Fair Work Commission

Fair Work Act 2009

Annual Wage Review 2013-14

Submission by the
Australian Catholic Council for Employment Relations
March 2014

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Preamble

This submission refers to a variety of matters in *Working Australia, 2014: wages, families and poverty*, an ebook to be published by ACCER. These submissions comprise Chapter 9 of the book. A copy of the manuscript of the book, save for Chapter 9, is attached hereto, commencing at page 37. The paragraph numbers in the book start at 201. The primary purposes of the book are to provide resource material for this submission and to make it more accessible a wider group of people who are interested in wages policies. It will be available at www.accer.asn.au and be free of charge. Unless otherwise stated, references in the submission to chapters, tables or figures are to those in the book. These submissions rely on the contents of the book to the extent that parts of it are referred to.

A. INTRODUCTION

1. The Australian Catholic Council for Employment Relations (ACCER) seeks the following orders:

   A. Percentage-based increases in all award wage rates to:

      - compensate for the cost of living increases as measured by the published quarterly increases in the Consumer Price Index (CPI) since the handing down of the *Annual Wage Review 2012-13* in June 2013; and
      - reflect productivity increases and community-wide wage increases.

      The three published CPI increases since June 2013 have totalled 2.3%, with the next public release expected on 24 April 2014. The further amount claimed in respect of productivity and community-wide wage movements is 1.0%.

   B. This percentage increase be applied to all classifications that provide wage rates equal to or more than the tradesperson's base wage rate, which is currently $724.50 per week. For all classifications below that rate, ACCER seeks a money increase equal to the dollar amount by which the base tradesperson's wage will increase as a result of the claimed percentage adjustment.

   C. The National Minimum Wage Order be increased in line with the award rates below the tradesperson's base wage rate and that it be increased by a further amount of $10.00 per week.

2. In addition, there are three other matters that ACCER seeks in the current proceedings:

   (a) A ruling that the *Fair Work Act 2009* requires that the NMW be set without being constrained by the rates of pay prescribed by awards made under the legislation. The reasons in support of this application are in Chapter 2B.

   (b) A ruling that the living standards of pensioners are relevant to the determination of relative living standards under section 284(1)(c) of the *Fair Work Act 2009*. The reasons in support of this application are in Chapter 2D.

   (c) The establishment of a process under section 290 of the *Fair Work Act 2009* for the purpose of obtaining evidence, principally from the Australian Bureau of Statistics, regarding the needs and relative living standards of low paid safety net-dependent workers and their families. The matters that are relevant to this request are in Chapter 8, at sections A, B and C.

3. These claims and the submissions in support of them focus on the needs of the low paid and relative living standards and are 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 (NMW).

4. Our submissions show that these low income families are living in poverty and that the principal cause of this has been the failure of safety net wages to reflect rising community incomes over the past decade and more. This deleterious trend has been hidden within the national statistics that record the very substantial increases in Australian incomes, wealth and living standards over the same period.

5. Our principal objective is to increase the NMW to the level of the lowest award rate for cleaners, which is currently $664.60 per week and $42.40 more than the NMW of $662.20. We propose that this be done by way of modest adjustments over the next few years. Another main objective is to improve the living standards of other low paid workers who are on a wage rate in excess of the NMW and living in poverty. We propose that this be addressed over time by the awarding of a money, rather than a percentage, increase in the manner indicated in paragraph 1. Our third objective is to obtain increases in safety net rates that reflect cost of living increases, productivity gains and the improvements in incomes across the broader Australian community.

6. ACCER's advocacy is informed by the Church's experience as a major employer in Australia with over 180,000 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. It is a standard that has wide community support. At the present time the NMW and other minimum wage rates do not meet that standard.

7. 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 in-work poverty, with its consequences of family and social dysfunction. Our objectives are not only consistent with the legislation under which minimum wages are set, they are required by it.

8. 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 social and economic factors in the making of decisions about setting and adjusting the minimum terms and conditions of employment, including safety net wage rates. The NMW and other low wage rates have become poverty wages for low income working families, and the cause of social exclusion; an outcome inconsistent with the legislation. We do not advocate a minimum standard of living that a well-governed and just society cannot afford. What we advocate is by reference to the standards of Australian society and not some idealised construct.

9. 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.

10. A major part of this submission is concerned with a detailed analysis of the way in which the setting of safety net wages since 2001 has failed 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. Many more have their wages set by reference to these rates. 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. This position is exacerbated for the large number of workers who are unable to secure full time employment.

11. The decline in the relative position of low paid workers and their families, both within society as a whole and relative to the poverty line, is illustrated by the change in the position of a family of four who is dependent on the C12 award wage rate (currently $664.80 per week). This frequently used rate is almost identical to the base rate for cleaners: the C12 wage rate is only 20 cents per week more than the cleaner's rate.

12. Over the ten years to January 2014 this C12-dependent family fell into poverty, as measured by the 60% relative poverty line. From being 1.7% above the poverty line in January 2004, it fell to 6.7% below it, with a poverty gap in January 2014 of $69.74 per week; see Tables 27 and 29.

13. These losses, with their personal, family and social consequences occurred over the course of one of the most prosperous periods in Australia's history. None of this loss was necessary for some claimed "greater national economic good". There was no reason for the most vulnerable workers to bear this loss in a decade that should have delivered more benefits to those most in need. To use the frequently used analogy of the cake, the cake grew considerably, but the slices given to many low paid workers and their families became relatively smaller and, as we have demonstrated in Table 1, the slices now given to some workers are smaller in absolute terms than they were in 2001.

14. ACCER welcomed the Commonwealth's *Fair Work* reforms to the framework of national wage-setting because they provided an opportunity to address these kinds of inadequacies in the wages safety net.

15. We argue in these submissions, as we argued in 2013, that the *Fair Work Act 2009* has failed to achieve fair outcomes for low paid workers and their families: the *Fair Work Act* has failed workers employed on or near the rate set by the NMW and it has not reformed the minimum wage-setting so as to overcome the systemic unfairness that has been evident since 2001 and earlier. The systemic unfairness cannot be addressed by ruling a line across the events prior to the commencement of the *Fair Work Act* in 2010 and leaving untouched the failures of the earlier years.

16. In our view, the Fair Work Commission (FWC), like its predecessors, has failed to give sufficient weight to the needs of low paid workers and their families and has failed to set a wage by reference to relative living standards across the Australian

economy, including the living standards of those on age and disability pensions. The living standards of many full time low paid workers and their families are lower than those who depend on the pension safety net.

17. The FWC has been faced with compelling evidence of widespread poverty among low paid workers and their families. It has apparently accepted the substance of the evidence, but has failed to take any action to target poverty.

18. It appears to us that the inaction of the FWC arises from three principal sources. First it has treated the growing inequality within the Australia workforce, which is the root cause of growing poverty levels, with some equanimity. It has said that growing inequality has been caused by workers moving to higher skilled jobs, thereby widening wage differentials. However, as we have shown in Chapter 3B and Table 7, in particular, the increase in wage inequality cannot be explained by changes in the skill mix of the workforce.

19. The second reason for the FWC's inaction is related to its treatment of the Wage Price Index, which has effectively imposed a ceiling on wage increases for lower paid workers while denying similar increases to higher paid workers. We argue that the Wage Price Index is, by its nature, not a useful guide to setting wages, save to identify a floor, above which increases should be set; see Chapter 5A. We note that the Remuneration Tribunal, which sets the salaries of members of the FWC (among others) has, in effect, used the Wage Price Index in this way, with the effect that the general increases awarded to a wide range of senior governmental officers have been substantially greater than changes in the index.; and much more than the increases in safety net rates.

20. The third reason for inaction on poverty *appears* to be FWC's concern about the consequences of increasing the NMW by a greater amount than the increases in award wage rates, as ACCER has claimed. If this were to occur, the NMW would, over time, have the potential to be higher than the award rates set for some low paid work classifications. Because of the respective provisions for the setting of the NMW and award minimum wages, which are referred to in Chapter 2B, award rates cannot fall below the NMW, with the result that changes would be required in some low paid classifications in some awards. We say that the FWC appears to be concerned about this because it has given no explicit reason for its rejection of ACCER's claims in 2012 and 2013 for an extra $10.00 per week increase in the NMW. The following are the relevant paragraphs in the 2012 and 2013 decisions:

> "[28] The national minimum wage is currently set at the minimum wage for the C14 classification, the lowest wage level in the *Manufacturing and Associated Industries and Occupations Award 2010* (Manufacturing Award). *No cogent basis was advanced for disturbing that relationship.* The national minimum wage will be $606.40 per week or $15.96 per hour. The hourly rate has been calculated on the basis of a 38 hour week for a full-time employee. This constitutes an increase of $17.10 per week or 45 cents per hour." (*Annual Wage Review 2011-12,* footnote omitted, emphasis added.)

> "[45] The national minimum wage is currently set at the minimum wage for the C14 classification. *We have not been persuaded to depart from that relationship.* The national minimum wage will be $622.20 per week or $16.37 per hour. The hourly rate has been calculated on the basis of a 38 hour week for a full-time employee. This constitutes an increase of $15.80 per week or 41 cents per hour." (*Annual Wage Review 2012-13*, footnote omitted, emphasis added.)

> "[116] In respect of the NMW, ACCER proposed an increase commensurate to the flat dollar increase for employees below the C10 level, plus a further $10.00 per week, to assist low-paid employees, and their families, who live in poverty. In its submission in reply, Ai Group opposed ACCER's proposal for a further $10.00 increase to the NMW on the basis that it would interfere with the outcome of the structural efficiency principle which is reflected in the modern award classification structures, and may lead to disputes during bargaining negotiations." (*Annual Wage Review 2012-13*, footnotes omitted)

21. We submit that these were insufficient responses to a very important issue about the living standards of the lowest paid workers in Australia. Given the statutory obligation to set fair minimum wages and to promote social inclusion more was required. The reasoning and the decision to reject the claim for an extra payment was not transparent, as it should have been. We submit that the low paid who are living in poverty and struggling from day to day deserve better.

22. In both years there was substantial material on poverty among low paid working families. In 2012 poverty was not even mentioned in the decision. In 2013, again there was substantial material on the issue, similar to the material that we are relying on in this submission. The FWC said in its 2013 decision that:

    - "Low-paid employment appears to contribute more to the total numbers in poverty than does unemployment". (Paragraph [408]); and,
    - in reference to its own research on the 60% relative poverty threshold, that "single earner couples, with and without children,...had disposable incomes near to or even below the threshold" (Paragraph [411]).

23. The first of these points came from a research report from the Australian Council of Social Services (ACOSS). In regard to the second issue, the FWC also had detailed

tables in ACCER's Supplementary Submission in Reply which were in similar form to Tables 27 to 30 in this submission. The 2013 submissions showed: the NMW-dependent family were 10.7% below the poverty line, with a poverty gap $109.46 per week; the C12-dependent family was 7.4% below it, with a poverty gap of $75.75 per week; and the C10-dependent family was 2.8% below it, with a poverty gap of $28.70 per week. The FWC's own words and the material that was before it in 2013 make its failure to target poverty even more perplexing.

24. The 2013 decision refers to two points raised by the Australian Industry Group, without indicating if they were given any weight in coming to the decision. The first, in relation to award relativities, had been the subject of submissions by ACCER (at Chapter 4D of its March 2013 submission, which was entitled *Award classifications should not constrain a fair NMW*) and, if relevant to the decision, we submit they should have been addressed. As we explained in our 2013 submissions, the first $10.00 increase would not impact on the award classifications, apart from reducing the margins between the lowest award rates in some awards, but that the progressive increase in the NMW towards the cleaner's rate would: the NMW would overtake some classifications.

25. However, the fundamental error with the acceptance of the award-based argument is that it permits the award structure, introduced in the early 1990s to constrain fair decision-making on the NMW more than 20 years later. We submit that this is not a permissible matter to be taken into account under the provisions of section 284(1) of the *Fair Work Act*.

26. In any event, it was not intended in 1997 that the newly introduced Federal Minimum Wage (FMW) would be fixed permanently. In the 1998 wage review 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 Australian Council of Trade Unions (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"

27. The NMW remains connected to award rates in the same way as its predecessor was in 1997, despite efforts to change the C14 rate, and the FMW/NMW, relative to other award rates. If it were to be changed it would have the effect of pushing up the C14 rate and the NMW relative to other award rates. The $10.00 increase that ACCER proposes would not sever the link between the C14 and NMW, but would increase them relative to higher award rates. This is exactly what happened in New South Wales in 2007 when the Catholic Commission for Employment Relations (a Catholic employer organisation in New South Wales and the Australian Capital Territory) made a successful application in the *State Wage Case* for an extra $7.00 per week in the State minimum wage and the C14 rates in State awards; see *NSW State Wage Case 2007* [2007] NSWIRComm 118. The adjustment did not progress beyond that first step for various reasons, including the fact that State awards are effectively constrained by nationally-determined rates.

28. The major consideration in these matters are the terms of the legislation. As we have explained in Chapter 2B, the minimum wages scheme under the current legislation directs the FWC to first set the NMW, which is to be taken into account when setting award rates of pay. The award system should not fetter that task.

29. The FWC has, we submit, an obligation to set the NMW at a level that will enable workers with family responsibilities to have a standard of living that is above poverty. It should provide for families and keep them out of poverty in the ordinary and expected cases; and those cases must include families, whether couple parent or sole parent, with two dependent children. The FWC has an obligation to ensure that, in these ordinary circumstances, no child in a working family need live in poverty. It therefore should ask itself, whether the wages that it sets are sufficient to keep the children out of poverty. Because of the undeniable importance of this issue, the FWC's reasons for decision should make clear the evidence and reasoning leading to its action or inaction on the matter. In 2013, the FWC had before it, and apparently accepted, evidence that working families, and a substantial number of children, were living in poverty, but did not make take any action to target and address those needs.

30. Our claim for an extra $10.00 per week in the NMW is a specifically targeted modest first step in alleviating poverty. Continuing the practice of the past 15 years of increasing the NMW, and its predecessor the FMW, by the same amount as the

increases in award rates, regardless of the relative needs of the lowest paid, will not target poverty; and any submissions directed to the alleviation of poverty will be pointless.

31. This is a modest proposal, with similar increases being foreshadowed over the next few years to bring the NMW up to the base wage rate for cleaners which, as we have seen, still delivers a poverty wage. On the January 2014 figures this would reduce the poverty gap for those dependent on the NMW from $104.25 per week to $69.75 per week and by a smaller amount for those who are paid a safety net rate that is currently between the NMW and the cleaner's wage rate. The cleaner's base wage rate is our target rate for the NMW in the expectation that by that stage we will have available a completed research program designed to better identify the needs of workers and their families. Our proposals may be criticised for being too conservative in dealing with a pressing social issue.

32. The legislation requires that the NMW and award wage rates be fair, yet the award classification structure appears to be the reason for the NMW not being increased to avoid poverty. How else can poverty among working families be addressed in a timely and modest way? If there is a better way to target poverty, nobody has suggested it.

B. THE WAGE-SETTING SYSTEM HAS FAILED LOW PAID WORKERS AND THEIR FAMILIES

B.1. Introduction

33. By way of introduction to this section we refer to two assessments of changes in the living standards of working Australians and their families. For some years the Commonwealth Budget Papers have included an overview of how living standards have risen for various kinds of households by reference to changes in wages, taxes and transfers. Significantly, the overview for workers and their families is presented in terms of Average Weekly Ordinary Time Earnings. (AWOTE), either 100% of AWOTE or some proportion or multiple of it. Each has an element of estimation because it is based on the changes in the Budget applied to the estimated increase in wages.

34. There are two Budget documents that summarise this change in average living standards over the past decade and a half:

(a) The last Budget of the Coalition Government in May 2007 provides a summary of the projected improvement in real disposable incomes over the period 1996-97 to 2007-08, which was the period of Coalition Government. For the single AWOTE income couple with two children, the real increase (measured in 2007-08 dollars) was projected to be 34.6% and for the single person on AWOTE the figure was 25.6%; see *2007-08 Budget Overview, Appendix A, Higher household incomes*. In effect, this was the claim for the Coalition years.

