part of a carefully established system of vertical and horizontal award relativities and in 1997 that system was in the final stages of implementation. In the following wage review, in 1998, ACOSS (which had raised questions about the adequacy of the C14 rate in 1997) argued for an inquiry into the needs of the low paid and relative living standards in order to review the adequacy of the FMW. Significantly, the ACTU did not support an inquiry, apparently because it wished to bed down the new wage relativities. These matters are evident in the AIRC's decision in the *Safety Net Review April 1998*, (1998) 79 IR 37, at 71-76. In referring to the ACTU's submissions the Full Bench noted (at 74):

"In the ACTU's submission, the maintenance of the federal minimum wage at the C14 classification rate would ensure a secure minimum level in award classification structures. The establishment of the federal minimum wage at the C14 classification would not preclude an adjustment at some future time based on different criteria"

451. This position, and similar views from other parties, continued until 2003. We noted earlier in relation to Mr Costigan's questions in the *Safety Net Review 2003* (see Chapter 2A), that the ACTU and other parties did not support the holding of an inquiry into the needs of the

low paid in that year. This continuing position was crucial because, as we pointed out, in the wage-setting system of the time ACCER and ACOSS were interveners in a dispute resolution process in which the parties sought a resolution of *their* dispute. However, the ACTU did change its position in 2004 when it sought to rely on the SPRC's budget standards research in support of its application. That initiative did not bear any fruit for the reasons we discussed earlier. No progress was made in 2005, the last opportunity to do so in the AIRC because of the enactment of the *Work Choices* legislation.

452. 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.
453. 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.
454. The HPLs were the only evidence that the AFPC had about the needs of workers and their families. ACCER and 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.
455. The SPRC's research project to update the budget standards research of the 1990s holds promise (see Chapter 2G), but it is a three year project and it should not delay the investigation of other possible sources of information.
456. More work is required on relative poverty lines. ACCER has argued in the past that debate and research are required if we are to address a number of issues that arise out of the use of relative poverty lines and establish them as very useful indicators for wage-setting purposes, both as a proxy for the measurement of need and a means of taking into account relative living standards; see, for example, our submissions of March 2012, at paragraph 326 and Research Proposals 31 July 2012. We have, for example, raised concerns about the appropriateness of the modified OECD equivalence scales in the case of sole parents who are required to engage child care services if they are to participate in the

workforce. But, we submit, these issues cannot hide the conclusion that the NMW-dependent family is *living in deep poverty*.

457. As we discussed in Chapter 1, the enactment of the *Fair Work* legislation promised a return to the setting of fair safety net wages based, in part, on the needs of the low paid. We regret that such little progress has been made to this end. We accept that more comprehensive research is needed, which the updated budget standards research is expected to provide. However, two important points are evident from the matters covered in this chapter. First, the legislative command to set *fair safety net wages*, which has operated for 8 of the last 12 years, was not enough to stop the very substantial slide in the safety net wages of low paid workers. Second, there is already a significant amount of material that justifies a substantial improvement in the real wages of low paid workers, particularly in regard to the consideration of relative living standards, needs and productivity improvements.

Chapter 4 Conclusions and orders sought

A. ACCER's claims	458
B. A contemporary <i>Harvester</i> that supports workers with family responsibilities	468
C. The wage-setting system has failed low paid workers and their families	491
D. Award classifications should not constrain a fair NMW	509
E. Proposals for an inquiry, research into needs and new hearing procedures	529

A. ACCER's claims

458. ACCER seeks the following orders in the *Annual Wage Review 2012-13*:

Award wages

ACCER seeks increases in award safety net wage rates on two grounds:

First, a percentage increase to compensate for the published increases in the Consumer Price Index (CPI) since the handing down of the *Annual Wage Review 2011-12* in June 2012, less an adjustment to be made on account of the compensation already provided in respect of the carbon price. As compensation for the carbon price has already been provided by way of Commonwealth budgetary measures on the basis that the tax would increase prices by 0.8%, this percentage should be deducted from the recorded CPI increases. After deducting that amount from the three published CPI increases, which have totaled 2.1%, the CPI-based component of this part of the claim will be not less than 1.3%, with the final percentage to be known after the release of the CPI figure for the March Quarter 2013.

Second, a further increase of 1% on account of productivity increases. It is sought as an interim amount because estimated annual productivity increases in recent years have been more than 1% and because there has been little or no compensation for productivity increases over the past eight years.

