

**Fair Work Commission**

*Fair Work Act 2009*

**Annual Wage Review 2012-13**

**Outline of Oral Submissions**

**by the**

**Australian Catholic Council for Employment Relations**

**21 May 2013**

1. This year marks the 10th anniversary of submissions made in the *Safety Net Review Case 2003* by Frank Costigan QC, who appeared for the Australian Catholic Council for Employment Relations (ACCER), in support of an application for an inquiry into the needs of the low paid. He submitted that, in order for the Australian Industrial Relations Commission (AIRC) to satisfy its statutory obligation to have regard to the needs of the low paid when setting wages, it needed to ensure that wage rates do not fall below 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.”

2. Mr Costigan then went on to pose a number of questions about poverty and the adequacy of the Federal Minimum Wage, as the National Minimum Wage (NMW) was then known.
3. The proposal for an inquiry into the needs of the low paid was not accepted by the AIRC, but it responded to those questions:

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

4. In the years since, ACCER has given close attention to the five questions posed by Mr Costigan and his submission that it is a fundamental need of the low paid not to live below the poverty line. Poverty is, we submit, highly relevant to a tribunal that is commanded to set fair minimum wages by reference to, amongst other matters, the needs of the low paid and relative living standards. A tribunal that is indifferent to this aspect cannot properly exercise its jurisdiction.
5. In each of its decisions from 2006, the Australian Fair Pay Commission (AFPC) compared poverty lines with the disposable incomes of minimum wage workers. Similar data has been published in successive Statistical Reports of the Fair Work Australia (FWA), now the Fair Work Commission (FWC). We now have a series of annual poverty lines calculated by those tribunals which ACCER has revised and extended back to 2000 in its Supplementary Reply of April 2013. We have known for some time that safety net workers and their families have not kept up with rising poverty lines. The implications of their own data have been ignored by both the AFPC and FWA in their published reasons.
6. Poverty lines and income levels for three kinds of households at three different wage levels are in ACCER's Supplementary Reply where Graph 3 demonstrates the dramatic changes in the position of safety net-dependent workers.
7. After being only \$1.03 per week under the poverty line in December 2000, the NMW-dependent family of four with two children had a poverty gap of \$109.46 per week in December 2012. The value of the breadwinner's work had been reduced by \$108.43 per week over a period that was, arguably, the most prosperous period in Australian history.
8. Many more fell below the poverty line. The family of four dependent on the C12 classification, which now pays only \$648.00 per week, fell from 4.8% above the poverty line to 7.4% below the poverty line. Trades-qualified workers, whom we would have

assumed could support a family of four on their C10 wage rate, have seen their family's position fall from 11.4% above the poverty line to 2.8% below it.

9. By contrast to these families, the family of four on average weekly earnings, as measured by Average Weekly Ordinary Time Earnings (AWOTE), moved further above the poverty line; from 24.7% to 26.9%. The difference in outcomes is even greater when one deducts from that average the figures for safety net-dependent families in order to separately compare the two classes of workers.
10. Our analysis also shows the worsening position of sole parents and single workers. Families have been shielded to some extent by increases in family transfers, but the position of single workers has not been protected. For example, C10-dependent single workers have fallen 24.3 percentage points relative to the poverty line, compared to 14.2 percentage points for C10 families.
11. The seriousness of this data is supported by research commissioned by the Australian Council for Social Services (ACOSS) which shows that 7.1% of full time workers are below poverty line. Many of these are workers with family responsibilities. Looking at the profile of those living in poverty, the report estimates that 20.5% of those living below the poverty line (estimated to total 760,000) are in, or rely on, fulltime employment.
12. The situation is emphasised by Graph 1 in our March 2013 Submission, which shows that Australia has the third highest poverty rate among 23 OECD countries (calculated by reference to 50% of median income). Graph 2 shows child poverty across 27 countries and shows that Australia has the 11th highest child poverty rate (calculated by reference to the 50% of median income).
13. These international comparisons are very troubling, especially for a country that has prided itself on a tradition of egalitarianism and whose economy is, so its Government claims, the envy of the world.
14. This is not a failure of welfare policy, but a failure of wages policy, affecting workers with and without family responsibilities. Despite major increases in transfer payments,

- the kind of which will not be seen again in the foreseeable future, the position of these working families has worsened because of wage-setting decisions.
15. This comes as a bitter pill. Bitter because we tried in 2003, and since, to change the way decisions are made. Bitter also because we were promised and believed that things would change under the current *Fair Work* legislation.
  16. In 2005 the Australian Catholic Bishops opposed aspects of the *Work Choices* legislation because of its potential to cause harm to low income working families. We therefore welcomed the current Government's *Fair Work* reforms when they were enacted 2009.
  17. The new legislative framework provided the opportunity to address significant inadequacies in the wages safety net. In their May 2011 Statement commemorating the 120th anniversary of Pope Leo XIII's great social encyclical, *Rerum Novarum*, the Australian Catholic Bishops recognised that the terms of the *Fair Work* legislation enable the making of decisions that would meet their concerns about wages made in 2005, but left open the question of whether the legislation had been a success in providing for low paid workers with family responsibilities.
  18. ACCER's answer to that question, 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.
  19. Our submissions 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 has hidden counter-trends which have operated to the detriment of safety net-dependent workers who comprise about one sixth of the workforce. The figures demonstrate the dangers in focussing on aggregates, without regard to the groups within them. Aggregate figures do not reflect the plight of safety net-dependent workers and their families.
  20. Safety net-dependent workers, who rely totally on the decisions of industrial tribunals have fallen well behind the majority of workers who have the capacity to bargain for higher rates. Typically, safety-net dependent workers have no ability to bargain for higher

wages and they are not union members.