(b) In the last Labor Budget in May 2013 the projected increase in real disposable incomes was for the period 2007-08 to 2013-14. For the single AWOTE income couple with two children the real increase (measured in 2012-13 dollars) was projected to be 8.4% and for the single person on AWOTE the figure was 11.8%; see *2013-14 Commonwealth Budget Overview, Appendix C Helping households with the cost of living*. In effect, this was the claim for the Labor years.

35. These kinds of figures have been at the centre of the narrative promoted by successive Governments over the last decade and a half. They cover the period since the FMW, now the NMW, was introduced in April 1997. There is no reason to doubt these figures.

36. The narrative hides some significant counter-trends of the past decade and a half. Neither side of politics has an interest in publicising the outcomes of those who are losing the battle to maintain living standards. The AWOTE measure has hidden the widening gap between sections of the workforce. This is most vividly illustrated by the FWC's own graph, Chart 6.5, in the 2013 Decision. The chart has been reproduced in the FWC's most recent Statistical Report, dated 20 March 2014, at page 31. Chart 6.5 is based on data from six surveys by the ABS over the period 2002 to 2012. The next release in this series will be later in 2014. For workers at the 10th percentile, the inflation adjusted real increase was about 13%. For workers on the 90th percentile it was about 32%. We say "about' because the actual figures have not been supplied. These increases may be compared to the increases three safety net wage rates: NMW, C12 and C10. We have calculated that over a similar period, January 2002 to January 2012, the real increases in these wage rates were 10.1%, 6.8% and 2.9%, respectively. The outcomes for these cohorts of workers, who are distributed across the lower paid

sectors of the workforce, provide the major reason for the divergence recorded in the FWC's Chart 6.5. They are nothing short of starling comparisons.

B.2. Many workers have had real wage cuts

37. Our analysis of the impact of wage decisions on the real wages of safety net workers is in Table 1. We can calculate that from January 2001 to January 2014 real wages were reduced for safety net rates that are now paying $785.00 or more per week. For example, the classification originally paying $600.00 per week in January 2001 and paying the modest wage of $838.70 per week in January 2014, has had a real wage cut of $21.70 per week.

38. In Table 2 to Table 5 we have looked at several periods over the years 1997 to 2013, by reference to the NMW, C10 and C4 rates. As Table 2 shows, that the C4 classification, which now attracts a modest wage of $870.30 per week, increased by only 45.7% from July 1997 to July 2013, during which time the CPI increased by 52.6%. This is a real wage cut of $41.00 per week. One of the points we make is that these outcomes demonstrate how misleading references to the changes in the NMW are when describing the impact of wage setting decisions on the low paid.

39. Part of the purpose of Chapter 3 is to provide an estimate of the overall impact of real wage increases in the lower paid classifications and real wage cuts for those classifications now paying $785.00 per week or more; ie to find out the net effect of the re-allocation of the compensation for price increases.

40. The overall impact of wage-setting decisions on safety net workers and their families will depend on the spread of wage classifications, the distribution of safety net-dependent workers across those classifications and the number of hours worked by workers within each income level. Although past research has not been specifically directed at the overall impact of wage-setting decisions, there is some data from the ABS that helps us to answer it.

41. Information on this matter can be drawn from material considered by the FWC in its 2013 decision. The ACTU had produced some previously unpublished data from the survey material gathered by the ABS for *Employee Earnings and Hours, Australia, May* 2012, Catalogue no. 6306.0. The publication estimated that there were 1,538,100 award-only non-managerial employees in Australia in May 2012. This number was 16.6% of 9,292,000 employees across Australia, after excluding owner-managers of incorporated enterprises. The previously unpublished ABS data enabled award-only workers across all awards to be classified according to the wage rates prescribed for the

various work classifications in the *Manufacturing and Associated Industries and Occupations Award 2010*. The distribution of award-only workers is shown in Figure 1, which is copied from Chart 6.1 of the FWC decision (*Annual Wage Review 2012-13*, paragraph [370]).

42. Table 7 is based on the figures accepted by the FWC in 2013 and calculates the weekly real gains and losses by award-only employees over the period January 2001 to January 2014, making several assumptions, each of which has the effect of understating the negative average real wage impact on safety net workers. In the absence of data about the varying hours of work across the classifications, the table assumes that all award-only employees are full time, rather than being 39.1% of the total, as shown in the ABS survey. It shows that, on average, there was a real wage cut of $6.38 per week, based on full time employment.

43. To provide an indication of the real impact we might assume that the workers with real wage increases worked an average of 20 hours per week and the workers with real wage cuts worked an average of 30 hours per week. This shows that the average real wage cut would then be $9.71 per week. Unpublished data on working hours might be able to throw more light on the issue, but it will not change the basic conclusion that, overall, award-only workers have had real wage cuts since 2001. This has been a very significant benefit to the employers of safety net workers and employers of those workers whose wages are linked in some way to changes in safety net rates.

44. We should note, however, that there is a difference between the ABS's data on the on the dispersion of award only workers and a very recent FWC-commissioned research project on award reliance: *Award reliance, Research Report 6/2013*. We discuss this report at Chapter 3B and conclude that, on average, real wages have been cut. Our purpose in dealing with the average outcome is not to quantify the loss, but to establish that, on average, real wages have not been maintained in the safety net-dependent workforce and, by extension, in those areas of employment where wages are linked in some way to changes in safety net rates.

B.3. Many workers have not received productivity increases

45. 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 as a matter of fairness

and because productivity is one of the matters that the FWC has to take into account when setting safety net wages; see section 284(1)(a).

46. The substantial increases in productivity since 2000 are shown in Table 8 by way of movements in the ABS index of Gross Domestic Product per hour worked at December in each of those years. This represents an increase of 20.1% over the 13 year period December 2000 to December 2013, averaging 1.55% per year.

47. There was no distribution of productivity gains to safety net workers because, on average, wage increases had not matched price increases. The re-allocation of the compensation for price rises across the classifications left some with a notional, but small, benefit from productivity gains, but others with real wage cuts. For example, the increase at the base trades, C10 level, was 47.2% while the CPI increase over the same period was 43.4% (see Table 1), leaving the worker with a real wage increase along way short of the 20.1% increase in labour productivity.

48. The denial of safety net-dependent workers access to their share of productivity gains is unjust and inconsistent with the statutory requirement to provide a fair safety net. Unless productivity gains are distributed by way of real wage increases, 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 bargaining sector workers able to take advantage of productivity gains while workers with no bargaining power have been denied the benefits of increases in their own productivity.

49. Over the past 13 years average weekly earnings (by the AWOTE measure) have increased by 80.0% (see Table 10), while prices, as measured by the CPI have increased by only 43.4%. Inflation has been contained and CPI increases have generally been within the within the Reserve Bank‘s “zone of comfort”. The margin of average wages over prices, 36.4 percentage points, shows a very large increase in real wages that is not explained by the substantial increase in labour productivity of 20.1%. Price increases have been modest even though there has been a substantial gap between prices and productivity (up 64.5%) and wages (up 80.0%) because the terms of trade have increased dramatically in Australia's favour (Table 9); and have provided the capacity for workers to receive more than prices and productivity.

50. As a matter of principle, and the application of the terms of *Fair Work Act* in requiring account to be taken of relative living standards, terms of trade-induced increases should be taken into account as factors in the setting of wages by way of adequate recognition

of community wage movements. Much to their disadvantage, safety net workers have not received any benefit through their wages of the major changes in the terms of trade over the past decade.

51. Safety net workers have, on average, received no benefit from the improvement in the productivity or the terms of trade over the past decade. Had community earnings been taken into account and safety net wages risen in response to those changes it would have been different.

B.4. Safety net workers have fallen below general wage levels

52. Any proper assessment of the wage increases for low paid work classifications has to be evaluated in the light of what has happened in the rest of the community. The needs of the low paid have to be identified in a social context. Fair wages have to be set after taking into account relative living standards across the community. Table 10 provides a comparison between safety net wages and various measures of wages and incomes.

53. The figures show that safety net wage rates have fallen substantially against these other measures of community income. The NMW increase of 55.4% compares unfavourably with the 80.0% increase in AWOTE. The NMW fell from 50.1% to 43.3% of AWOTE over the 13 years to January 2014. At the other end of our calculations in Table 1, a safety net rate starting at $700 per week in January 2001 increased by only 34.3% over the same period. If the NMW had increased at the same rate as AWOTE, the NMW would now be $720.70 per week, $98.50 more than it is.

54. We do not argue for a strict arithmetical nexus between safety net rates and AWOTE, because the ratio between them may go up or down depending on circumstances, but these figures demonstrate how much the NMW and other safety net workers have lost when compared to community wage movements and, as a result, general living standards. We have argued that, as a matter of principle and fairness, the NMW and other safety net rates should follow a similar path to these average weekly earnings; and must do so if the social value of safety net wages is to be maintained.

55. Changes in the Wage Price Index (WPI) have been used by the FWC as a comparator for wage rate adjustments. In 2012 the FWC referred to the WPI in the context of relative living standards and in doing so raised a broader question about rising levels of inequality, which it came back to in 2013. In 2012 it said:

> "We are required to take into account the relative living standards and needs of the low paid. 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, the relative position of the lowest award rate has been maintained, but this is not so for higher award rates. 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." (*Annual Wage Review 2011–12,* paragraph [15])

56. In its 2013 decision the FWC said "...the evidence is clear that even the lowest award rates have barely kept pace with growth in rates of pay for the job more generally (as measured by the WPI)" *Annual Wage Review 2012–13,* paragraph [392]).

57. The first point to make about these passages is that the divergence of the higher award rates from the WPI has been substantial. Table 10 shows the actual position of the WPI relative to the NMW and the C10 rate shortly before the 2012 decision. In fact, the NMW had not kept pace with the WPI; another 2.4 percentage points was needed in early 2012 to keep up with the WPI. The position of safety net workers relative to the WPI has deteriorated further. In January 2013 the gap at the NMW level was 3.3 percentage points and in January 2014 it was 3.2 percentage points. Given that the NMW was 3.2 percentage points behind the WPI at the start of 2013, we cannot agree with view in the extract from the 2013 decision: even the lowest award rates had lost pace compared to the WPI, not barely kept pace.

58. Of course, the NMW was the high point in any comparison with the WPI. By January 2013, the C10 rate had increased by 43.3% compared to an increase of 54.7% in the WPI; a substantial gap of 11.4 percentage points. Had the C10 followed the WPI it would have been $55.30 per week higher than it was in early 2013. The same gap of 11.4 percentage points appears in January 2014. As Table 1 has shown, the increases for higher paid classifications were much less relative to the WPI.

59. There is, however, an important point to be made about the nature and design of the WPI which make it an inappropriate benchmark for the setting of wages. This argument is developed Chapter 5A following an explanation of what the WPI measures. The WPI is designed to measure "pure price" changes in the costs of labour in work positions that are unchanged over time. Data is collected through continuing surveys of randomly selected employers. Employers record positions within their firms and the wages paid to their employees. Changes in wages are recorded, but where there has been a substantial change in the work of the employee, the position in question is excluded from the survey, as is the recording of any increase in wages for that

employee. It is designed to measure only "pure price" movements from one period to the next.

60. The WPI is not concerned with award classifications, for which rates of pay are set by the FWC. Those classifications are typically broad-banded classifications that are designed to encompass a broad range of skills and responsibilities, unlike the narrowly-defined classifications of the award system prior to the 1990s. Work value changes, increases in productivity and re-designed positions are encompassed within the award classifications. To use pure price changes as measured by the WPI is inconsistent with the setting of wages for work classifications that are generally undergoing constant change. The WPI reflects the static, and not the dynamic aspects of a firm's operations and the work being performed by workers within the scope of broad-banded wage classifications. To set wages by reference to the WPI devalues the work being performed in a changing workplace and fails to properly value it.

61. There is another fundamental point to be taken into account. The price of labour may increase in the unchanged jobs because of, for example, an increase in the safety net wage for safety net-dependent workers, an increase in wages as a result of a new collective bargain or individual market-related adjustments. The WPI is, therefore, partly determined by the FWC; and past wage decisions are reflected in the WPI to some extent. Extracting that part of the WPI index which is the product of safety net decisions would give a higher figure for those who are not safety net workers. The precise figure would depend on the calculation of the average safety-net dependent worker’s wage. This means that if we are to look at the WPI as some kind of guide for adjusting safety net rates, we must extract the safety net component from the WPI. The adjusted WPI will be more than the published WPI used by the FWC.

62. As a measure of "pure price" changes the WPI is not a measure that should operate as a ceiling, as it has tended to be treated by the FWC in the passage quoted earlier. More precisely, it has been treated as a kind of ceiling for NMW workers; for other higher-paid safety net workers there is a much greater gap between their rates and the WPI. Rather, the WPI should be treated more as a floor for the granting of wage increases, with rates being set substantially above the floor. As the figures demonstrate many safety net workers have found themselves very much below that pure price floor; significantly in the case of low paid workers, but dramatically so in the case of higher paid safety net-dependent workers.

63. Table 10 also shows changes in seasonally adjusted household disposable income per head (HDI) as calculated by the Melbourne Institute over the period 2001 to 2014. The 91.7% increase in HDI since January 2001 exceeds other income measures in Table 10; it is substantially greater than, for example, the 80.0% increase in the AWOTE over the same period.

64. The Melbourne Institute's HDI calculations are also very useful in providing an insight into the long-term changes in the relative position of low paid workers. The HDIs provide the best information available about the broad changes in the relative position of safety net workers and their families over the past four decades. Table 11 compares HDI changes with the changes in the disposable incomes of two households: the single worker and the couple with two children, with reference points being August 1973, January 2001 and January 2014. This enables a comparison of the kind of outcomes in the first 28 years and the last 13 years covered by the Melbourne Institute's research. Over the first period of 28 years there was a marked increase in the disposable incomes of the family relative to the HDI. Since 2001 families have had significantly smaller increases than those in the HDI. The negative change in the position of the single worker relative to the HDI has been dramatic.

65. The Melbourne Institute's figures demonstrate that something very significant happened after 2001 which was at odds with the changes over the previous three decades. Another way of viewing this more recent development is in Table 23 which shows how NMW-dependent workers and their families have fallen below the HDI-based Henderson Poverty Lines: a fall from 1.9% above in January 2001 to 8.7% below in January 2014. This trend is consistent with other measures of change over the past 13 years.

66. The trend in national safety net wage rates since 2001 may also be compared to the outcomes of decisions of various State industrial tribunals and the Commonwealth Remuneration Tribunal and the Commonwealth's own employment practices. The role of State tribunals in setting wage rates has been greatly reduced in recent years and the ability of the remaining three States to set higher minimum rates is constrained by the NMW. Nevertheless, in January 2014 the average minimum wage in the three States which still set a State minimum rate was $19.77 more than the NMW; see Table 12. This confirms that our claim for an extra $10.00 is modest and shows that our target of the base rate for cleaners is only $22.63 above that average.

67. Table 13 sets out adjustments to two of the four PEO bands set by the Remuneration Tribunal and the level of payments made to members of the Senior Executive Service (SES). The two PEO bands were increased by 67.8% and 67.7% between 2001 and 2014. The increases in the median total remuneration for members of the SES were between 72.5% and 86.8% over the 12 years to 2013. Table 13 also includes AWOTE for the public sector, which increased by 73.3%. The general level of increases reflected in the PEO rates, SES agreements and the public sector AWOTE contrast markedly with safety net rates; for example, the trade-qualified safety net rate increased by only 47.2%.