ACCER seeks *percentage* wage increases for all award classifications that provide wage rates equal to or more than the base tradesperson's (C10) wage rate, currently \$706.10 per week. For all classifications below that rate, ACCER seeks a *money* increase equal to the money amount by which the base tradesperson's wage will increase as a result of the claimed percentage adjustment. An increase of 3.0%, for example, would amount to

\$21.20 per week. This will give the lowest paid workers an increase slightly in excess of the percentage increase in prices and the interim productivity adjustment.

National Minimum Wage

The current NMW of \$606.40 per week is manifestly inadequate. ACCER seeks a further increase in the NMW. In 2013 we ask that the NMW be adjusted in a similar way to award wages and that it be adjusted by a further amount of \$10.00 per week. Our submissions show that the economic cost of this \$10.00 per week first step towards a decent NMW would be negligible.

459. The arguments in support of these claims have been laid out in the earlier chapters. We have made extensive submissions on the failure of minimum wages to meet price increases, reflect productivity increases and retain relativity with wage outcomes across the community and in relevant sectors of it; and the failure of the NMW to meet the needs of the low paid and their families.
460. The outcome of both aspects of ACCER's claim will be less than the increase in community-wide wage levels during recent years and those expected in 2012-13. As our submissions stress in some detail, the continuing decline in the relative living standards of safety net workers must be arrested. We see the adjustment of wages partly on the basis of productivity-based increases as means of minimising, but not eliminating, the current and emerging gap between CPI increases and community-wide wage movements. The recent *Mid-Year Economic and Fiscal Outlook 2012-13* forecasts an increase in the WPI half a percentage point higher than the CPI (3.5% and 3.00%) for the 2012-13 year; see Table 12.3 of FWA's *Statistical Report - Annual Wage Review 2012-13*. As we have seen earlier (at Table 10) average weekly ordinary time earnings (AWOTE) typically increase at a greater rate than the WPI.
461. Our claim to convert the percentage increase into a flat money amount for wage classifications below the C10 rate (now \$706.10 per week) would cover a small part of this emerging gap at the lower end of the wage scale.

Low income working families

462. Safety net-dependent workers, who comprise about one-seventh of the Australian workforce, rely on safety net wages because they do not have the ability to bargain for higher rates of pay, either directly or through their unions. They can only improve their position and achieve a fair outcome through the annual wage reviews.
463. Our major concern is with the low paid, particularly the lowest of the low paid with family responsibilities: *low income working families*. They are not able to *live in dignity*. They do not have a *decent wage*. This means that, at the least, they are unable to achieve a *basic acceptable standard of living*. As we have explained, providing a basic acceptable standard of living was the objective of the Commonwealth's review of pensions in 2009, which had the effect of delivering to pensioners a higher standard of living than that of the NMW-dependent family.
464. We have shown by reference to the widely-used 60% relative poverty line, that the family of four is in deep poverty and the sole parent will be close to, or in, poverty if child care expenses are substantial, after taking into account government childcare payments. We have shown that since 2000 the family of four has fallen from parity with this poverty line to being 11% below it. We submit that a sole parent on the NMW is likely to be under severe financial pressure to make unsatisfactory child care arrangements.
465. Our concern is not limited to the lowest paid, but extends to other workers who are on higher safety net wages, particularly those with family responsibilities. Many safety net workers are employed on safety net wages that have been reduced in real value since 2000. Our figures have demonstrated that these families have fallen well behind community movements. For example, the disposable incomes of couples and sole parents with two children (aged 8-12) who rely on the NMW have fallen substantially relative to average weekly ordinary time earnings, as measured by AWOTE. Relative to AWOTE, those families have lost \$106.18 per week in disposable income (see Table 17). For a single person on the same wage rate, the loss of relativity in disposable income equates to \$50.68 per week (see Table 13).
466. Although the relative losses have been greatest at the higher classification rates, the financial needs remain greatest at the low income levels.

467. We have argued that the extra increase of \$10.00 per week in the NMW safety net is justified by:

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

B. A contemporary *Harvester* that supports workers with family responsibilities

468. 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.

469. 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. Domestic and social function also have an economic cost.

470. The impact that wage policies have on families, on children in particular, is one that cannot be ignored or glossed over. One of the two explicit goals of the F W Act (at section 3) is the promotion of social inclusion. 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' dependants. As a result, safety net wages have to cover a large part of the needs of these dependants. Unless and until family payments cover the full costs of dependants, wages will need to be set by reference to the needs of dependants.