21. We can identify at least seven reasons why this has come about and why a change is needed.
22. First, tribunals have been reluctant to even compensate safety net workers for price increases. There has been a cut in the real value of classification rates that are now more than \$767.00 per week. On average, real wages have been barely maintained, if at all.
23. Second, safety net rates have not been adjusted to reflect productivity increases. Since 2000 substantial productivity gains across the economy have resulted in significant wage increases across the national economy. Unlike other workers, safety net workers have been denied the benefit of the increases in their own productivity. The labour productivity gains from one of the most prosperous periods in Australian history has not gone to safety net workers, but to their employers.
24. Third, in considering relative living standards, successive tribunals have given inadequate attention to community wage movements. These matters have added importance because the FWC has to take into account relative living standards when setting safety net wages. Compared to the rest of the workforce, *all* safety net workers are now *relatively* worse off than they were in 2000. When compared with other rates of pay and income measures, safety net wages have fallen dramatically; for example, while AWOTE has 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%. If safety net workers were extracted from the AWOTE calculation, the difference would be greater.
25. Another aspect of relative living standards is pension rates. Pensions were reviewed and adjusted in 2009 in order to provide a “basic acceptable standard of living”. 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 which depend on government pensions. Unlike safety net wages, the pension safety net is adjusted by reference to movements in average weekly earnings (Male Total Average Weekly Earnings) which guarantees that pensioners share in improved community living standards. The NMW-dependent family of two adults and two children has a

substantially lower standard of living than the pensioners; and the gap will continue to grow unless there is a change in minimum wage decisions.

26. Fourth, there has been a failure to recognise the importance of the social inclusion objective of the *Fair Work Act* and the social value of wages. The effective promotion of social inclusion requires the setting of wages that will avoid poverty and social exclusion and will enable them and their families to participate in their society. Despite the social inclusion objective, the decisions since 2009 have not shown any commitment to better understand the reality of the lives of the low paid and their families.
27. Fifth, there has been insufficient commitment by successive wage-setting tribunals to processes that will provide an evidentiary basis for the setting of *fair* safety net wages for the lowest paid workers. 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?”
28. Sixth, the Commonwealth’s participation in past wage cases has not provided any substantial material in regard to the needs of the low paid, relative living standards and poverty, even though the Commonwealth has access to considerable data in regard to these matters. We expected more of the Commonwealth Government, particularly given its claimed commitment to the promotion of social inclusion of low income families and its claimed concern about the needs of workers with family responsibilities. In this tribunal the Commonwealth has turned a blind eye to these vulnerable workers and families.
29. Seventh, the Commonwealth’s passivity is both a cause and an effect of the failure to address some important public policy issues, such as the nature and purpose of a wages safety net and the extent to which changes in government taxes and transfers increase or reduce the proper operation of the wage safety net. This is a jurisdiction without jurisprudence.
30. The end result of this is that low paid workers and their families are in a worse position than they were in 2003 when Mr Costigan sought an inquiry into the needs of the low paid. Unless things change the position will worsen.

31. We now turn to the Annual Wage Review decision of 2012 and, in particular, ACCER's unsuccessful claim for a further \$10.00 per week increase in the NMW.
32. Our Submission of March 2013 (at paragraphs 69 to 120) sets out in some detail our criticisms of the reasoning and conclusion in 2012 and we need only make brief reference to them in this submission. As we seek the same kind of increase this year we wish to demonstrate the errors in that decision.
33. Three preliminary points should be made.
34. First, when the NMW (then the Federal Minimum Wage) was first set by the AIRC in 1997 it was set at the same level as the C14 rate in the *Metal Industry Award 1984*. It was not set by reference to an estimation of the needs of the low paid; nor, we submit, with the intent that the adjustment of the NMW would continue to be constrained and limited by movements in award rates. Since 1997 the increases in the NMW have moved in line with increases in award rates without regard to the adequacy of the NMW.
35. Second, the claim for an extra \$10.00 per week is a very modest first step to address the deleterious changes and the substantial poverty gaps that have emerged over the past 12 years. We are very conscious that it will not reverse the trend of the past 12 years. It deals only with the most pressing aspect of it. It will not address the fact that better paid workers (for example, C12 workers) and their families are living in poverty. The ACTU claim would have more initial impact, if granted. But we have balanced our claim with a proposal for a serious and fundamental review of aspects of wage-setting, which we expect to be more effective over time.
36. Third, there is a precedent for this extra increase. This situation is similar to the 2007 case in the NSW Industrial Relations Commission where the Catholic Commission for Employment Relations successfully sought a further increase of \$7.00 per week in the lowest minimum wage rate in New South Wales. As a result, the C14 rates in relevant awards were increased by an extra \$7.00 per week and the margin between the C14 rate and the next classification rate was reduced by \$7.00 per week.