B.5. The causes of wage inequality

68. When referring to the WPI we quoted a passage in the 2012 decision which touched on increasing inequality "caused by the workforce moving into higher paid jobs over time". The same point was made in a subsequent paragraph in the 2012 decision:

> "…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." (*Annual Wage Review Decision, 2011-12*, paragraph [183], emphasis added)

69. In 2013 the FWC came back to this issue and its possible implications:

> [424] We are conscious that there is a broad shift in the economy toward higher-skilled jobs and that this is affecting measures of average and even median earnings. Even the WPI will be affected if the pay rates of the higher skilled are rising more rapidly as a result of the increased relative demand. For this reason, we would not expect award rates, especially for the lower-skilled jobs, to rise as fast as the average. Nonetheless, the average or "typical" wage influences typical living standards and norms about how the households of employees live. In this way it is relevant to our task of considering relative living standards. It remains one of a number of considerations that we must take into account.
>
> [425] If not addressed, increasing earnings inequality and the persistent decline of modern award minimum wages relative to wage increases generally may have broader implications, both for our economy and for the maintenance of social cohesion.

70. In effect, the FWC has been saying that it has not caused the inequality, but that the changing and growing economy has been the cause.

71. In Chapter 5D we consider the factual basis for the claim that the changing workforce composition is the cause of growing inequality. The evidentiary basis of the FWC's conclusions about changes in work skills was in the Australian Government's

submission of March 2013; in particular in data that was sourced from the ABS's *Labour Force, Australia, Detailed, Quarterly*, Catalogue no. 6291.0.55.003, February 2013, regarding changes over the period February 2003 to February 2013.

72. The FWC's position is based on the view that the jobs profile has been changing and that there is now, on average, a higher level of work value through increasing skills and responsibilities. We can accept that this trend has been underway. But, for reasons that are given in Chapter 5D, we submit that it does not establish what the FWC has claimed.

73. Table 14 uses the data presented by the Australian Government regarding the number of employees in each of the five skill levels in 2003 and 2013. The table sets out the compositional mix in each of those years, with values assigned to each level based on the relativities in the *Manufacturing and Associated Industries and Occupations Award 2010*. It shows a 1.5% increase in average skill levels over the period February 2003 to February 2013. It was quite small compared to the increases in average incomes and the gap between them and various safety net rates. Over the period January 2003 to January 2013 the increase in AWOTE was 57.9%, while the NMW increased by 40.6% and the C10 wage rate increased by 34.4% (see Tables 1 and 10). Increasing skill levels over this period have not been a substantial cause of growing inequality between safety net workers and the rest of the workforce.

74. We submit that increased inequality cannot be explained by a composition in the skill levels of the workforce over this period. Nor can the change in skill levels explain or justify the decrease in safety net wages for the higher-paid safety net classifications. The principal cause of the divergence between award rates and going rates has been the failure of wage-setting tribunals to take sufficient account of changing relative living standards, as indicated by, especially, average and median wages across the community.

75. In addition to the factual issue concerning changing skill levels, there an important issue of principle concerning the relevance of community average and median wages and incomes to the setting of wage rates for the least skilled. In the longer term we expect that a strong Australian economy will require and produce a greater proportion of higher-skilled workers. If it does not the consequences will be detrimental for all. There is a risk that some will take an unduly benign view of any growing inequality and poverty that accompanies this development. Some may argue that lower paid and unskilled workers should not share in the benefits of increasing national living

standards through the creation of a higher proportion of high skilled jobs. This is an important issue because it raises questions about the rights of the least skilled and most marginal workers in an increasingly skilled workforce. We submit that, as the fundamental objective of minimum wages is to promote social inclusion and social participation through a basic acceptable standard of living, set by reference to society as a whole, a rise in the average skill level of the workforce should not prejudice that purpose.

B.6. Tax cuts and family payments have not maintained living standards

76. Some commentaries on the fairness of safety net wage increases over the past decade or more 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.

77. Changes in taxation rates for all workers since 2001 have had a major impact on disposable incomes, but they cannot justify real wage cuts, or the discounting of real wage increases. We explain in Chapter 6A that since 2001 the low paid have not been targeted for tax cuts any more than the population as a whole. Nor did they get more than their fair share of the national benefits of strong economic growth and the resources boom, which underpinned the taxation changes of the 2000s. The use of their tax cuts to justify wage-discounting, which did occur in the *Work Choices* years, has deprived safety net workers of those cuts and imposed on them a burden not suffered by those workers who have the capacity to bargain for higher rates of pay, or by the workforce as a whole, as the AWOTE figures demonstrate.

78. Tables 19 and 20 in Chapter 6B show the impact of changes in wages, taxation and family transfers since 2001 over various income levels by reference the single breadwinner families with two children, which covers couple and sole parent families. Table 20 compares the outcomes for the AWOTE family, being an estimate middle Australia, and various similar, but safety net-dependent, families: those dependent on the NMW and the C12 and C10 award wage rates.

79. The middle income AWOTE family has had a gross wage increase of 80.0% and a disposable income increase of 93.8%, well in excess of similar families who depend on safety net wages. The comparable figures for the NMW-dependent family are 55.4% and 71.9%, respectively. The dollar loss per week that appears in the last row of Table 19 is the difference between what the families did receive and what they would have

received had their wages had moved in line with AWOTE. It demonstrates how far they have fallen behind; relative to the AWOTE family, the C10 family is $148.03 per week worse off. The C10 family has fallen from 79.4% of the AWOTE family to 70.9% over the period 2001 to 2014. The gap between safety net workers and the rest of the population is even greater than this comparison shows because the AWOTE measure includes safety net workers. Absent safety net workers, the average would be greater than AWOTE.

80. There is nothing in the material in Chapter 6A and 6B 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. Family payments and tax cuts have not made up for the lack of wages growth. There is nothing to support a claim that the relative standards of low income working families are rising. It demonstrates the contrary: since 2001 working families who rely on safety net wages have fallen behind middle income families.

C. TWO AUSTRALIAS: POVERTY IN THE LAND OF PLENTY

C.1. Introduction

81. The title of this section is borrowed from a report published in October 2013 by the St Vincent de Paul Society, *Two Australias: A report on poverty in the land of plenty*. It describes the changes that have taken place over the period covered by our analysis of wage-setting. The following is a broad review of that period from an organisation that is at the front line in dealing with the daily needs of those living in poverty, including an increasing number of working families.

> "In 2001, the St Vincent de Paul Society released its ‘Two Australias’ Report, which highlighted the levels of disadvantage and inequality in Australian society.
>
> Since then, things have changed. Australia’s population has grown by 4 million, while our unemployment rate has fallen. We have weathered the Global Financial Crisis well, and now have one of the strongest economies in the world. Our GDP is high, and our cities are consistently rated amongst the most liveable.
>
> However, despite economic growth and increasing living standards for many Australians, poverty is still on the rise. At present, according to the Australian Institute of Health and Welfare, 13% of the population is living in relative poverty. This translates to almost three million Australians. Indeed, every day members of the St Vincent de Paul Society witness the fact that in 2013 there remain a large group of Australians who are consistently disadvantaged in a

> range of ways. Every day, people living in poverty have to overcome a number of structural and personal barriers that make surviving difficult, and thriving impossible. These Australians may have very low-paying jobs with insecure and inadequate hours or no paid work at all. They often have poor health or are living with a disability. They struggle to pay their bills or to be able to afford groceries and other essentials. Many live in insecure housing or are forced into a state homelessness in one of the world's most prosperous nations. For these individuals, the feelings of exclusion, isolation and 'being forgotten' are common. Whether measured in terms of real income, social exclusion or multiple deprivation factors, this gap between the two Australias is clearly visible and, arguably, increasing." (Page 5, footnote omitted.)

82. In his Foreword to the Report, Dr John Falzon, the Chief Executive Officer of the St Vincent de Paul Society National Council of Australia, wrote:

> "It is true that many of us feel worn down by the unremitting resistance to our project of building a more just and compassionate Australia. But this is nothing compared to the cruelty and humiliation meted out to the people who continue to be excluded, from the First Peoples to the most recent arrivals, and everyone in-between who has been locked out of the prosperity this nation is known for. It is because of these courageous people, who we are proud to stand in solidarity with, that we refuse to stop at anger and we dare to have the courage to speak the truth about the emergence of two Australias and the truth about how this trajectory can be changed." (Page 4.)

83. Part of the reason for the two Australias is that we have a disconnection between the setting of safety net wages and the reality of life for low paid workers and their families. Taking a broad view of wage-setting over the past 13 years, and more, there has been little or no evident concern in the decisions of industrial tribunals about the daily struggles of ordinary working people, even in the face of evidence that something is wrong and the situation has been worsening. The wages set by tribunals have played a role in this process. Words, if they do occur, are of no comfort in the absence of results. Repeated proposals for an inquiry or some other process to gather evidence about the needs of the low paid have been ignored or denied. Over this time, as Dr Falzon points out, the people who put in the demanding work of serving the needs of the poor and vulnerable have been exhausted.

84. These kinds of comments are not new. In its 2013 submissions ACCER said:

> "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.*" (ACCER submission, Annual Wage Review 2012-13, March 2013, paragraph 57, emphasis added.)

85. Our position on this aspect is unchanged. We emphasise, however, that our comments are made because of the great importance of the FWC's role in providing fair wages and working conditions. We do not wish to understate the important and constructive role that an independent statutory tribunal, acting under appropriate legislative terms, can play in the life of this nation. From before Federation the Catholic Church has been one of the strongest supporters of the system that is now in the hands of the FWC. The Australian Catholic Bishops' Statement in Appendix D on the subject of *Work Choices* is evidence of that.

86. We have not been asking tribunals to let their hearts override their heads, but we have been asking the FWC to search for and consider the evidence about poverty; and to act on it. If we are to achieve any sustainable outcome, it must be based on evidence. If the evidence is presented and explained, the community will support a plan to attack in-work poverty. The way to achieve it is for the FWC to gather the evidence and act on it.

87. The purpose of the preceding section of this submission was to show how low paid workers and their families have been increasingly disadvantaged since 2001. The purpose of this section is to look at their current situation.

88. In 2013 the FWC said:

> “We accept the point that if the low paid are forced to live in poverty then their needs are not being met. We also accept that our consideration of the needs of the low paid is not limited to those in poverty, as conventionally measured. *Those in full-time employment can reasonably expect a standard of living that exceeds poverty levels.*” (*Annual Wage Review 2012-13*, paragraph [33], emphasis added.)

89. This was very welcome, especially because poverty was not mentioned in the 2012 decision, despite substantial material on it being placed before the tribunal. We would expect that poverty would be tackled as a priority, especially when the FWC, in referring to research on the risk and profile of poverty among full time and part time employees, said "Low-paid employment appears to contribute more to the total numbers in poverty than does unemployment" (paragraph [408]). However, there was no targeting of poverty: the 2.6% increase was applied to all minimum rates, including the NMW. Those living in poverty got the same increase as others.

90. Over recent decades there has been a greater understanding of the causes, dimensions and consequences of poverty. Descriptions of poverty are now often associated with descriptions of deprivation, social exclusion, social inclusion and social participation.

The promotion of social inclusion is one of the stated objects of the *Fair Work Act 2009*. Social inclusion, poverty, social exclusion, marginalisation and social participation are related concepts. The following is an adaption of the definition of poverty used by the Irish Government in its *National Action Plan for Social Inclusion 2007-2016* :

> 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 Australian 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.

C.2. Measuring needs and contemporary relevance

91. An extraordinary feature of Australian minimum wage-setting over the last few decades, at least, has been the lack of any serious attempt to set wages by reference to the needs of the low paid, despite the presence for most of the time since 1996 of an explicit obligation on the decision-maker to take into account the needs of the low paid. At no time since then has the FMW or its successor, the NMW, been set at a different rate to the C14 award rate. The NMW remains connected to award rates in the same way as its predecessor was in 1997.

92. There is no reason to conclude that the NMW or other low paid rates that were set in 1997 had contemporary relevance to the needs of the low paid or, more importantly, have any contemporary relevance in 2014, even though they have been adjusted by more than the rate of inflation. Of its nature, the NMW is a basic needs wage. It is beyond dispute that needs have to be determined in a particular social context; and since 1997 there has been an extraordinary increase in community standards.

93. Average household disposable income, as measured by the Melbourne Institute, has increased from $367.07 per week in the June quarter 1997, the quarter in which the FMW was set, to $801.89 per week in the September quarter 2013 (the latest available quarter); see *Poverty Lines: Australia, September Quarter 2013*. This is an increase of 118.5%: more than double the 1997 figure. The NMW is only 73.1% higher than the initial FMW, and the C10 award rate increase is even less, at 60.6%; see Tables 1 and 2. We are not arguing that these rates should have gone up by the same percentage as the Melbourne Institute's measure of community wealth, but it is clear that differential between these low paid safety net classifications, with the NMW being predicated on

providing socially-determined basic needs, have lost contemporary relevance.

94. It is surprising that the only attempt to consider the sufficiency of the lowest minimum wage rate was by the Australian Fair Pay Commission (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. Over the four years of its operation the AFPC published comparisons between the disposable incomes of low paid workers and families and their respective Henderson Poverty Lines (HPLS). In the latter two years it published comparisons between these disposable incomes and the relevant 60% relative poverty lines. This latter work was particularly useful, but nothing appeared to come of it in terms of wage increases. Its calculations did not assist the low paid, as Table 4 demonstrates.

C.3. HPLs and Budget Standards

95. The two best-known Australian measures of poverty and basic needs, the Henderson Poverty Lines (HPLs) and the Budget Standards research of the Social Policy Research Centre (SPRC) at the University of New South Wales, have been dismissed by the FWC.

96. The HPLs did not survive the transition from the AFPC to the new wage tribunal. In the decision of June 2011 the tribunal said:

> "[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." (*Annual Wage Review 2010-11* [2011] FWAFB 3400)

97. In 2011 an investigation and report *Measuring the Needs of the Low Paid* made under the provisions of section 290 of the *Fair Work Act* resulted in a report which concluded:

> "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." (PR517718, 14 December 2011, paragraph [41])

98. That conclusion was implicitly adopted in the June 2012 decision which reproduced the passage without comment; *Annual Wage Review 2011-12*, paragraph [179]. For reasons which are referred to in Chapter 6C, ACCER has not pressed the HPLs since that time; but the Budget Standards research continues to be relied on for reasons that are set out in Chapter 7E.

99. In the June 2012 decision poverty was not even mentioned by the FWC despite substantial submissions being made to it on the subject. It may have been because of the attitude expressed in the foregoing passage from the June 2011 decision (from paragraph [226]), to the effect that the tribunal was concerned with needs, not poverty. That distinction is an untenable one. However, the FWC's position in regard to the relevance of poverty was changed in the June 2013 decision:

> “We accept the point that if the low paid are forced to live in poverty then their needs are not being met. We also accept that our consideration of the needs of the low paid is not limited to those in poverty, as conventionally measured. *Those in full-time employment can reasonably expect a standard of living that exceeds poverty levels.* In assessing the needs of the low paid we rely on a range of measures including comparisons of hypothetical low-wage families with customary measures of poverty, both before and after taking account of the impact of the tax-transfer system, and survey evidence of financial stress and material deprivation among low-paid households.” (*Annual Wage Review 2012-13*, paragraph [33], emphasis added)

100. This was not an acceptance of the HPLs, but it was a recognition of the value of relative poverty lines. The FWC did accept the utility of "customary measures of poverty", ie relative poverty lines, to which we will return. Despite the change of words, poverty was not targeted. There was no change in the FWC's position on Budget Standards research. It was not referred to other than in an incidental reference to "the absence of robust contemporary poverty line or budget standards data" (paragraph [402]).

101. ACCER has continued to argue the relevance and utility of the Budget standards, without any success. It submits that the FWC should change it past position and take it into account on the basis set out in the following paragraphs.

102. The Budget Standards research, which, is based on baskets of goods and services constructed over the years priced in February 1997, and is now adjusted by CPI increases, has been dismissed on the basis that it has “no contemporary relevance” to the adequacy of a the NMW, which itself was set in April 1997. If the Budget Standards research is lacking relevance because it was priced in February 1997, why should the NMW, which was set in April 1997, be assumed to have contemporary relevance in 2014? Of course, as Table 2 shows, the NMW has increased by much more than the NMW, 73.1% compared to 52.6%, but that does not close off the issue.