471. Our analysis and proposals are necessarily based on the application of values about work, social participation and family life. The setting of wages is not a value-free process. The very objective of providing a fair safety net emphasises the need to consider a range of values. The proper support of workers with family responsibilities is a value that necessarily enters into the setting of a fair wage. The requirement for the workplace

relations system to take into account the needs of workers with family responsibilities is made explicit in sections 153 and 578 of the F W Act

472. In a speech entitled *Introducing Australia's New Workplace Relations System* at the National Press Club on 17 September 2008, the current Prime Minister, the Hon Julia Gillard, then Deputy Prime Minister, Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion, started her speech with the following:

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

473. We regret that the values highlighted in this passage have been frustrated by the Commonwealth's failure, as we described in Chapter 1, to take seriously the inquiries that are needed to ensure that workers can achieve a decent standard of living. Despite that failure the words correctly highlight ingrained values both in the current legislation and in the Australian community.

The family safety net

474. The Prime Minister was rightly talking about the substance of the *Harvester* decision in 1907. She was not referring to the formula or benchmark that seemed relevant to its time: the needs of a man, his wife and three children. In the absence of any government family payments in the early part of the twentieth century, the *Harvester* wage provided the total support of children. The wage that was set was one intended to support a family; and it was set in circumstances where many workers receiving that wage were not heads of households with family responsibilities.
475. It is important that we separate the substance from the formula. *Harvester* and the Basic Wage (which developed from *Harvester*) through to the NMW over-compensated workers without family responsibilities because it was necessary in order to have a wage that

recognised the needs of families and the importance that our society attaches to the support of families, especially those at the margins of the labour market.

476. The safety net does not have to cover exceptional cases, but it must cover ordinary and foreseeable cases and circumstances in which families find themselves. We have argued, by reference to the nature and purpose of a safety net, that a safety net wage must be sufficient to support families with two children, whether the family is headed by a couple where one of them stays at home to remain outside the paid workforce in order to care for their children or by a sole parent in employment, and incurring 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.
477. It is in this context that we refer to research that shows that a substantial proportion of low income workers live in higher income households. This is nothing new because it was a well-known feature of life around the time of *Harvester* and ever since. In some cases low income is the reason single workers cannot live independently. 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. We would not, for example, reduce the level of pensions by reference to the proportion of those pensioners who live with their children or other relatives.
478. The level of a safety net wage cannot be determined by the proportion of workers who need it to achieve a minimum acceptable standard of living. Similarly, the number of families in which both parents work is not relevant to setting of the safety net wage that will support a family. When the NMW is manifestly inadequate and is a poverty wage, the fact that the second parent works is not to the point. The second parent should not have to work so that the family can avoid poverty and achieve an acceptable standard of living. On this aspect we refer to part of a previously quoted passage from the Poverty Commission's report:

"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.)

479. Of course, a safety net should also be sufficient to cover the single person living alone; but, we know that with government transfers being set at rates less than the needs of dependants, the single person will be in a relatively better position than workers with family responsibilities. If we were ever to reach a situation where government transfers provided for the needs of dependants, our analysis could focus on the individual.
480. A contemporary *Harvester* is not gender specific, as we explained in Chapter 2F. Our submissions recognise the rights of parents to make decisions about how they will exercise their parental responsibilities, which includes the ability of one of them, whether the father or mother, to stay at home to care for the children.

The impact of increased family payments on wage-setting

481. The major feature of wage-setting over the past century has been the increase in family payments, particularly in the last four decades. We have discussed the developments in family support and the work of the Commonwealth Poverty Commission in the early 1970s in promoting these changes as part of a strategy to end poverty in, amongst others, families who depend on a single breadwinner. Support of the family or, as the legislation now puts it, workers with family responsibilities, is fundamental to the setting of fair safety net wages.
482. In its first decision in 2006 the AFPC compared family disposable incomes with the relevant Henderson Poverty Lines. 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.)
483. This passage identifies a fundamental objective of wage-setting: enabling families to rely solely on a single wage, with the aid of family payments. This means that the second parent does not need to work in order for the family to avoid poverty and achieve the minimum acceptable standard of living. The objective of providing a system of wages, supported by family payments, underpinned the work of the Poverty Commission, as we discussed earlier;

and it 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.