37. In 2012 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.]

38. Our March 2013 Submission argues 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 the wage-setting provisions in section 284(1) of the *Fair Work Act*.

39. The 2012 Decision did not recite the grounds on which ACCER’s claim was based, nor indicate why the claim was found to have no cogent basis and there are no explicit reasons for that conclusion. The reader does not know how the \$10.00 claim was put.

40. The FWC is obliged to set the NMW and award rates; see *Fair Work Act 2009*, section 285 (2) and (3). The setting of the NMW is a specific obligation independent of setting award rates. Taking into account relative living standards and the needs of the low paid raises for active consideration of whether the NMW and award classifications are sufficient to provide a safety net of fair minimum wages; and, in particular, whether an increase in the NMW should be limited to, or determined by, increases granted to award classifications.

41. FWA’s recitation in its 2012 Decision of evidence and submissions regarding the needs of the low paid and relative living standards (at paragraphs [149] to [179]) and its conclusions (at paragraphs [180] to [189]) contain errors and leave out some important aspects of the evidence and submissions regarding the level of the NMW and the claim for a further \$10.00 per week.

42. In regard to the NMW, paragraph [183] appears to be the implicit basis for the conclusion that no cogent basis was advanced for disturbing the relationship between the C14 rate and the NMW. No other matter relevant to ACCER’s claim was recited or referred to by implication.



43. There are several errors in paragraph [183]. First, the NMW had not risen, as claimed by FWA, “relative to the various measures of movements in average rates of pay”. Second, the reliance on changes in the Wage Price Index (WPI) contained a factual error (ie that NMW had risen at about the same rate as the WPI) and errors of principle. The errors of principle involved giving undue weight to the WPI, treating it as a benchmark, and taking inadequate account of community increases in wages and incomes.
44. The use of the WPI in 2012 denied appropriate weight being given to relative living standards. However, we have another concern about the WPI. The WPI is a measure of labour costs that strips out the significant work value changes that can occur within award wage classifications and it fails to record the changes that have occurred in the work of workers employed in those classifications. The error in the use of the WPI is illustrated in the case of the estimated 79,000 workers who are award free but covered by the NMW (see Australian Government Submission March 2013, page 13). Their work classifications are most likely to cover a broad spectrum of work and workplace change. To limit their increases by an index that removes occupational change is erroneous and leaves them with declining living standards.
45. A striking feature of FWA's 2012 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. 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. Rising inequality was treated with equanimity. The social implications of rising inequality, especially its impact on children, calls for discussion, not silence.
46. The 2012 Decision also fails to consider, and even acknowledge, matters that were relevant to the NMW claim. There was a range of material put on the needs of the low paid, as well as relative living standards.
47. First, ACCER argued that the NMW was a poverty wage and had presented material and made substantial submissions on poverty which were not considered. Poverty, so relevant

to needs, relative living standards and social inclusion, was not even mentioned.

48. Second, ACCER relied on comparisons with pensions, which had been set by the Commonwealth in 2009 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. This matter was not considered.
49. Third, ACCER relied on Budget Standards research for the limited purpose of showing that the extra \$10.00 in the NMW was justified. The Budget Standards material was rejected without any reasoning, apparently on the basis of the view expressed in the section 290 report (quoted at paragraph [179]) that the "current... budget standards data provide little guidance to the Panel because the original research upon which they are based lacks contemporary relevance". A conclusion that a measure of adequacy does not have contemporary relevance because it does not reflect increased living standards should not preclude reliance on that unadjusted measure, as ACCER did, to demonstrate that incomes were inadequate even by that earlier measure.
50. The reasoning in 2012 in regard to the NMW was not transparent. The deliberative process requires a manifest testing of the arguments and material advanced. The omission of relevant arguments, as there was in 2012, is not acceptable. ACCER submits that the FWC 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. Low paid workers have a vital interest in knowing how FWA came to its decision about their needs and living standards. Many others also have an interest in this information; for example, unions, employers, government, economic commentators and editorial writers.
51. 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 of 2.5% in the Consumer Price Index (CPI) since the handing down of the *Annual Wage Review 2011-12* in June 2012, less an amount reflecting the CPI effects of the introduction of

the carbon price, estimated to be 0.7%, for which compensation has already been provided by way of Commonwealth budgetary measures. This ground yields 1.8%. 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. It is identified as an interim amount to make clear that it is not intended to exhaust the accumulated, but undistributed, productivity gains.

ACCER, therefore, seeks increases of 2.8% 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 of 2.8%. The money amount is \$19.80 per week.

*National Minimum Wage.*

ACCER seeks a further increase in the NMW of \$10.00 per week. This would mean a total increase in the NMW of \$29.80 per week.

52. ACCER renews the request it made in 2011 for an inquiry into relative living standards and the needs of the low paid. We propose that this inquiry 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.