103. We have explained in some detail in Chapter 7E how the budgets were established and how the Low Cost budget was designed for social security recipients. The very detailed budgets, illustrated in Table 24, were established over the period 1995 to 1998, with the

original prices set in February 1997, two months before the FWM was established. The research was not available until after that decision. In each year since 2010 ACCER has updated the SPRC research in the manner now set out in Table 25 by the application of the relevant CPI increases.

104. In each year ACCER has been pointed out, as it does again this year in Chapter 7E, that the disposable income of the NMW-dependent family is inadequate by reference to the price-adjusted Low Cost budget. This year the Low Cost budget is $939.03 for the family of four (Table 25), compared to the disposable income of $938.24 (Table 28). Various reasons are given for why the disposable income should be substantially more, including that the basket of goods and services reflects community standards in 1997. So while it needs adjustment, the figures provide an understated and conservative guide. Importantly, it is only used in support of the extra $10.00 per week claim for the NMW adjustment.

105. Apart from the claim that it has no "lacks contemporary relevance" no reason has been given for the total rejection of the Budget Standards research for all purposes. The basis of the conclusion that the Budget Standards research has no contemporary relevance is, we can only conclude, that the baskets were priced in 1997 and that they do not reflect the increases in community standards since that time. We say that we can only conclude this because the tribunal has not given reasons for its rejection. If that is so, surely the NMW needs to be reviewed because, since it was set, household disposable income per head, as calculated by the Melbourne Institute has risen by 118.5%, compared to the increase of 73.1% in the NMW. (The former figure is calculated from the June quarter 1997 and the September quarter 2013, the latest available; see *Poverty Lines Australia, September Quarter 2013*, page 2.)

106. The Budget Standards research, like the NMW, needs updating to have full contemporary relevance, but that does not mean that they have no relevance to current wage-setting.

107. The shortcoming of a price-adjusted basket of goods is that it becomes increasingly outdated with decreasing utility in the setting of wages based on relative living standards and the needs of the low paid. Because community standards have increased, a re-construction of the budgets will raise the budgets, not lower them. Without undertaking new complex and expensive research at very frequent intervals, an adjustment mechanism needs to be found for Budget Standards research. The price-adjustment method is the most conservative.

108. Indisputably, the Budget Standards research is the most comprehensive work in Australia on the budgetary needs of low income families. The people responsible for this research are of world standing on this kind of research. Yet it has been repeatedly dismissed or ignored for all purposes. On what basis can a basket of very basic goods and services, the *basics of life*, have no relevance? Nobody would seriously suggest that families can get by on less. Why, then, does it have no utility in the setting of a wage rate, the NMW, that is to provide for basic needs? We submit that the FWC should take into account the Budget Standards research on the basis proposed by ACCER; ie for the purpose of considering the claim for an extra increase of $10.00 per week in the NMW.

C.4. Poverty Lines

109. Relative poverty lines have assumed greater prominence in Australian public policy debate as a result of the publication over the last two decades of relevant national data on incomes and income distribution. The developments in data collection and international standards over the past couple of decades have made relative poverty lines increasingly useful for social analysis and the formulation of public policy. Unless you have sound data, relative poverty lines are guesswork. There is a now a considerable body of international learning on these matters. The Australian ABS has played an active role in this. The basic international resource material is found in the *Canberra Group Handbook on Household Income Statistics*, published in 2011 by the United Nations Economic Commission for Europe.

110. The fundamental task in setting a median-based relative poverty line is identifying the median equivalised disposable household income (MEDHI) and its changes over time. MEDHI is the foundation stone for poverty lines based on the median: the 60% relative poverty line is simply 60% of MEDHI. The next task is to establish equivalence scales that permit a comparison between differently constituted households in order to establish how much disposable income each will be require to achieve the same standard of living. There are now well-established equivalence scales.

111. Calculations of median incomes and equivalence scales provide a means of comparing particular households and to position them within the broader community. They also provide a means of tracking the relative position of various households over time. They have a value beyond identifying poverty. They enable comparisons to be made without debate about the appropriate level for the poverty line.

112. Relative poverty lines do not measure or estimate needs. There is debate about the

appropriate level. The FWC uses the 60% poverty line, as did the AFPC before it. Research such as the Budget Standards research provides a basis for choosing a particular percentage. A selected poverty line will move in line with community income, as measured by MEDHI. This is another reason why more attention should be paid to the Budget Standards research. Under an integration of the two, the Budget Standards research would help identify a particular percentage of MEDHI as a guide, or even a prima facie benchmark, to be used for the adjustment of the NMW. That percentage would continue to have contemporary relevance, while permitting periodic reviews of particular items in the basket of goods and services.

113. Relative poverty lines are an important tool in the setting on wage rates with reference to relative living standards, as the FWC is required to do under the minimum wages objective in section 284(1) of the *Fair Work Act*, because they enable the positioning of various income groups relative to each other and to a community average. They enable, for example, the positioning of low income households relative to households which rely on unemployment benefits or pensions. These kinds of calculations also have some relevance to the obligation on the FWC to take into account the promotion of "social inclusion through workforce participation"; see section 284(1)(b).

114. The use in relative poverty lines in minimum wage cases commenced with the AFPC's decision in the minimum wage review of 2008. The setting of wages based, in part on need, should not be limited to finding the poverty line and placing the lowest paid workers on it. Work should deliver something above poverty. 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 and to be considered along with all of the other factors that the legislation requires the FWC to take into account.

115. Table 31 has comparisons of living standards, without reference to poverty lines. It compares the living standards of pensioners and various safety net-dependent families by reference to MEDHI and the equivalence scales. Single pensioners have a standard of living that is measurable: at 57.8% of the median. Couple pensioners are at 55.1% of MEDHI. By contrast, single breadwinner families, comprising a couple and two children, have lower standards of living. The NMW provides 54.0%; the cleaner's base wage rate provides 56.0%; and the base trade-qualified rate provides 58.6%. As the equivalence scales do not factor in the costs of work when comparing working and non-working households it is necessary to take them into account when making a judgment

about relative living standards and fairness as between these segments of Australian society.

116. These estimates of disposable household incomes also allow us to track changes over time: to see how safety net workers have compared with the community as a whole. The position of safety net workers can be plotted against the poverty line or the median disposable household income.

161. In Table 26 we have calculated changes in MEDHI over the period January 2001 to January 2014. The MEDHI figures are taken from ABS surveys over the relevant period, with the non-survey years being calculated by the use of the Melbourne Institute's calculations of HDI.

117. In Chapter 7C we have four tables which present the basic data for the construction of relative poverty lines for three low income families over the period January 2001 to January 2004. Table 27 shows the poverty lines for single workers, couples with two children and sole parents with two children. Tables 28, 29 and 30 respectively, cover families on the NMW, C12 and C10 wage rates over the period January 2001 to January 2014. They are summarised and shown in Figure 2. Table 29 is of particular importance because the C12 wage is virtually identical to the base cleaner's wage rate that ACCER has argued should be adopted as the target level for the NMW pending the completion of research into the financial needs of low paid workers and their families. We expect that the current upgrading of the Budget Standards research (under a grant from the Australian Research Council) will be available in three years.

118. In order to avoid the possibility of some inconsistency in the ABS's collected data in the early 2000s, the following poverty line calculations compare the changes over the decade January 2004 to January 2014. Over that decade:

- The NMW-dependent family of four fell further into poverty: from 3.3% below to 10.0% below, with a poverty gap of $104.25 per week;
- The C12-dependent family of four fell into poverty: from 1.7% above the poverty line to 6.7% below it, with a poverty gap of $69.74; and
- The C10-dependent family of four fell into poverty: from 7.6% above to 2.3% below, with a poverty gap of $23.68.

119. The position of single workers over this period is worse because their falling wage levels have not been partly offset by increased family payments. In January 2004 the single C12-

dependent worker was 33.2% above the poverty line, but by January 2014 had fallen to 21.5% above the poverty line; see Table 29.

120. We have demonstrated that the broad economic growth over the past decade and a half has masked some serious counter-trends, which have produced high levels of poverty and disadvantage among Australian working families. Despite good average national figures, many low paid workers and their families have fallen below, or closer to, rising poverty lines. A fulltime job is not a path out of poverty. There are two broader matters that arise out of our analysis of the living standards of safety net-dependent workers and their families: the extent of poverty in Australia and the number of "working families" living in poverty. We have covered these questions in Chapter 8F and Chapter 8G.

C.5. The national Census, 2011

121. Chapter 8F is based on data from the 2011 Census. In the Table 32 we have collated the data in Appendix A on the working characteristics of couple parent families by reference to family income levels. Table 32 serves two purposes: as evidence on the extent of poverty among couple parent families with two children and as evidence of the employment profiles of low income families.

122. The extent of poverty among low income families is shown by the number of families with income of less than $1000.00 per week. This demarcation is a reasonable approximation of the 60% relative poverty line at the time of the Census, after taking into account the inclusion of income tax calculations of household income in the Census returns and the estimated poverty lines at January 2011 and January 2012 (see Table 27).

123. The table shows that 106,223 couple parent families with two children, or 13.5% of the total in that class, were living in poverty. This amounts to 424,892 people, half of them children. The number with at least one full time breadwinner was 55,020. This means that just over 110,000 children were living in poverty even though there was a full time worker in the home. In addition, there were 25,094 families where one or both of the parents worked part time (disregarding part time employment where there was one parent working full time). The figures confirm again that full time work is not necessarily a path out of poverty.

124. The second purpose of Table 32 is to provide evidence of the working profiles of low income families. As we explained in Chapter 8E, the FWC has raised questions about

the extent of single breadwinner families among low income families, which suggested that it would not target poverty among single breadwinner families unless it had more evidence on the extent of single breadwinner family poverty.

125. Table 32 shows the number of single breadwinner families living in poverty and classifies the total number according to the working arrangements of the parents in two children families. It shows that 39.7% were single breadwinner families. If the number of families in which the single breadwinner was unemployed or "away from work" is added, that percentage rises to 47.4% of single breadwinner families. By comparison, 20.3% of the families had at least one full time worker. If one adds in families where the second breadwinner was unemployed or away from work, that figure rises to 25.2%. In 13.4% of the households both parents were not in the labour force. In 6.3% both parents worked part time. Among couple parent families with two children living in poverty the number of single full time breadwinner families out-numbers the families with more than a full time breadwinner by almost two to one: 39.7% to 20.3%; or, on the broader classification, 47.4% to 25.2%.

126. ACCER has argued that, as a matter of principle, wages should be set on the basis of a single breadwinner family. This data confirms that, in practice the single breadwinner family is the most common, by far, among families of a couple and two children who are living in poverty. The Census data provides more reason for the FWC to specifically target poverty by granting successive additional increases in the NMW.

127. Table 33 shows the working patterns among sole parents with two children, with $800.00 per week as the best fit for the poverty line. On this basis, the majority of sole parent families, 58.2%, were living in poverty at the time of the Census. This represented 199,446 children. Most were in families where the parent was not working. Among those living in poverty, only 9.9% of the parents were employed full time, but 32.9% were employed part time. Table 4 of Appendix A shows that most of the part time workers reported an income of less than $600.00 per week. These figures are very troubling and raise issues far beyond the scope of the FWC's responsibilities. However, the do emphasise the urgency of increasing low wage rates in a measured and sustained manner.

128. ACCER has argued over the years that high child care costs have forced sole parent families into poverty and/or unsatisfactory latch key arrangements and has requested tribunal-sponsored research into child care costs. This has been put on the basis that

the costs of child care for sole parents is a matter that should be taken into account when considering and providing for the needs of the low paid. It is not only a welfare issue. ACCER's request in the *Annual Wage Review 2012-13* for research into child care cost was unsuccessful. On 17 November 2013 the Federal Treasurer, Mr Hockey, announced that he had requested the Productivity Commission to undertake an Inquiry into Child Care and Early Childhood Learning. The terms of reference include issues concerning affordable high quality child care. In December 2013 the Productivity Commission published an Issues Paper, *Childcare and Early Childhood Learning*, which includes a discussion of childcare costs. This initiative appears to obviate the need at this time for research on the costs of childcare to be undertaken by or sponsored by the FWC; and should do if there is sufficient attention paid to the sole parents in the poverty columns of Table 33.

C.6 Research reports on poverty in Australia

129. Over the last two years two significant Australian research reports on poverty in Australia have been published. Several international studies covering Australia have also been published, including two mentioned below.

130. *Poverty, Social Exclusion and Disadvantage in Australia*, a report prepared by the National Centre for Social and Economic Modelling (NATSEM) for UnitingCare, was published in October 2013. The report covers the extent of poverty in households by reference to labour force status. Poverty was measured by the use of the 50% relative poverty line. It found that a person in a family with a person employed full time (defined as 35 hours or more per week) had only a 3% chance of being in poverty, but amongst children under 15, the rate rose to 4.5% (Figures 7a and 7b, page 19). While these are low percentages, they refer to a large proportion of the population. When considered overall, 20% of those living in poverty live in a family where a person is employed full-time (Figure 8, page 21). The report's conclusion refers to poverty generally and child poverty in particular:

> "Our analysis of poverty rates across individual groups and household types has illustrated particular patterns and prevalence rates for certain groups. Examining trends over time, we can see that overall poverty has increased in the eleven years from 10.2 per cent in 2000-01 to 11.8 per cent in 2011-12. *This equates to around 2.6 million persons living under the poverty line.* Of these almost one-quarter are dependent children. Child poverty rates, while decreasing in 2005 and 2009 are now similar to rates at the beginning of the 2000’s." (Page 40, emphasis added.)

131. The second report was *Poverty in Australia 2012*, a publication by ACOSS in 2012,

with a further edition being published in November 2013. The report is based on research undertaken in 2010 by the Social Policy Research Centre. 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 32).

132. The report shows that among fulltime workers 3.8% were below the 50% poverty line (page 31). 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% (page 31), 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 (page 32). Using the 60% poverty line the figures rise to 20.5% (page 32). The estimated numbers of those living in poverty in households where there is full time employment are 401,000 at the 50% measure and 760,000 at the 60% measure (page 20)

133. The ACOSS and NATSEM/UnitingCare reports demonstrate that a very significant part of child poverty occurs in homes in which there is fulltime employment. The obvious conclusion from this is that the current wage levels are part of the reason for child poverty and their increase is needed if child poverty is to be minimised and eliminated. Further material from these reports is at Chapter 8G.

134. These reports are of great concern. However, our concern must be raised when we see the international comparisons in Chapter 8G. They compare Australia's record on poverty, and child poverty in particular, with that of other similarly developed economies. There is now an increasing amount of material on international comparisons as a result of the increasing use of relative poverty lines calculated according to international standards.

135. A 2012 report by UNICEF shows that in a group of 20 advanced economies, 10 had a lower child poverty rate than Australia, by reference to the 60% relative poverty line; see *Measuring Child Poverty: New league tables of child poverty in the world's rich countries, Innocenti Report Card 10,* UNICEF Innocenti Research Centre, 2012.

136. A report from the Organisation for Economic Co-operation and Development (OECD) in March 2014 provides an overview of social trends and policy developments in OECD countries and selected non-member countries using a variety of indicators from the OECD and other sources; *Society at a Glance 2014.* The study found that Australia ranks 26th out of 34 countries. Using the 50% relative poverty measure it found Australia's 14.4% poverty rate is considerably higher than the EU average of 9.4% and substantially higher than the OECD average of 11.3%; *Society at a Glance 2014 Highlights: Australia, OECD Social Indicators,* March 2014.

Working Australia, 2014: wages, families and poverty

CHAPTER 1

WORKING AUSTRALIA, JANUARY 2001 TO JANUARY 2014

A. INTRODUCTION

201. This book has grown out of submissions made by the Australian Catholic Council for Employment Relations (ACCER) to the national reviews of minimum wages over the past decade. The fundamental purpose of those submissions was to promote the interests of low paid workers and their families. Most of what follows is assembled around a number of issues raised by ACCER regarding increasing inequality and rising levels of poverty in Australian working families.