484. We can test the fairness of the wages system by asking whether the NMW and other wages enable families with two children to rely solely on a single wage, supplemented by family transfers.
485. Unfortunately, the AFPC's conclusion was erroneous because, in its calculation of the disposable incomes of single breadwinner families, it had included the Newstart allowance for the second parent. As the Newstart allowance is an unemployment benefit that is only payable to a person who is seeking employment, it should not be included.
486. A contemporary *Harvester* does not need to provide for the total support of dependants as its predecessor did a century ago. The economics of family support have changed, particularly in the last 40 years. The changes in the balance between wages and social measures (ie the pay packet and the public purse) in Australia from 1973 to 2012 are illustrated in Table 29.

Table 29
Changes in wages and transfer payments in Australia 1973 - 2012
(\$ per week)

Year	Income unit	Lowest Min. Wage	Min. wage after tax	Family transfers	Disposable income	Transfers as a % of disposable income
August 1973	Couple, 2 children	60.00	54.00	4.50	58.50	7.7%
August 1973	Single person	60.00	54.00	-	54.00	-
December 2012	Couple, 2 children	606.40	556.87	355.05	911.92	38.9%
December 2012	Single	606.40	556.87	-	556.87	-

This table is derived from Tables 13,17, 23 and 26. The disposable income for the couple with 2 children in 2012 includes rent assistance. The Medicare levy exemption for families at this income level is included in family transfers.

487. Table 29 compares the single wage earners and families of four who are dependent on the lowest minimum rate of pay. In 1973 the minimum wage had a much greater role in the support of families because of the limited family payments, though less than at the time of

Harvester. Over 90% of the family income for the lowest paid came from the wage packet. Family payments now provide a substantial supplement to the wage, 38.9% of disposable income, but obviously do not cover all of the family's costs which are additional to the breadwinner's.

488. This change in the proportions that the wage packet and the public purse contribute to the support of families has economic consequences. The increase in family payments has permitted the decline of minimum wages in Australia relative to general wage levels and cushioned the impact of the decline on families. This trend has taken out of minimum wages some of the family support element and it has kept down labour costs compared to what they would have been without those payments. As we explained in Chapter 3J, despite the substantial increase in government family support, the position of families is much the same, relative to the Henderson Poverty Line, as it was in 1973. From 2000 the disposable income (excluding rental assistance) of the NMW-dependent family of four has gone from 2.1% above that poverty line to 7.0% below it. The significant improvements from 1973 to 2000 have been lost. FWA, unlike the AFPC, has disregarded the Henderson Poverty Line as an indicator of need. However, it is a valuable measure of change over time because it is calculated by reference to changes in household disposable income per head, as calculated by the Melbourne Institute. It emphasises the need for our proposed inquiry into the needs of low paid workers with family responsibilities.
489. This change is illustrated by reference to the single worker's margin over the (HPL) poverty line fell from 32.8% in 2000 to 15.2% in 2012; see Table 22. Tables 21 and 22 show that most of this occurred in the *Work Choices* years. However, we can see from Table 23 that there has been a long term trend of relative income reduction for single workers. Table 23 shows that in 1973 the minimum wage put the single worker 61.7% above the poverty line. A drop from 61.7% to 15.2% has substantial economic and social consequences. Economic consequences follow from the reduction of the "over-compensation" of needs in the wage rate paid to single workers. It has social consequences by reducing the capacity of single workers to save and prepare for family life or retirement. Since 2000 safety net wage cuts have gone too far, while increased transfer payments have not gone far enough.

490. We are concerned that these kinds of trends are not discussed in the community generally and that they are not debated by the parties to wage reviews. The underlying data is not well-known in the community, but it is well-known in the wage reviews that have produced these economic and social changes.

C. The wage-setting system has failed low paid workers and their families

491. A major part of this submission is concerned with a detailed analysis of the way in which the setting of safety net wages since has failed low paid workers and their families. We showed in Chapter 3 that the safety net wages system has failed low paid workers and their families, by:

- allowing the incomes of some low paid workers and their families to fall below the 60% relative poverty line;
- failing to take into account evidence regarding needs;
- causing real wages to fall for a large proportion of safety net workers;
- failing to take into account productivity gains when adjusting wage rates ; and
- failing to maintain their living standards relative to the rest of the community.

Families are living in poverty

492. FWA is required by the minimum wage objective in section 284 (1) of the FW 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. Since 2000, and earlier, declining wage levels have meant 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. In Table 26 we showed that NMW-dependent family of four was at 11.0% below the 60% relative poverty line in December 2012: a poverty gap of \$115.81 per week (also see Table 27). We accept that this percentage is not universally accepted as a measure of poverty, but the family would still be in poverty at the 55% relative poverty line. The family is on 53.2% of the median (see Table 20). The poverty gap is so great that it calls for a response. In 2013 ACCER is asking that it be closed by a very small step of \$10.00 per week.

Real wage cuts

493. We have shown that real wages have been cut since 2000 for those work classifications that now pay more than \$767.00 per week. This is a very modest wage rate. Apart from the percentage increases in 2011 and 2012, since 2000 compensation for price increases has been by way of money increases that have favoured low paid safety net workers at the expense of higher paid safety net workers.

Productivity denied

494. Fair outcomes require more than compensation for price increases. Fair wages should be set by reference to community wage movements and productivity improvements. Increases of not less than prices and productivity should be a fundamental *minimum* objective of a fair wages system.
495. With average annual productivity increases in excess of 1% per year over the past twelve years (see Chapter 3D) and CPI increases of 39.5%, wage increases based on prices and productivity would have yielded not less than a 51.5% increase since 2000.
496. Not one group of safety net workers has had wage increases even equal to price and productivity increases. Even those safety net workers who had real wage increases got them wholly or mainly at the expense of higher paid safety net workers who suffered real wage cuts. The increase of 51.4% in the NMW from 2000 is less than prices and productivity. For workers in a classification now paying \$916.00 per week, the wage increase since 2000 leaves them more than 20% below prices and productivity.
497. Nearly all, if not all, of the labour productivity dividend from one of the most prosperous periods in Australian history has not been distributed to safety net workers. This means that there has been a massive transfer of labour productivity gains from the workers who have generated those gains (about one-sixth of the workforce) to the owners of the businesses in which they are employed. It should be noted that the overwhelming majority of these workers are non-unionists and are without effective bargaining power.

The loss of wages relative to the rest of the community

498. The minimum wage objective in section 284(1) of the FW Act also requires that FWA take into account “relative living standards” when setting wages.

499. The loss of wages relative to the rest of the community is illustrated in [Table 29](#). It summarises the changes from December 2000 to December 2012 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, the base trade-qualified, C10, rate and average weekly ordinary times earnings as measured by the ABS's AWOTE series. The different outcomes for single workers and workers with family responsibilities are the result of increased family payments, especially for middle income families. We need to consider these figures having in mind that increases based on prices and productivity would have yielded not less than 51.5% over the period since 2000.

Table 30
Losses of safety net-dependent workers and their families relative to AWOTE
2000-2012

Household	Disposable Income 2000 \$ per week	Disposable income 2011 \$ per week	Increase in gross wage	Increase in Disposable Income
NMW single	346.38	556.87	51.4%	60.8%
NMW 2+2	503.37	844.18	51.4%	67.7%
NMW 1+2	503.37	844.18	51.4%	67.7%
C10 Single	412.39	636.14	43.3%	56.5%
C10 2+2	570.88	924.94	43.3%	63.9%
C10 1+2	570.88	924.94	43.3%	63.9%
AWOTE Single	616.48	1081.37	74.4%	75.4%
AWOTE 2+2	688.65	1300.50	74.4%	88.8%
AWOTE 1+2	688.65	1300.50	74.4%	88.8%

The figures are drawn from Tables 13 and 17. The family transfers to couple parent and sole parent families are the same. The two children are in the 8 to 12 age group. Rental assistance is not included

500. Table 30 demonstrates major changes in the relative position of safety net workers and the safety net rates upon which employees bargain. Over the eleven years gross NMW increased by 51.4%, the net NMW by 60.8% and, for the families, the increase in disposable incomes (net NMW and family payments) was 67.7%. For the average income earner and his or her family, as represented by AWOTE, the increases were 74.4%, 75.4% and 88.8%, respectively. These are very significant differences.

501. The contrast between the outcomes of safety net workers and AWOTE workers is more striking when we look to the position of the C10 worker where the increases were 43.3%, 56.5% and 63.9%, respectively. Tables 13 and 17 enable us to calculate the outcomes for other income levels.
502. Had the NMW wage increased in line with average weekly earnings, as measured by AWOTE, the NMW would now be an extra \$91.90 per week (see Table 13). We do not argue that safety net wages should move in lockstep with AWOTE, as net incomes may be taken into account, but we do argue that the AWOTE trend should be followed over time.
503. Finally, we repeat a point explained earlier: because AWOTE is a national average that includes the wage rates of safety net-dependent workers, any comparison between safety net rates and AWOTE will understate the differences between safety net workers and the rest of the workforce. This means that the actual increase in average weekly ordinary time earnings of the five-sixths of the working population who were able to bargain for higher wage rates were significantly greater than the AWOTE figures in [Table 29](#).