202. This is the first of what we hope will be an annual series of books that contain the resource material for use in annual wage reviews. We intend that it will also be of use to those who are interested in wages policy and a range of associated public policy issues; and to Catholics who are interested in the practical application of an important part of Catholic social doctrine. Because of these broader purposes we have endeavoured to present the issues in a way that does not require pre-existing knowledge of the subject matters.

203. Our basic format is a presentation of changes in minimum wages since 1 January 2001 and the impact that they have had on low paid workers and their families. 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. That budgetary package was widely debated in the course of the framing of the legislation. While it could not be said that there was a national consensus on matters of detail, one of the main features of the new system was an attempt to protect low income earners and their families from the effects of a newly-introduced consumption tax.

204. We should note that in the past our basic calculations in minimum wage submissions have been made as at December of each year, starting from December 2000. However, this book presents the situation at the start of the calendar year, not at the end of the previous calendar year. The relevant figures are the same because wages, taxes and transfers do not change at the start of the calendar year. Although our comparisons and commentary concentrate on the period 1 January 2001 to 1 January 2014, from time to time we present data within this period and from earlier periods.

205. Since 1 January 2001 the annual national wage reviews have been successively conducted by the Australian Industrial Relations Commission (AIRC), the Australian Fair Pay Commission (AFPC) and the Fair Work Commission (FWC), previously known as Fair Work Australia (FWA). The national legislation under which each of these tribunals were established and operated has been contentious in some respects, including wage-setting; and the most contentious was the *Work Choices* legislation of 2005 under which the AFPC operated. That legislation was replaced by the *Fair Work Act 2009*, under which the FWC operates. One of the stated objects of the current legislation is to promote social inclusion and a key provision is the obligation of the FWC to set a safety net of fair minimum wages by taking into account, among other matters, relative living standards and the needs of low paid workers.

206. Our main concern is for those low paid workers, and their families, who are unable to bargain for higher wage rates that the safety net rates set by the National Minimum Wage (NMW), now at $622.20 per week, and by the rates set for low paid award work classifications. About one-sixth of Australian workers only receive the minimum wage rates set by law. They may be described as "award only", "award-reliant", "safety net" or "safety-net dependent", workers. There are many, including lower paid workers, who are able to bargain collectively or individually for better wages and other terms and conditions of employment. In some cases the prescribed rates of pay are very influential in the agreements struck; but some job sectors operate independently of safety net wage rates and deliver wage outcomes considerably higher than them.

B. A SNAPSHOT OF 2001-2014

207. The last 13 years have presented the best of economic times and, at a time, 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 uncertainty. One measure of the increase in national wealth is the increase in average wages: over the 13 years Average Weekly Ordinary Time Earnings (AWOTE), for example, increased by 80.0% (see Table 10), while the rate of inflation measured by the Consumer Price Index (CPI) increased by only 43.4% (see Table 1) .

208. The broad economic growth has, however, masked some serious counter-trends. Despite good national figures, many low paid workers and their families have fallen below, or closer to, rising poverty lines.

209. Compared to the rest of the workforce, *all* safety net workers are *relatively* worse off in 2014 compared to 2001. This is reflected in, for example, the position of low income workers relative to their poverty lines. Since 2001 poverty lines have increased at a greater rate than the disposable incomes of low income safety net-dependent families causing lower living standards and many of them to fall into poverty.

210. As measured by the 60% relative poverty line, the changes were dramatic. Over the 10 years from January 2004, the NMW-dependent family of four (including two children) fell further below the poverty line: from 3.3% below to 10% below; and in January 2014 they had a poverty gap of $104.25 per week (see Chapter 6B). Many more families fell below the poverty line. Even a trade-qualified worker on the widely-used C10 wage classification, whose pay we would have assumed could support a family of four, saw the family's position fall from 7.6% above the poverty line in January 2004 to 2.3% below the poverty line in January 2014. The deterioration would have been worse but for increased family payments. Without those payments, over the 10 years to January 2014 the single NMW-dependent worker's margin over poverty fell from 29.5% to 14.7%.

211. These figures demonstrate a very concerning change in circumstances for those workers and their families who depend entirely on the decisions of minimum wage tribunals for their ability to live at a decent standard of living.

C. THE EMERGENCE OF POVERTY IN A LAND OF PLENTY

212. In its 2013 submissions ACCER argued that minimum wages policies had failed low income workers:

> "...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." (ACCER submission, March 2013, page 4)

213. This judgment followed the *Annual Wage Review 2011-12* decision of June 2012 in which poverty was not mentioned, even though substantial submissions were put to the FWC about poverty. In the subsequent decision of June 2013 there was a substantial change in the text, with particular reference being made to poverty and the obligation on the tribunal to take into account "the needs of the low paid". The FWC said:

> “We accept the point that if the low paid are forced to live in poverty then their needs are not being met. We also accept that our consideration of the needs of the low paid is not limited to those in poverty, as conventionally measured. *Those in full-time employment can reasonably expect a standard of living that exceeds poverty levels.*” (*Annual Wage Review 2012-13*, paragraph [33], emphasis added.)

214. This was very welcome, but what did it mean in practice? We would expect that poverty would be considered and tackled as a priority; especially when the FWC, in referring to research on the risk and profile of poverty among full time and part time employees, said:

    - "Low-paid employment appears to contribute more to the total numbers in poverty than does unemployment". (Paragraph [408]); and,
    - in reference to its own research on the 60% relative poverty threshold, that "single earner couples, with and without children,...had disposable incomes near to or even below the threshold" (Paragraph [411]).

215. Yet nothing changed for the most needy. The wage increases were the same for high paid and low paid classifications: a 2.6% increase. Poverty was not targeted and no special recognition was given to the needs of the low paid and their declining position relative to the rest of the community. They were left below poverty and the prospect of achieving "a standard of living that exceeds poverty levels" (the FWC's own words) was just as far away as it was when the FWC did not even mention poverty in 2012.

216. In both 2012 and 2013 ACCER asked for an extra increase of $10.00 per week in the NMW as a very modest first step for those in most need. It foreshadowed further "bottom up" claims working towards, at least, the base rate for cleaners, which is now $42.40 per week above the NMW. In each year the claim has been rejected without any reason being given and the NMW has been increased by the same amount as award increases.

217. We can only guess at the reason for the rejection of the $10.00 per week claim; but it is probably in the comment made in regard to ACCER's emphasis on the fact that a NMW-dependent family of four would be living well below the poverty line. The FWC said "We did not receive any evidence as how many people might actually be in that position" (paragraph [409]). The point the FWC seemed to be making is that it needs to be convinced that, in practice, there are families living on the NMW. We will deal later with the question of principle and the evidence around this matter, but the first point to make is that the FWC has apparently addressed the wrong question.

218. ACCER's argument was not limited to NMW-dependent families. It argued that safety net wages up to, at least, the base cleaner's rate are poverty-inducing wages. Families on these higher award rates were living in poverty and the $10.00 increase was a first step in a phased attack on poverty. Progressively lifting the wages floor over time is the way to do it. How else could it be done in a progressive and measured way?

219. We might also speculate that the FWC was concerned about the potential impact of progressive NMW increases on the award classifications and wage rates that are found between the NMW rate and the cleaner's wage rate. The NMW is intended to prevail over award classification rates, as we explain in Chapter 2B. There are awards, such as those in the hospitality industry that have classifications with wage rates below the cleaner's base rate. On the other hand, in many awards, such as the retail industry, the lowest award rate is substantially above the cleaner's rate. Any serious attempt at addressing poverty has to confront this uneven terrain. An initial increase of $10.00 per week in the NMW will not have any practical effect on higher award classifications because the gap between the NMW and the next highest wage rate is typically more than $10.00 per week; but subsequent increases will.

220. In a policy speech during an election campaign in the 1980s the former Prime Minister Bob Hawke famously said "By 1990 no child will live in poverty". He later commented that he might have said "No child need live in poverty". Children live in poverty for various reasons. Public institutions have to address issues such as poverty when they arise within the scope of their statutory responsibilities. A wage-setting tribunal is not "an anti-poverty commission", as such, but it does have an obligation to set a wage that will provide for families and keep them out of poverty in the ordinary and expected cases; and those cases must include families with two dependent children. The FWC has an obligation to ensure that, in these ordinary circumstances, *no child in a working family need live in poverty*. It therefore should ask itself, whether the wages that it sets are sufficient to keep these children out of poverty. It should, given the undeniable importance of this issue, disclose to the readers of its reasons for decision, the conclusion to that question and the evidence and reasoning leading to that conclusion. To date, no tribunal has done so. Unless there is a change our submissions will be wasted.

221. Continuing the practice of the past 15 years of increasing the NMW by the same amount as the increases in award rates, regardless of the relative needs of the lowest

paid, will not target poverty; and submissions directed to the alleviation of poverty will be pointless.

D. GROWING INEQUALITY AND SOCIAL EXCLUSION

222. The figures show that we have increasing poverty because we have not seen a fair and balanced distribution of the benefits of economic growth. Safety net minimum wages are not meant to simply mimic rising average wages across the broader labour market, but a substantial and increasing disconnection between safety net wages and general wage levels is unfair and unjust and deprives many workers of a fair opportunity to live a decent life by the standards of the broader community.

223. A clear message from our review of the changes since 2001 is that there has been growing inequality within the labour market and society as a whole. Growing inequality was not inevitable, nor was it needed for the overall national economic growth since 2001. It has been the result of conscious, but unarticulated, decisions of wage-setting tribunals. Increasing inequality may not have been chosen as a policy objective, but it was allowed to happen for reasons that have not been explained. The tribunals must have been aware of what they were doing because each year they were given the relevant data and submissions on them. If increasing disconnection between safety net rates and community wage levels was allowed to happen in recognition of the forces of globalisation, and a desire to constrain Australian wage growth rates, then it should have been stated and explained so that the matter might be debated.

224. The level of Australian wages has been the subject to some debate, especially in recent months, in the light of what appears to be increasing economic uncertainty. We are facing some economic uncertainties and there are voices that argue that Australian wages are too high. But we need to be clear about which wages *may* be too high. The first point to be made is that our minimum wages are not so high that they keep workers and their families out of poverty. As we show in Chapter 7G, Australian poverty rates compare unfavourably with other similar economies.

225. If any wages are too high and moderation is called for, surely it must be in some of the wages that have delivered most of the 80.0% average increase over the past 13 years, rather than the safety net wages that have delivered increasing poverty to those who depend on them. If the problem is that Australian wage rates as a whole are too high, then we must also look at the wages and incomes of a wide range of high income

earners, including those in government and the bureaucracy. In any discussion about the overall level of Australian wage rates it has to be remembered that they are mainly set through collective and individual bargaining processes across a wide diversity of workplaces and that there is wide popular support for enterprise bargaining based on a fair and secure safety net of wages and terms and conditions of employment. This process is not subject to central control.

226. There is a risk in these circumstances that safety net rates are used in the hope that they will be macroeconomic regulators. It has happened before and has placed an unfair burden on safety net workers. In 2009 the AFPC imposed a wage freeze in the wake of the Global Financial Crisis. In its Media Release in response to the decision, Catholic Social Services Australia said:

> "Last year, in good economic times, the AFPC reduced the real value of safety net wages in the hope of containing inflationary pressures in other parts of the labour market. This year it has gone further and frozen safety net wages in the hope that the decision will promote economic recovery...
>
> In good times and bad, safety net dependent workers have been expected to carry the burden of macro economic reform.
>
> Today's decision will see many families exposed to unnecessary hardship as they carry a disproportionate burden in the current economic circumstances." (*Fair Pay Commission Deals Dud Hand to Poorest Workers in Good Times and Bad*, 7 July 2009)

227. Inequality matters. It matters to society when people are too poor to participate in the ordinary life of the community and when excessive wealth delivers unreasonable social, economic and political power to the few. This book deals with issues concerning the poor and their increasing disconnection with the middle of the Australian community. It does not deal with the very wealthy and the increasing disconnection in incomes and wealth between middle and high income earners in Australia, but it must be noted that favourable tax and welfare arrangements for high income earners must limit the capacity of government and the community to support the poor and others in need.

228. Inequality impacts on the poor; not just on their capacity to provide food, clothing and shelter, but on their ability to participate in society. Wages have an economic value and a *social value*. The social value of wages is highlighted in the following discussion of *basic justice* in a Pastoral Letter issued in 1986 the National Conference of Catholic Bishops of the United States:

> "*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.)

229. Appendix C, *Why we advocate for low paid workers and their families*, has a review of Catholic doctrine on minimum wages and related issues. The matters of principle in that review are shared by many others.

230. The point about the importance of social participation that was being made by the bishops in 1986 is now being made under the rubric of social inclusion. 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..."

231. A precondition for social inclusion is a decent wage and a wage that takes into account the needs of workers with family responsibilities. Workers with family responsibilities are supported by various kinds of family payments from the Commonwealth; but these payments do not, and are not intended to, provide for all of the needs of workers' dependants. Indeed, the trend noted earlier by which increased family payments alleviated the underlying deterioration in relative wage rates appears to have come to an end, and some of the benefits being paid to families will be removed or frozen. If the Schoolkids Bonus (which is now targeted for repeal) had not been paid in January 2014, the family of four referred to earlier would have been $23.57 per week worse off, adding 2.2 percentage points to the NMW-dependent family's margin below poverty.

232. The NMW and other low wage rates have become poverty wages for low income working families, and the cause of social exclusion.

233. A particular concern of this book is child poverty. In commenting on the personal and social impact of child poverty the UNICEF Innocenti Research Centre has written of

> "…the evidence for the close association between child poverty and a long list of individual and social risks – from impaired cognitive development to increased behavioural difficulties, from poorer physical health to underachievement in school, from lowered skills and aspirations to higher risks of welfare dependency, from greater likelihood of teenage pregnancy to the increased probability of drug and alcohol abuse. That there are many exceptions – many children grow up in economically poor families who do not fall into any of these categories – does not alter the fact that poverty in childhood is closely and consistently associated with measurable disadvantage both for individuals and for the societies in which they live." *(Measuring Child Poverty: New league tables of child poverty in the world's rich countries, Innocenti Report Card 10,* UNICEF Innocenti Research Centre, 2012, page 4)

234. 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. The impact that wage policies have on families, and on children in particular, is one that cannot be ignored or glossed over in decisions about wage rates. Sadly, this has been the case.

235. 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. Inequality, social exclusion and social dislocation have economic costs (including opportunity costs) that need to be considered. We are not dealing with impersonal "labour markets" producing some claimed "optimal" allocation of resources, if only because so many come to the market disadvantaged. More importantly, people deserve more than this. Policies that reflect and enhance human dignity and the social participation of all groups have to be the goal of good public policy. The pursuit of this goal does not exclude debate about matters of detail and competing economic views, but puts them into a proper context.

CHAPTER 2

AN OVERVIEW OF MINIMUM WAGE-SETTING IN AUSTRALIA

A. THE LEGISLATIVE FRAMEWORK

236. Before describing and analysing the operation of the wage-setting system it is necessary to set out the key features of the Australian system for setting minimum wages and other terms and conditions of employment. The regulation of these matters is part of a comprehensive regulatory system that covers matters such as collective bargaining, unfair dismissals, the regulation of the internal affairs of unions and employer associations and discrimination in employment.

237. For most of the past century the power to set minimum wage rates and other terms and conditions of employment was shared between the Commonwealth and the States. In all jurisdictions these provisions were prescribed by awards made by independent statutory tribunals.

238. The most significant case in the early years of Commonwealth wage-setting was the *Harvester Case* in 1907 (*Ex parte McKay* (1907) 2 CAR 1). This was an excise taxation case under legislation that tied tariff protection for the employer to employment protection for the worker. The decision determined the course of wage decisions in the Commonwealth's new industrial court as well as decisions of State tribunals. The *Harvester* Living Wage (as it was often referred to) became part of the fabric of Australian life. It was an expression of its time: a wage that would be sufficient for a worker with a wife and three children; but its substance was concerned with fairness and decent living standards. The Living Wage was important because it recognised the need to fix fair and reasonable wages, the need for workers to live in dignity and the need for the worker to be provided with a wage sufficient to support a family.

239. Over the years various awards provided for the further payment of "margins" to reflect the extra value of skilled work in a very wide range of work classifications. The *Harvester* derived wage came to be known as the Basic Wage. For decades the basic Wage and the margins were adjusted separately. In 1965 a decision was made to amalgamate the reviews of both matters and in 1966 the two were amalgamated into a total wage that removed the award distinction between them. The continued presence

of margins for skill and other related factors distinguish Australian wage-setting from many other national systems.

240. For the first century or so after Federation, the Commonwealth's jurisdiction was mostly based on its constitutional power to make laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State" (*Australian Constitution*, section 51 (xxxv)). The use of “paper disputes” linking claims throughout the country, which then needed resolution, extended the Commonwealth’s power and ensured that most areas of contentious industrial relations were regulated by Commonwealth tribunals. The result was a multiplicity of awards made in settlement of a wide range of disputes over many years, usually operating alongside a multiplicity of awards in the various State jurisdictions. It was the diversity of State regulation that led many employers with a national spread of workplaces to support national rather than State regulation. Nationally organised unions, with the capacity to generate real or paper interstate disputes, were happy to accommodate them.

241. Since 2005 the Commonwealth has greatly extended its powers over employment matters through its constitutional power to regulate trading and financial corporations and through co-operative legislative arrangements with the States, apart from Western Australia, under which the States have conferred a wide range of employment regulating powers on the Commonwealth in respect of non-corporate employers. The Commonwealth no longer relies on the conciliation and arbitration power to regulate employment relations. Even before those changes took place the Commonwealth tribunal, the AIRC, was the pre-eminent tribunal; and it and its predecessors had been so for decades.

242. The two most significant events in employment regulation since the turn of the century have been the enactment by the Commonwealth of the *Work Choices* legislation in 2005 and the passing of the *Fair Work Act 2009*. Each changed the institutional structure and criteria for wage-setting, among many other matters.

243. The *Work Choices* legislation was amending legislation, entitled *Workplace Relations Amendment (Work Choices) Act 2005*, which amended the *Workplace Relations Act 1996*. As a result of the *Work Choices* changes the wage-setting functions of the Australian Industrial Relations Commission (AIRC) were transferred to the Australian Fair Pay Commission (AFPC), but the AIRC continued to perform a wide range of

other functions. The AFPC heard and determined minimum wage cases in each year from 2006 to 2009.

244. The *Work Choices* legislation was controversial and in 2007 the newly-elected Labor Government set about replacing it. Indeed, it was a major reason for Labor's win in 2007. As a result of the enactment of the *Fair Work Act 2009*, the AFPC and the AIRC were abolished and the revised employment-regulating powers were conferred on the newly established Fair Work Australia (FWA), which was very similar in structure, personnel and appearance to the AIRC. It was, in effect, the AIRC by a new name, with a substantially changed jurisdiction. In 2013 its name was changed to the Fair Work Commission (FWC).

245. The Commonwealth now sets the terms and conditions of employment for Australian workers, with only minor exceptions, through a much smaller number of awards than previously. There are 122 awards, covering defined industries and/or occupations, under the current legislation. The legislation refers to them as "modern awards". These awards came into operation in 2010 following a lengthy and exacting process in the AIRC (acting under transitional provisions) to replace hundreds of State and Federal awards which contained many inconsistent provisions, the most contentious of which were wage rates. The overall result was the continuation of Federal award classifications and wage rates. The great majority of Australian workers are covered by an award classification made under this new award system, but in most cases a collective or individual agreement provides for further and better terms of employment than are provided by the award safety net provisions.

246. The awards prescribe various kinds of work classifications and set wage rates for them. In recent decades the trend has been towards a limited number of “broad-banded” classifications rather than many narrowly defined job classifications which characterised most awards until the 1980s and which were responsible for a range of workplace rigidities. The differential wage rates are intended to reflect differences in work value and, sometimes, the different conditions under which work is performed. While there is a rationale for differentials within each award, it is hard in some cases to find consistency across awards. This is evident in some of the awards to which we refer later.

247. Not all employment rights are contained in awards. Some of the most important and general rights (eg the right to annual leave) are found in the National Employment Standards prescribed by sections 59 to 131 of the *Fair Work Act*.

B. THE NATIONAL MINIMUM WAGE

248. This book gives particular attention to changes in the National Minimum Wage (NMW) which came into operation in 2010 under the *Fair Work Act* as the successor to the Federal Minimum Wage (FMW). In general, we will use the term NMW, unless the context requires reference to the FMW. While we generally refer to the two as the same thing by different names, there is a basic distinction to be drawn between them. The FWC is required to set the NMW according to statutory provisions, whereas the FMW was the product of the AIRC's general award-making powers.

249. The FMW was set first set in 1997 by a decision in the AIRC's Safety Net Review case "to determine a minimum wage (to be called "the federal minimum wage") for full-time adult employees of $359.40 per week and, for junior, part-time and casual employees, of a proportionate amount" (Print P1997, Chapter 8.1). It was determined that no award rate could be less than the FMW. There was no legislative requirement to do this. The FMW was an incidental, though very important, aspect of the award system. It did not operate outside the award system as a general entitlement of workers.

250. The FMW was set at the same rate as the C14 classification rate in the *Metal Industry Award 1984*. Importantly, the setting of the FMW did not involve any investigation into the adequacy of that rate. The C14 rate was the lowest rate in the award and operated over the first three months of employment. Over the past 16 years it has increased at the same rate (either a percentage or money amount) as the lower paid award rates, with the effect that the relativity between the NMW and the lower end of the award classification has remained much the same. The NMW and the C14 rate have been locked together in this process.

251. The *Fair Work Act* provides a very different process for the setting of the NMW. Unlike the FMW, the legislation requires that it be set and provides that it operates as a general right of workers within and outside and the award system. The clear intention of the legislation is that award rates are to be based on a separately assessed NMW and that the NMW is not to be constrained by existing award rates. Having assessed the NMW, the FWC is to take it into account in setting award rates. This is very significant in our consideration of the level of, and the adjustments to, the NMW.

252. To explain this important change it is necessary to refer to the basic provisions applying to the setting of the NMW and award wage rates. Subsections 285(2) and (3), which deal with the annual wage review, provide a starting point :

"(2) In an annual wage review, the FWC:
  (a) must review:
    (i) modern award minimum wages; and
    (ii) the national minimum wage order; and
  (b) may make one or more determinations varying modern awards to set, vary or revoke modern award minimum wages; and
  (c) must make a national minimum wage order.

(3) In exercising its power in an annual wage review to make determinations referred to in paragraph (2)(b), the FWC must take into account the rate of the national minimum wage that it proposes to set in the review."

253. Section 135(2) provides further direction on the relationship between the NMW and award wage rates:

> "In exercising its powers under this Part to set, vary or revoke modern award minimum wages, the FWC must take into account the rate of the national minimum wage as currently set in a national minimum wage order."

254. This means that the NMW is to be a base upon which minimum award wages are to be set. It is inconceivable that an award rate could be set at less than the NMW given these provisions. Minimum award wages are set under section 139(1)(a), which enables the making of terms regarding:

> "minimum wages (including wage rates for junior employees, employees with a disability and employees to whom training arrangements apply), and:
> (i) skill-based classifications and career structures; and
> (ii) incentive-based payments, piece rates and bonuses;"

255. The minimum wage order is the fundamental instrument in the new scheme. Section 294 (1) provides that a national minimum wage order "must set the national minimum wage" and "must set special national minimum wages for all award/agreement free" junior employees, employees to whom training arrangements apply and employees with a disability. In regard to employees not covered by those special wage rates, section 294(3) provides that the NMW applies to "all award/agreement free employees"

256. The agreements referred to in these provisions are enterprise agreements made under the legislation. The NMW has an operation on those agreements by virtue of section 206 which provides that the base rate of pay under an enterprise agreement must not be less than the lowest modern award rate or the national minimum wage order rate and provides for their operation in the event that the agreement fails to comply with the section.

257. In summary, the NMW, and special national minimum wages, directly apply to those not covered by an award or agreement; for those covered by an award, the requirements

of sections 285(3) and 135(3) ensure that an employee cannot be paid less than the NMW; and for those covered by an enterprise agreement the provisions of section 206 ensure that an employee cannot be paid less than the NMW.

258. This new scheme in which centrality is given to the setting of the NMW is very relevant to a point raised in the previous chapter about the fact that in some awards there are classifications and wage rates sitting close to the NMW, and if the NMW is to be increased, changes will be have to be made to them. The award classification system has operated to constrain the adjustment of the NMW. Since 1997 the NMW and the C14 award rate appear to have been tied together by a Gordian Knot. The provisions of the legislation, properly applied, cut that knot.

259. The distinction between the NMW and award rates is underlined by the objects of the legislation and the criteria that are to be taken into account when setting wage rates. One of the stated objects of the *Fair Work Act* is the establishment and maintenance of a safety net of fair minimum wages and conditions of employment (see section 3). There are two specific objectives in the legislation. First, the minimum wages objective in section 284(1), which deals with the setting of minimum wage orders and, by the terms of section 284(2), adjustments in award wage rates. Section 284(1) provides:

> "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.
>
> This is the *minimum wages objective*" (Italics in original)

260. Section 284(2) provides that the minimum wages objective applies to the minimum wages provisions (in Part 2-6) and the setting, varying or revoking award minimum wages (in Part 2-3). There is an editorial note in the legislation under section 284(2), which states:

> "The FWC must also take into account the objects of this Act and any other applicable provisions. For example, if the FWC is setting, varying or revoking

> modern award minimum wages, the modern awards objective also applies (see section 134)."

261. The second specific objective in the legislation is found in the criteria to be applied in award-making. Section 134 (1) covers, among other matters, the setting, varying or revoking modern award minimum wages and 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
> (da) the need to provide additional remuneration for:
> (i) employees working overtime; or
> (ii) employees working unsocial, irregular or unpredictable hours; or
> (iii) employees working on weekends or public holidays; or
> (iv) employees working shifts; 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.
>
> This is the *modern awards objective*" (Italics in original)

262. The broader criteria in the awards objective do not apply to the setting of the NMW; for example, the explicit requirement in paragraph (b) to take into account "the need to encourage collective bargaining" is not a factor to be taken into account in setting the NMW, but it must be in regard to the setting of award rates of pay that are set above the NMW.

263. How does this work out in practice? A guide is available in the ABS report *Employee Earnings and Hours, Australia, May 2012*. At that time it was estimated that 1,544,100 were award only employees, ie employees who were only receiving the prescribed minimum wage rates, 4,033,000 were covered by collective agreements and 3,714,300

were covered by individual arrangements. The great majority of the individual arrangements would have been arrangements that added to employee's award entitlements because the number of award free employees covered by those arrangements would have been small; and the number of employees who were paid only the NMW would have been smaller. To give some indication, it has been estimated that in May 2012 about 1.3% of the workforce was award free and paid at or within 20 cents per hour of the NMW (Australian Government submission to Annual Wage Review, March 2013, page 13). More award-free employees would have been covered by the NMW, but in receipt of an income substantially higher.

264. The large number of workers not regulated by the award system emphasises the point that the NMW should not be constrained by features of the award classification system described earlier. As a matter of fairness, their wage rates should not be constrained by award rates that do not apply to them. Yet that is the result of linking them to award rates set in 1997. We return to the 1997 decision in Chapter 7B.

Collective bargaining and individual agreements

265. Another important aspect of the current legislation is the connection between safety net conditions and collective bargaining. Section 134 refers to "the need to encourage collective bargaining". The Act establishes a system of collective bargaining based on that safety net so that wages and other terms and conditions of employment under those agreements will be "better off overall". Detailed procedures regulate and monitor that system. The intention is that, overall, the bargaining process will one in which workers and their employers will identify and implement measures for increasing productivity for their own mutual benefit. Collective bargaining is also a means through which the supply and demand in particular parts of the labour market can be recognised and accommodated.

266. There is also limited scope for individual bargains to be struck under "individual flexibility agreements" that enable an employer and an employee to vary the terms of the relevant award or enterprise agreement to meet the needs of their situation. Again this kind of agreement is subject to the "better off overall test". In addition, it is open to any employer to enter into a contract to pay more than the rates prescribed in the relevant award or collective agreement. Over the years some employers have simply paid an extra amount over the current wage rate, without the complications of statutory agreements or common law contracts.

267. The "bargaining sector" of the labour market is varied and the extra benefits accruing to workers may be marginal or substantial, depending on a myriad of factors. The Australian Council of Trade Union's website states that workers who "are under a union collective agreement earn on average $100 a week more than other employees".

268. The distinction between safety net entitlements and negotiated entitlements is an important distinction when considering responses to changing economic circumstances, either in the economy as a whole or in specific sectors of it. The response to changing business conditions and changes in the 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. Unlike the wages safety net system, the bargaining system presents the *opportunity* for making various arrangements that can minimise the impact of an economic downturn or the changing operational needs of the firm.

The needs of the low paid

269. Since 2010 there has been an important debate about the needs of the low paid are to be taken into account. In the first decision under the *Fair Work Act* the tribunal formulated its view of section 284(1) in the following terms:

> "[244] Our view is that the low paid need the highest level of wages that is consistent with all other objectives including low unemployment, low inflation and the viability of business enterprises. At the least, this level of wages should enable a full-time wage earner to attain a standard of living that exceeds contemporary indices of poverty. We are open to evidence that there are particular economic developments that are placing unusual and severe strain on the budgets of the low paid." (*Annual Wage Review 2009-10*, footnote omitted.)

270. In the subsequent review ACCER made submissions about the reasoning in this passage; in particular it argued that the first sentence disclosed an error of law. In substance, the argument was that all factors had to be assessed and that it was not a matter of distributing what is left over after priority has been given to the other factors. The substance of the submission on this aspect is in the following paragraphs of the submission:

> "The legislation requires FWA to take into account the needs of the low paid. In the first sentence of paragraph [244], FWA states that "the low paid need the highest level of wages that is consistent with all other objectives". This is inconsistent with the statutory duty to take into account the needs of the low paid. The duty cannot be performed if the wages are set by reference to what is available after other factors are taken into account. The needs of the low paid are

> not taken into account unless they are considered and estimated, as best they can be.
>
> The approach taken by FWA is, in effect, to re-define needs, so that the need of the low paid is to have as much as is permitted by reference to the other factors. It means, for example, that it wouldn't matter whether workers live in poverty or not, live in dignity or not, or live above or below any other measure of need. Nor would the margin above or below that measure matter. It means that the clear legislative intent in moving away from *Work Choices* to a safety net wage that takes explicit account of the needs of the low paid, has been frustrated." (ACCER submission March 2011, paragraphs 408-9)

271. The decision in the *Annual Wage Review 2010-11* decision did not refer to ACCER's submissions, but without explanation it provided a new formulation of the purpose of section 284(1) and related provisions in a way which met ACCER's concerns. The formulation was at the end of the chapter *Relative Living Standards and the Needs of the Low Paid*:

> "In this chapter we have focused on both relative living standards and the needs of the low paid. It is important to point out that those two considerations, taken together, are required to be taken into account along with a number of other matters specified in the modern awards objective and the minimum wages objective. No one matter or combination of matters should take precedence, although the weight given to them may vary depending on the circumstances at the time." (*Annual Wage Review 2010-11* paragraph [228])

272. This met ACCER's concerns. However, two years later at paragraph [56] of the *Annual Wage Review 2012-13* decision, the FWC said "We agree with the following observation from the 2009–10 Review decision" and then set out paragraph [244] of that decision. The change came about without any relevant submissions being made in the case. It also sat uneasily alongside some other passages in the FWC's decision, such as:

> [9] It is also important to recognise that the range of matters the Act requires us to take into account is not limited to economic considerations. In particular we are also required to take into account relative living standards and the needs of the low paid. The submissions of the parties tended to focus, naturally enough, on those statutory considerations which support the outcome for which they contend. But the Act requires the Panel to take into account *all* of the relevant statutory considerations.
>
> [10] There is often a degree of tension between the economic and social considerations which we must take into account. A substantial wage increase may better address the needs of the low paid and improve the living standards of award-reliant employees relative to those employees who are not award reliant; but it may (depending upon the prevailing economic circumstances) reduce the capacity to employ the marginalised and hence reduce social inclusion. It is this

> complexity which leads us to reject a mechanistic approach to wage fixation.... The range of considerations we are required to take into account calls for the exercise of broad judgment, rather than a mechanistic approach to minimum wage fixation." (Footnote omitted)

273. These two paragraphs avoid the issues raised by paragraph [244] in the 2009-10 decision. We would add (and it is not ruled out in this passage) that the FWC's consideration of the component parts of this process needs to be transparent so that the reader is able to understand how the tribunal assessed the various matters that had to be taken into consideration.