Comparisons with Pensioners

504. The need for safety net increases to be linked to a measure of community wage movements was highlighted by our submissions in regard to Aged and Disability pensions.
505. Our comparison between the standards of living of pensioners and low income working families (at Chapter 3I) 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 and with the assurance of increasing disparities unless wage-setting changes.
506. Pension rates were increased in 2009 after a much needed and overdue review of their sufficiency. Table 20 shows that, according to the modified OECD equivalence scales used by the ABS, the living standards of the NMW-dependent family of four are lower than single aged and disability pensioners and very similar to couples on the aged pension. However, those comparisons do not take into account the substantial costs of working in the working family household, nor any component that rewards the performance of work. A pensioner couple now has a disposable income of \$911.92 per week and, without the costs of work, they have a substantially higher standard of living than the working family of four on \$911.92 per week.

507. 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. This mechanism 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.
508. The consensus is that pensions should move in line with community earnings. In these circumstances, we have posed the question "Why shouldn't wages?", and asked that the Commission seeks submissions on whether the NMW increases and other safety net rates should be linked to movements in pensions.

D. Award classifications should not constrain a fair NMW

509. Our claim for an extra \$10 per week increase in the NMW, and the breaking of the practice of increasing the NMW by the same amount as award rates are increased, is based on a precedent. In 2007 the Catholic Commission for Employment Relations successfully argued in the NSW State Wage Case for a further \$7.00 per week in the NSW equivalent of the NSW. The NSW Industrial Relations Commission awarded a general increase in award rates of \$20 per week and an increase in the lowest minimum rate of \$27.00 per week.
510. As we explained in Chapter 3K, the C14 rate in the Metal Industry Award 1984 was adopted in the *Safety Net Review - Wages, April 1997* as the rate for the newly-introduced Federal Minimum Wage (FMW). The FMW was not set by reference to the needs of low paid workers; nor had the C14 rate been set on that basis. The FMW, now the NMW, has not been the subject of any separate inquiry regarding its sufficiency and has always been adjusted in a similar manner to award rates of pay. We seek to break that connection in 2013, as the NSW Industrial Relations Commission did in 2007.

511. In a number of awards the second lowest classification rate is the C13 rate (or its equivalent), which is currently \$17.10 per week more than the C14/NMW rate. The granting of a further \$10.00 per week increase in the NMW would result in this margin being reduced to \$7.10 per week. Having regard to the matters set out below, we submit that there is no reason based on the terms or operation of the award classifications why this change cannot be made in 2012. A similar situation occurred in NSW in 2007. Following the State Wage Case 2006 the margin between the C13 and C14 rates was \$16.70 per week and after the State Wage Case 2007 the margin was \$9.70
512. Furthermore, the C14 rate is not an appropriate rate for the NMW because it is a transitional rate. The C14 rate in the *Manufacturing and Associated Industries and Occupations Award 2010* is 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). The C14 rate covers a three month training period for new workers.
513. A number of other awards have introductory transitional provisions. Generally, they set the introductory rate at the C14 level and provide for movement to the equivalent of the C13 rate or something similar. We estimate that this occurs in about 23 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.
514. The effect of our claim for an increase of \$10.00 would be to reduce the gap between the introductory, C14, rate, and the C13 rate, where those two classification, or similar classifications are found. In many awards the change would have no impact whatsoever; for example, cleaning, fast food and retail would not be affected because their lowest wage rates are well in excess of the proposed NMW.

515. The further adjustment of the NMW in subsequent years would have implications for some classifications in some awards. Whether the further adjustment of the NMW should occur by the overtaking of some classification rates or by increases in those rates in order that they retain a margin over the rising NMW is not a matter to be determined in this case. However, we ask that FWA establishes a process by which this can be considered prior to the lodging of submissions in the early part of 2014. The important point to make is that the award classification that was set in 1997 should not operate to frustrate the proper adjustment of the NMW in 2013.