274. There is a risk in these kinds of cases that decision-makers do not sufficiently disclose their reasoning on crucial aspects. This was part of ACCER’s criticism of the 2009-10 review decision and partly why it relied on judgments of the Full Court of the Federal Court of Australia in *Minister for Immigration and Citizenship v Khadgi* [2010] FCAFC 145 and *Lafu v Minister for Immigration and Citizenship* [2009] FCAFC 140 in support of its submissions that section 284(1) requires the FWC to engage in what has been described as “an active intellectual process” in which each of the prescribed matters receives “genuine” consideration. Adapting the words in *Lafu*, it was submitted that the FWC 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. These points are relevant to our complaint that the FWC has rejected our past claims for an extra $10.00 per week increase in the NMW without giving any reasons for doing so.

275. ACCER has recently raised its concerns about the adoption of the words used in the 2010-11 Review decision. The matter was the subject of consultations in early March 2014. In written submissions for those consultations, the Australian Council of Trade Unions drew attention to paragraphs [9] and [10] (just quoted) and submitted that the operation of section 284(1) has to be seen in the broader context and purpose of the *Fair Work Act*, which, it argued, was beneficial legislation which should generally be construed in a way which is favourable to those for whose benefit it has been enacted. This is a well-established principle when legislation can be so characterised. There

may be debate about this characterisation in the final submissions of the wage review, but, for reasons given earlier, the setting of the NMW separate from award wage rates leads to a stronger argument that the provisions dealing with the NMW should be construed as beneficial provisions. The factors leading to a beneficial construction are the social inclusion object of the Act, the emphasis on fairness and of the requirement to provide a safety net. A beneficial construction cannot, of course, exclude or read down the particular matters in section 284(1) safety net. To the extent that a conclusion from the full and proper consideration of these matters enables some discretion in the awarding of a wage increase, the discretion should be exercised in a way that would best advance the beneficial nature of the legislation. In the following section we turn to a discussion of the three factors that support a beneficial construction of the legislation: social inclusion, fairness and the nature of the wage safety net.

C. SOCIAL INCLUSION, FAIRNESS AND THE WAGE SAFETY NET

276. A major part of the debate about *Work Choices* and wage-setting concerns the question of fairness in wage-setting. Prior to *Work Choices* the AIRC was obliged by section 88B(2) of the *Workplace Relations Act 1996* to:

> "...ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following:
>
> (a) the need to provide fair minimum standards for employees in the context of the *living standards generally prevailing in the Australian community*;
> (b) economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;
> (c) when adjusting the safety net, *the needs of the low paid*." (Emphasis added)

277. Despite the AFPC having "fair" in its name, it was not obliged to set a fair safety net of wages. Its legislative objective in section 24 of the *Workplace Relations Act 1996* (as amended) stated:

> "The objective of the AFPC when performing its wage-setting function is to promote the economic prosperity of the people of Australia having regard to [amongst others]...providing a safety net for the low paid..."

278. 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, 2009, page 4.)

279. The reformed system that Professor Harper described did not come as a surprise. The purpose and its likely effects were evident at the outset. There was a lot of community debate before the legislation was enacted.

280. The Australian Catholic Bishops issued a Statement in November 2005 on these matters, which is now reproduced as Appendix D, which called in vain for changes to be made to the then pending legislation. The Statement included the following in relation to wages:

> "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."

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

282. This was very welcome and the legislation that was enacted was consistent with the position taken by the bishops in 2005. However, as we explain later, the implementation of the values was hindered by the Commonwealth's failure to take

seriously the inquiries that are needed to ensure that workers can achieve a decent standard of living. Nevertheless, the words used correctly highlight ingrained values both in the current legislation and across the Australian community.

283. We should also note that the term "relative living standards" has been construed narrowly by the FWC and not as broadly as the term "living standards generally prevailing in the Australian community", which was used in the pre-*Work Choices* legislation, and the term "the living standards generally prevailing in Australia" used in the Bishops' Statement. The FWC's position is that comparisons which are to be made for the setting of safety net wages are to be restricted to the standards of living of other wage earners. This is found in the FWC's exclusion of ACCER's comparisons between the wages safety net and the pension safety net over recent years. This is an important issue because, as we demonstrate later, pensions provide a higher standard of living for pensioners than some safety net wages provide for families.

284. The terms of the *Fair Work* Act are more than a reminder of the *Harvester* connection. They also reflect an international standard for minimum wage-setting. The International Labour Organisation's *Minimum Wage Fixing Convention, 1970*, which has been ratified by Australia, requires the recognition of the interests of workers and their families and the relevance of general economic circumstances. The current Australian legislation is consistent with the international standard, although the restrictive interpretation given by the FWC to the term "relative living standards" is not. Article 3 of the convention 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."

285. Social inclusion is mentioned in two parts of the legislation. First, the overarching 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..." Second, it is specifically mentioned in sections 134 and 284 in connection with workforce participation. In substance, we have recognition of a tension between wage levels and employment opportunities. Not surprisingly, unions

emphasise the general and employers emphasise section 284(1)(b). In dealing with submissions made on this issue the FWC has said:

> "[101]...We accept that our consideration of “social inclusion” in the context of s.284(1)(b) is limited to increased workforce participation. On that basis it is obtaining employment which is the focus of s.284(1)(b). This involves a consideration of the increased incentives that higher minimum wages can provide to those not in employment to seek paid work, balanced against potential impacts on the demand for low-paid workers and hence the supply of low-paid jobs, from large increases in minimum wages.
>
> [102] However, we also accept that modern award rates of pay impact upon an employee’s capacity to engage in community life and the extent of their social participation. These are matters that can be appropriately taken into account in our consideration of the legislative requirement to “maintain a safety net of fair minimum wages” and to take into account “the needs of the low paid” (s.284(1)(c)). Further, the broader notion of promoting social inclusion is also relevant to the fixation of minimum wages, quite apart from the more limited construct reflected in s.284(1)(b). One of the objects of the Act is to promote “social inclusion for all Australians by” (among other things) “ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through…modern awards and national minimum wage orders” (s.3(b))." (*Annual Wage Review 2012-13*)

Workers with family responsibilities

286. The term “safety net” is used in several important parts of the *Fair Work Act*, but it is not defined. It appears in the Objects (section 3), the minimum wages objective (section 284(1) and in the modern awards objective (section 134(1)). The term is not one of fixed meaning and must be influenced by the context in which it appears. How the powers are exercised must be influenced by the nature and purpose of the safety net.

287. ACCER has argued that the needs of workers must include the need of workers to support their families, whether they are sole parents or partnered. This raises the question of the number of children the wage is expected to support. The answer is provided by the nature of the safety net. 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. A safety net wage must, in our view, 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. For this reason

we place substantial emphasis on the position of both kinds of families in the discussion in the following chapters.

288. An alternative view is that the safety net should operate as a safety net for the single worker and that the needs of his or her family be left to the public purse. But we cannot get to that position unless and until the Commonwealth takes financial responsibility for the needs of the worker's dependants, or, at least, the dependants of low income workers. While they are very substantial, family payments are insufficient to support the needs of low income families. The payments are not likely to increase in the foreseeable future. In the absence of that reality, we have to grapple with the issues raised by workers with family responsibilities.

289. The argument 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 is based on principle, sound public policy and the legislation under which the FWC operates. There are several aspects of our legal framework that support this approach.

290. The International Labour Organisation's *Minimum Wage Fixing Convention, 1970,* which has been ratified by Australia, recognises the "needs of workers and their families". We referred to the text of Article 3 a little earlier. There are two specific requirements in the legislation that bear on this discussion. 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…"

291. A similar obligation is found in section 578 which provides:

> "In performing functions or exercising powers under this Act…, the FWC 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…"

292. 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).

293. 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.

294. 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.

295. 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.

296. The work of the Commonwealth Commission of Inquiry into Poverty (Poverty Commission) in the early 1970s 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 one of the Poverty Commission’s reports, 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.)

297. 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. The passage is just as relevant today as it was 39 years ago.

298. 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.

299. 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.

300. 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.

301. 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 a family-based 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.

302. The *Fair Work Act* seeks to achieve a number of objectives, which are both social and economic. The range of economic and social objectives that are specified in the legislation may often be in tension and call for careful judgment involving the prioritisation and weighting of those objectives. How that is to be done should be informed and directed by the social inclusion objective. The social inclusion objective, if properly applied, requires that *primary* consideration be given to the lowest paid, especially to workers on or close to the NMW.

D. PENSIONS AND RELATIVE LIVING STANDARDS

303. This section concerns the meaning and operation of the term "relative living standards" in section 284(1) (c) of the *Fair Work Act 2009*. The FWC is requiring taking into account relative living standards when it is setting "a safety net of fair wages". The question is whether it is to be construed broadly or narrowly. In particular, are the living standards to be taken into account limited to the living standards of wage earners?

304. To put the issue in an historical context we refer again to the national provisions prior to the *Work Choices* amendments. The AIRC was obliged by section 88B(2) of the *Workplace Relations Act 1996* to:

> "...ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following:
>
> (d) the need to provide fair minimum standards for employees in the context of the living standards generally prevailing in the Australian community;...."

305. The words, and the reference to standards, were broad and sufficient to pick up significant sections of Australian society. In the *Fair Work Act* the use of standards again recognises that Australian living standards vary. They certainly vary among wage earners within the Australian community, but they vary in other ways.

306. In each wage review since 2010 ACCER has argued that the level of pensions paid in Australia is relevant to the determination of relative living standards for the setting of safety net rates. From 2012 it has produced a series of tables similar to those now in Chapters 6C and 8D and has raised similar points to those made in those chapters. The decisions of the FWC did not discuss the relevance of them, or even mention the material. We cannot expect the FWC to pursue every matter, but this is an important one. There are about 3.5 million Australians on pensions, including about 2.28 million on the age pension (Chapter 8D).

307. In the *Annual Wage Review 2012-13* the FWC touched on this statutory construction issue at various parts of its decision:

> "The minimum wages objective and the modern awards objective both require us to take into account two particular matters, relative living standards and the needs of the low paid. These are different, but related, concepts. The former, relative living standards, requires a comparison of the living standards of award-reliant workers with those of *other groups that are deemed to be relevant*. The latter, the needs of the low paid, requires an examination of the extent to which low-paid workers are able to purchase the essentials for a “decent standard of living” and to engage in community life. The assessment of what constitutes a decent standard of living is in turn influenced by contemporary norms." (Paragraph [30], emphasis added.)
>
> "In assessing relative living standards, the comparison we focus on is other employed workers, especially non-managerial workers. There is no absolute relationship that the living standards of award-reliant workers should bear to all employees. In taking into account relative living standards, we pay particular attention to changes in the earnings of the award-reliant compared to changes in measures of average and median earnings more generally." (Paragraph [365])

> "In the context of fixing minimum wages, the requirement to take into account "relative living standards" requires a focus on the living standards of the award reliant relative to *others in the Australian workforce*." (Paragraph [383], emphasis added.)

308. While there was a view expressed about the scope of the term relative living standards, there was no analysis for that conclusion. It carried the implicit rejection of ACCER's pensions material and argument without disclosing the reasoning.

309. In submissions in late 2013 regarding the current hearing, ACCER again raised the pensions issue. The FWC responded:

> "...ACCER proposed that the Statistical Report include aged and disability pensioner households in the comparisons of household disposable income, suggesting that pensions represent a relevant safety net and comparator. However, we are not presently persuaded that it is a relevant comparator and is therefore not included in the proposed changes to the Statistical Report." (*Statement* on Draft Research Program [2013] FWCFB 7720, paragraph [8])

310. The submissions in support of the use of the pensions material can be stated briefly. The fundamental rule of statutory construction is that words be given their plain and ordinary meaning. The provision refers to living standards in Australia. On a plain and ordinary reading, the standards that are referred to are living standards within and across Australian society. If a person was asked to describe Australian living standards, he or she would very likely refer to a range of matters, including the living standards of wage earners, pensioners and the unemployed. Only referring to wages earned would be an incomplete response.

311. Where this is some uncertainty or ambiguity, the words can be read in their context. If this is done, our contention on the meaning of the words themselves is confirmed. As we discussed earlier in this chapter, a principal object of the *Fair Work Act* is social inclusion. The wage-setting provisions are designed to establish a position for Australian workers in society as a whole, which clearly includes more than wage earners. Furthermore, when one comes to section 284 there is the obligation to establish a "safety net" and a "fair" outcome. These are matters that can only be done in a social context, having regard to all of the socio-economic factors within the broader Australian community. On this view, every relevant fact or circumstance is to be taken into account and given its proper weight.

312. This view is consistent with the nature of the exercise required of the FWC under 284(1)(b) of the *Fair Work Act*, where it has an obligation to take into account the promotion of "social inclusion through workforce participation". The pension safety net

and the living standards of pensioners are principally relevant for the setting of fair wages safety net under section 284(1)(c), but they are also relevant to section 284(1)(b) because the level of pensions, and the aged pension in particular, are relevant to workforce participation.

313. There is no single formula for identifying and measuring relative living standards in Australian society and positioning safety net workers relative to them. Primary emphasis needs to be given to the wages of other workers across a broad range of incomes, as we have done in many parts of this book, but that does not exclude taking pensions into account.

CHAPTER 3
MANY SAFETY NET WORKERS HAVE SUFFERED REAL WAGE CUTS

A. REAL WAGE CUTS 1997 - 2014

314. The first step in evaluating the outcomes of minimum wage decisions is to compare the arbitrated wage increases with changes in price levels as measured by the Consumer Price Index (CPI). Table 1 shows safety net wage adjustments by reference to a range of starting points on 1 January 2001, including the National Minimum Wage (NMW) and the C10 award classification, which applies to trade-qualified workers, and compares them with a total CPI increase of 43.4%.

Table 1

Changes in various national safety net wage rates
January 2001- January 2014
($ per week, unless otherwise indicated)

Year	Safety Net Rates ($)								Consumer Price Index
	FMW/NMW		C10						
2001	400.40	450.00	492.20	500.00	550.00	600.00	650.00	700.00	73.1
2002	413.40	463.00	507.20	515.00	565.00	617.00	667.00	717.00	75.4
2003	431.40	481.00	525.20	533.00	583.00	635.00	685.00	735.00	77.6
2004	448.40	498.00	542.20	550.00	600.00	652.00	702.00	750.00	79.5
2005	467.40	517.00	561.20	569.00	619.00	671.00	721.00	769.00	81.5
2006	484.40	534.00	578.20	586.00	636.00	688.00	738.00	786.00	83.8
2007	511.86	561.36	605.56	613.36	663.36	715.36	760.04	808.04	86.6
2008	522.12	571.62	615.82	623.62	673.62	720.68	765.36	813.36	89.1
2009	543.78	593.28	637.48	645.28	695.28	742.34	787.02	835.02	92.4
2010	543.78	593.28	637.48	645.28	695.28	742.34	787.02	835.02	94.3
2011	569.90	619.30	663.60	671.30	721.30	768.30	813.00	861.00	96.9
2012	589.30	640.40	686.20	694.10	745.80	794.40	840.60	890.30	99.8
2013	606.40	659.00	706.10	714.20	767.40	817.40	865.00	916.20	102.0
2014	622.20	676.10	724.50	732.80	787.40	838.70	887.50	940.00	104.8
$ Increase	221.80	226.10	232.30	232.80	237.40	238.70	237.50	240.00	-
% Increase	55.4%	50.2%	47.2%	46.6%	43.2%	39.8%	36.5%	34.3%	43.4%

The figures are those at January of each year. The CPI figures for each January are those for the immediately preceding quarter. The CPI figures are taken from *Consumer Price Index, Australia, December 2013*, Catalogue no. 6401.0, Table 1. In January 2001 the Federal Minimum Wage (FMW), now the NMW, was $400.40 and the base trade-qualified, or equivalent, wage rate (the C10 classification) in the *Metals, Manufacturing and Associated Industries Award 1998* was $492.20. The successor to that award is the *Manufacturing and Associated Industries and Occupations Award 2010*. The C4 classification, which is referred to in some of the following tables, was also found in these two awards and was $634.20 in January 2001 and $870.40 in January 2014. The wage rates set by the

Australian Fair Pay Commission were set as hourly rates, and the rates for 2007 to 2010 are not rounded. Wage rates have been rounded in the transition from the Australian Fair Pay Commission's rates to the modern award rates in 2010. The 2012, 2013 and 2014 figures for the other columns are also rounded to the nearest 10 cents, consistent with award practice.