The benefits and economic costs of the first step

516. The granting of an increase of \$10.00 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. For some it will only increase their wages over a three month period.
517. We referred in Chapter 3C 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 10,142,200 (*Labour Force Australia, May 2006*, cat. no. 6202.0). 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 February 2013 the workforce had increased to 11,628,300, seasonally adjusted, of which 8,117,000 were full time; see *Labour Force Australia, February 2013*, 6202.0. Other matters remaining the same, this would mean that the numbers would be 14.7% higher; about 60,800 for full time workers and about 129,600 for casuals.

518. We are asking the Commission to do something significant for the lives of about 190,000 of the lowest paid workers who comprise 1.6% of the labour force. 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 and necessary step towards that goal.

The application of principle

519. We submit that the provisions of current awards should not constrain the proposed increase. The minimum wage objective in the FW 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.
520. This is not a case where we are seeking a change to carefully established wage levels and relativities. 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.
521. There are classifications in awards that are at the current NMW/C14 level, but a substantial number of those classifications are only transitional introductory rates. Even if the current award rates were thought to have 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*: \$673.50
- *Aged Care*: \$644.80
- *Airport Employees Award*: \$629.50
- *Car Parking*: \$638.80
- *Cleaning Services Industry*: \$647.80
- *Educational Services (Schools) General Staff*: \$624.00
- *Higher Education Industry – General Staff Award*: \$649.40(Year 1)
- *Fast Food Industry*: \$666.10
- *Gas Industry Award*: \$629.20
- *General Retail Industry*: \$666.10
- *Hair and Beauty Industry*: \$666.10
- *Local Government Industry*: \$648.30
- *Passenger Vehicle Transportation*: \$635.90

- *Premixed Concrete Award*: \$623.70
- *Security Services Industry Award*: \$681.40
- *Storage Services and Wholesale*: \$648.00
- *Waste Management Award*: \$642.20
- *Water Industry Award*: \$648.30

522. 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.”

523. 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.

524. The introductory rate in the *Restaurant Industry Award* 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 FW 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...".

525. This 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 Industry Award* is work that is equal to or comparable with the work performed after that period and the introductory rate cannot be justified.
526. 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 \$606.40 as its lowest rate, with an increase to \$648.00 after 3 months. This is not a genuine training period and operates to provide different rates of pay for work of equal or comparable value, contrary to the terms of the legislation.
527. The *Miscellaneous 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 above 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.”
528. Finally on issues of principle, we submit that the NMW, which now operates independently of award rates (unlike in 1977 when the FMW operated on and in an award system), should not be set at the same rate as a short term introductory rate. 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. Proposals for an inquiry, research into needs and new hearing procedures

529. A major part of this submission is concerned with quantifying the needs of low paid workers and their families so that safety net wages can provide an acceptable standard of living for low paid workers and their families. It should be "well above poverty" and enable them to live in dignity.
530. Our submissions also present the case for the base cleaner's classification rate of pay, currently \$647.80 per week, and \$41.40 per week above the NMW, 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. We propose that the target rate be achieved over time.
531. A fair system of wage-setting requires the information that is necessary to establish the needs of workers and their families. We have relied on a wide range of material in support of the claim for an additional \$10.00 per week increase in the NMW. We expect that the currently available material will provide a sound basis for an increases to our interim target of the base cleaner's rate. However, further evidence about the needs of low paid workers and their families is required if the FWC is to be fully informed and may be needed to go beyond this interim goal. We need further research on the identification and quantification of needs.
532. We have welcomed the decision in 2011 to establish a process for the identification of issues in regard to the measurement of the needs of the low paid. The section 290 investigation and report (*Measuring the Needs of the Low Paid*) was a significant development. In 2012 we submitted that this should be an ongoing process with consultations being held throughout the year. As we discussed in Chapter 1, this process has come to an end with nothing to show for it. That process has finished and there is nothing in the Commission's research program that addresses the issues and evidence on the measurement of the needs of the low paid. We submit that there has been no progress on this aspect since 2003 when Mr Costigan, appearing on behalf of ACCER, called for the

establishment of an inquiry into the needs of the low paid. nothing has changed in the past decade

533. The recent decision by the Australian Research Council to fund the updating of the SPRC budget standards research is very significant. One of the purposes of the application was to produce research that will assist in the measurement of the needs of low income families, with obvious relevance to minimum wage cases. As a three year project it will be some time before its results will come before the Commission. ACCER is concerned to see that the research has the most utility that it can in wage reviews. It does not want to be found in a position in three or four years where alleged shortcomings in the design and methodology of this expensive and important research are raised by parties who have been able to keep their powder dry until its results come before FWA in an annual wage review.
534. As we said in our Annual Wage Review submissions in 2012 and in the research submission of July 2012 , we are keen to ensure that there is a process in FWA that will elicit views about the design and methodological issues of this kind of research so that they might be considered in the research project. There is, we submitted, the capacity under the section 290 investigation and report process to have these issues ventilated and narrowed, and possibly determined. In such a process the parties who have an interest in the matter can, and should, raise their concerns in advance of the research being conducted. If the FWC is reluctant to review prospective research, we submit that can address the substantive questions by seeking submissions on, and considering, the existing budget standards research.
535. ACCER supports the continued use of relative poverty lines as a proxy for the measurement of need and a means of taking into account relative living standards. We have argued that debate and research are required if we are to improve their utility in wage-setting.
536. A major problem with the current relative poverty lines is that the modified OECD equivalence scales used to establish relative living costs produces an outcome for sole parents that our experience, and closer inspection, show to be erroneous. This is illustrated in Table 8.2 of the *Statistical Report - Annual Wage Review 2012-13*. The table shows that a sole parent employed on the NMW and having two children to support has a slightly higher standard of living than a single person who is employed on the NMW, but who has

no dependants. The ratios of disposable income to poverty lines are 1.16 and 1.14, respectively. The problem arises from the use of equivalence scales that do not distinguish between the costs of working and non-working families, whether couple parent or sole parent. The same issue arises when making a comparison between the pension safety net and the wage safety net. Costs of work, particularly for sole parents, can be substantial. Ordinarily, sole parents are required to engage child care services if they are to participate in full time work and many kinds of part time work.

537. We referred earlier to the costs of child care and the impact that those costs of on working parents. We have argued that the costs of child care need to be taken into account when considering the living standards of sole parents. 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. We submit that a section 290 investigation would be an appropriate process for the release and further consideration of that material. Given the importance of this information to a range of its policies (workforce participation, family support, social inclusion, child care, etc), the Commonwealth should be asked to provide financial assistance to FWA to facilitate further research in this area. We note, however, the point made earlier that the Commonwealth has been very reluctant to participate in any process that would assist in the assessment and measurement of the needs of the low paid. If there is to be any progress the FWC will need to give directions to the Commonwealth and use its coercive powers if needed.
538. We submit that more discussion and research is required on the FWC's calculations of the disposable incomes of low income families. The FWC's current research follows the past practice of including in those calculations the maximum amount of rent assistance that is available to families who rent in the private rental market. This could be usefully considered and addressed in a section 290 process.
539. These matters should be addressed in an inquiry into the needs of low paid workers with family responsibilities. We see the section 290 process as being the primary and initial means by which it is undertaken and, as such it will not require all members of the FWC's Minimum Wage Panel to participate at that stage.
540. Finally, in these submission we have raised some overarching issues. We have pointed out trends and issues in wage-setting that bear on social equity that are not even debated by

the parties to wage reviews and which are not discussed in the community generally. The underlying data is not well-known in the community, but it is well-known, but un-remarked, in the wage reviews that have produced these economic and social changes.

541. One of the fundamental issues in wage setting concerns the relative contributions of the wage packet and the public purse to the support of workers, especially low paid workers, and their families. Yet it is not addressed by successive tribunals and parties who should be addressing these issues have stood mute. As we said earlier, an extraordinary feature of Australian minimum wage-setting since the FMW was introduced in 1997 has been the lack of any serious attempt to set wages by reference to the needs of the low paid, despite the presence most of that time of an explicit obligation on the decision-maker to take into account the needs of the low paid.
542. We illustrated the lack of attention to these matters in our reference to FWA's call at the handing down of the 2012 decision for the parties to consult on the operation of the tax and transfer system and how it should be taken into account in the setting of minimum wages. That is a matter that should have been addressed years ago while we were undergoing very substantial changes in the relative contributions of the pay packet and the public purse to the support of families. It is also a matter that cannot be answered without addressing some fundamental questions about the purpose and scope of a fair safety net, which might be called the principles of wage-setting. As we discussed earlier, the established attitudes and practices of the parties and the restricted procedures and tight timelines of the wage review process are not conducive to substantive progress on these matters. We expect that our proposed inquiry into the needs of low paid workers and their families would address these issues.