315. The increases awarded by successive tribunals were either money or percentage increases. Money increases, rather than percentage increases, were awarded in each wage decision since January 2001, save for 2011, 2012 and 2013 when percentage increases were awarded. Because of a concern for declining relativities between wage classifications, in 2001 an extra $2.00 per week was awarded by the Australian Industrial relations Commission (AIRC) to classifications above $490.00 per week, and a further $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 Australian Fair pay Commission (AFPC) gave much smaller increases to classifications over $700.00 per week (approximately), the same money amount to all in 2008 and, as a result of a wage freeze, nothing at all in 2009. The four decisions under the *Fair Work Act 2009* from 2010 have been $26.00 per week, 3.4%, 2.9% and 2.6% The end result has been a substantial compression in relativities; and, as we shall see, an increasing disconnection between the safety net rates for higher paid classifications and the wage rates for those classifications in the broader workforce.

316. The increases in Table 1 have been within a narrow band: from $221.80 to $240.00 per week. This has produced sharply contrasting percentage and real wage outcomes across the classifications. This has been to the benefit to the lower paid and the detriment of the higher paid.

317. There were real increases in the NMW and in some low paid classifications. From January 2001 to January 2014 real wages were reduced for safety net rates that are now paying $785.00 or more per week. For example, the classification originally paying $600.00 per week, and now paying the modest wage of $838.70 per week, has had a real wage cut of $21.70 per week since 2001.

318. We have limited our discussion to a comparison of safety net wages and the CPI. There are other means of measuring the price increases that impact particular segments of the community, ie on those who have a different basket of goods and services to the CPI basket. The Australian Council of Trade Unions (ACTU) has argued for the Living Cost Index, another index published by the Australian Bureau of Statistics (ABS). ACCER has supported the continued use of the CPI as a primary reference, but has argued that particular matters need to be considered; for example, child care costs,

which have risen substantially in recent years, are much more important to working families than the CPI reflects. Similarly, because lower income families pay relatively more in rental costs (recently increasing) and less in mortgage repayments (recently decreasing), the relevance of the CPI to lower income earners is reduced. The St Vincent de Paul Society has done extensive research on the differential impact that rising prices have on low income groups. It has produced a detailed examination of the way in which the ABS's weighted average price indices vary among households and geographic areas; see *The Relative Price Index: the CPI and the implications of changing cost pressures on various household groups*, Gavin Dufty and Ian Macmillan, St Vincent de Paul Society, December 2013. These matters emphasise the need to better understand the needs of the low paid and support the kind of Budget Standards research that we discuss in Chapter 8.

The Federal/National Minimum Wage 1997-2014

319. Although Australia has had some form of national minimum wage since the early part of the twentieth century, the antecedents of the NMW date from only 1997. The NMW grew out of the enactment by the Commonwealth of the *Workplace Relations Act 1996* (which was an amendment to, and a re-naming of, earlier legislation) and the wage-setting function established under that legislation. The legislation included the requirement that the AIRC establish and maintain "a safety net of fair minimum wages and conditions of employment…having regard to…living standards generally prevailing in the Australian community…and the needs of the low paid" (section 88B(2)).

320. The AIRC introduced the FMW in its first wage review after the enactment of the 1996 legislation. The FMW was set at the same rate as the C14 classification rate, the lowest classification rate, in the *Metal Industry Award 1984*. This award was replaced by the *Metal, Engineering and Associated Industries Award 1998* and, later, by the *Manufacturing and Associated Industries and Occupations Award 2010*; but, relevantly, the award classification structure has remained the same.

321. In Tables 2 to 5 we show how wage increases have varied, relative to the CPI, over the period 1997 to 2013. The tables show the increases in the NMW, two other classifications in the *Metal Industry Award 1984* (the C10 and C4 classifications) and the CPI over the period July 1997 to July 2013. We have used July in these and other years to explain better the changes that have taken place. As the July 2013 rates include the most recent increases, they are also the rates that applied in January 2014.

322. Table 2 covers three distinct periods, which may be described by reference to the *Work Choices* legislation that was operative in the middle period: pre-*Work Choices*, *Work Choices* and post-*Work Choices*. In Tables 3 to 5 we show the increases in prices and the three wage rates over the course of each of the three periods.

Table 2

Increases in safety net wages and the CPI
July 1997 – July 2013
($ per week, unless otherwise indicated)

	July 1997	July 2013	Increase
Federal/National Minimum Wage	359.40	622.20	73.1%
C10 classification	451.20	724.50	60.6%
C4 classification	597.20	870.30	45.7%
Consumer Price Index	67.1	102.4	52.6%

At the time of the 1997 decision, which was handed down on 29 April 1997, the most recent published CPI figures were for the December Quarter 1996, but the most recent completed quarter was March 1997. The table uses the March Quarter 1997 figure of 67.1, which was slightly higher than the previous quarter's 67.0. The most recent published CPI figure at the time of the June 2013 decision was for the March Quarter 2013. The CPI numbers are those in *Consumer Price Index, Australia, December 2013*, Catalogue no. 6401.0, Table 1.

323. Table 3 shows the increases awarded by the AIRC in the pre-*Work Choices* period of 1997 to 2005. It shows that there was a very substantial real increase in the NMW and a real wage cut of 1.5 percentage points at the C4 rate.

Table 3

Increases in safety net wages and the CPI
Pre-*Work Choices*
July 1997 - July 2005
($ per week, unless otherwise indicated)

	July 1997	July 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	67.1	82.1	22.4%

See the notes to Table 2. The CPI figure for 2005 is for the March quarter, the most recently published figures prior to the AIRC decision in June 2005. The CPI numbers are published in *Consumer Price Index, Australia, December 2013*, Catalogue no. 6401.0, Table 1

Work Choices: fairness foregone and what the figures really mean

324. The four years during which the AFPC set wages present a marked contrast to the preceding eight years, which was especially evident in its last decision in 2009. In the 2009 AFPC wage review ACCER sought an increase of 2.5%, based on the then expected CPI increase for the 12 months following the previous decision. It argued that the real value of safety net wages should be maintained and that, having regard to the increases being agreed to throughout the public and private sector (more than 2.5%), it would be unfair to reduce the real value of wages by awarding an increase of less than 2.5%. When this point was made in the oral submissions one member of the AFPC interjected, "We don't have to be fair." And it wasn't. The AFPC decided that no increase would be granted. This was a clear sign that a new system was needed.

Table 4

Increases in safety net wages and the CPI
Work Choices
July 2005 – July 2009
($ per week, unless otherwise indicated)

	July 2005	July 2009	Increase
Federal Minimum Wage	484.40	543.78	12.3%
C10 classification	578.20	637.48	10.3%
C4 classification	722.20	771.40	6.8%
Consumer Price Index	82.1	92.5	12.7%

The CPI numbers are for March 2005 and March 2009; see *Consumer Price Index, Australia, December 2013*, Catalogue no. 6401.0, Table 1.

325. Table 4 covers the period following the last decision of the AIRC in 2005 and shows that by July 2009 the real value of all wages had been cut; and the decision in July 2009 would cut them even further. The effect of this decision was to provide no compensation for price rises since March 2008.

326. The AFPC did not appear to be too uncomfortable about the decision to freeze wages. It claimed that the disposable income of the lowest paid workers had improved under its watch. It claimed, for example, that at the NMW level the single worker's disposable income, which was assisted by significant tax cuts, had increased by 14.9% from July 2006 to July 2009, "well above the CPI increase from the June quarter 2006 to the March quarter 2009, which was 7.7%" (*Wage-setting Decision and Reasons for Decision, July 2009*, pages 54-5). It was 7.7%, but that is not the relevant figure. The relevant starting point was the most recent CPI figure when the AIRC made its last

decision. The CPI increase over the correct period was 12.7%, as we have shown in Table 4. When the AFPC made its first decision in October 2006, which included increasing rates under $700 per week by $27.00 per week, it was clearly not based on events from July 2006, but had regard to the date of the previous wage setting decision by the AIRC, including relevant CPI changes.

327. The AFPC's claimed 14.9% increase was greater than the 12.7% CPI increase is arguable only if we compare disposable incomes and remove the benefit of the tax cuts over this period. The issue of increasing disposable incomes from tax cuts is addressed in Chapter 6 where we argue that the tax cuts did not justify real wage cuts. We should be careful, however, not to limit our evaluation to the changes in the NMW. The real wage cut for most safety net-dependent workers was dramatic over the *Work Choices* period; for example, while the CPI increased by 12.7% the C4 classification rose by 6.8% (see Table 4). These workers had a cut in their real disposable incomes because their tax cuts were much less than their real wage cuts.

328. Evaluating the decisions of the AFPC in terms of the maintenance of real wage rates has to take into account the decision in July 2009 not to award a wage increase. Even the lowest paid safety net-dependent worker was to have a real wage cut as a result of this decision. The freeze was imposed in the "lame duck" period arising from the imminent commencement of the *Fair Work Act 2009* and the expectation that the new tribunal's first decision would come into operation on 1 July 2010. The freeze had the initial effect of denying a pay increase from the expected operative date, October 2009, until July 2010. After its initial decision in 2006, which provided an operation date about 18 months after the last increase by the AIRC, the AFPC adopted the practice of handing down its decision in each July, with the commencement dates being on 1 October 2007 and 2008.

329. The wage freeze of July 2009 imposed a burden on safety net workers that was not imposed on any other workers; for example, in the year from May 2009 to November May 2010 Average Weekly Ordinary Time Earnings for full time employees increased by 5.6%; see *Average Weekly Earnings, May 2010,* Catalogue no. 6302.0. This point is not just made with the benefit of hindsight. The wage freeze was made in the face of evidence that wages were expected to increase across the community. In its Post-Budget submission to the AFPC in 2009, the Commonwealth advised: “Growth in the Wage Price Index is forecast to moderate from 4¾% through the year to the June quarter 2009 to 3¼% through the year to the June quarters of both 2010 and 2011”. In

the face of that kind of evidence about wage increases across the workforce safety net workers got a wage freeze. This was a very unfair outcome for the lowest paid workers and their families; and consistent with the comment by the AFPC member that it didn't have to be fair. There was good reason for the low paid to support and welcome the *Fair Work* reforms.

The Fair Work Reforms

330. How well has the *Fair Work Act* operated and how should we evaluate the decisions of the Fair Work Commission (FWC), as the new tribunal is now known? The answer depends, in part, on the way in which the AFPC's wage freeze is to be treated. Catholic Social Services Australia's Media Release in response to the freeze 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 the ignored CPI increase of 2.4% for March 2008 to March 2009, to the CPI increase of 2.9% over the following 12 months.

331. While some might wish the FWC to be judged by published price movements *after* the last pay freeze decision of the AFPC, the important question for low paid workers is how they are treated over time. A wage freeze not only provides economic pain in the short term, but it has a continuing legacy because it is very hard to recover lost ground. The wage-setting system was in need of repair and the consequences of the freeze were on the FWC's agenda. After all, a major purpose of the *Fair Work Act* was to put right the problems caused by *Work Choices*. The FWC had to confront its legacy and its performance is to be evaluated by how it dealt with it. Table 5 summarises the changes under the reformed wage-setting system and compares recent wage increases with two sets of CPI increases.

Table 5

Increases in safety net wages and the CPI
Post-*Work Choices*
June 2010 – July 2013
($ per week, unless otherwise indicated)

	June 2010	July 2013	Increase
National Minimum Wage	543.78	622.20	14.4%
C10 classification	637.48	724.50	13.7%
C4 classification	771.40	870.30	12.8%
Consumer Price Index			
From March 2008	90.3	102.4	13.4%
From March 2009	92.5	102.4	10.7%

332. Table 5 shows that the FWC has been confronted with CPI increases of 13.4% for the period March 2008 (the most recently published CPI prior to the last wage increase by the AFPC) to March 2013 (the most recent before the FWC's 2013 decision). The figures from March 2009 present a different picture and illustrate the importance of the starting date. In our view, the relevant CPI figure is that from March 2008.

333. An important aspect of this period is that there was a one-off spike in price because of the impact of the introduction of carbon pricing. The Commonwealth estimated that the impact would add 0.7% to the CPI and provided budgetary compensation across a wide range of households. ACCER, along with others, supported the discounting of price-based increases commensurate with that compensation. We need to keep in mind those arrangements when in reading these figures and evaluating the FWC's decisions by reference to the CPI.

334. Table 5 shows that the decisions in 2010 to 2013 can be said to have overcome the real wage effects of the AFPC's wage freeze in 2009 for many lower paid workers, but not all. Because of the flat money amount awarded in 2010 the benefits across the classifications have slightly favoured the lower paid relative to the higher paid.

335. The percentage increases awarded in the last three wage decisions have departed from the broad practice since 1997. The characteristic of the longer period has been to maintain the real wages of the low paid at the expense of the real wages of higher paid safety net workers. In distributing compensation for price increases many modestly paid workers have been left with real wage cuts. As Table 2 shows that the C4 classification increased by only 45.7% from July 1997 to July 2013, during which time the CPI increased by 52.6%. This is a real wage cut of $41.00 per week.

336. Part of the reason for this development has been the type of claims made by the ACTU. For most of the period the ACTU wage claims have been for money amounts based on a desire to deliver relatively more of the growing economic cake to low paid workers. Because the amounts awarded have usually been substantially less than the claims, higher paid workers have suffered losses that were not intended by the ACTU. In recent claims the ACTU has sought a combination of percentage and money amounts: percentages for classifications above the C10 rate and a money amount equal to the value of that percentage at the C10 level for C10 and lower paid classifications. ACCER has supported this approach; but has also argued for a further $10.00 per week increase in the NMW.

337. These increases in safety net wages need to be seen in the context of community wage movements over the same period. We will do this Chapter 5, but we might note at this stage a pertinent comparison. The NMW increase from the amount fixed in the July 2008 decision ($543.78) to the amount fixed in June 2013 (622.20) was 14.4%. All other safety net rates increased by a smaller percentage. From March 2008 to March 2013 the CPI increased by 13.4%. Over the period May 2008 to May 2013 (which is the most relevant recorded period) Average Weekly Ordinary Time Earnings increased from $1,132.20 to $1,420.00, a 25.4% increase. This increase across the Global Financial Crisis delivered a community-wide real increase far in advance of safety net workers whose real wages had barely moved over these five years.

B. WINNERS, LOSERS AND THE AVERAGE OUTCOME

338. What has been the net effect of the re-allocation of compensation for price increases? Have safety net workers, as a whole, had real wage increases or decreases?

339. There are several matters that might be considered: first, the spread of classifications across the income range; second, the distribution of safety net-dependent workers across those classifications; and, third, the calculation of a mean weighted average. There is also a broader question about the impact that these decisions may have on the bargaining sector; ie on the extent to which minimum wage decisions and safety net rates influence collective and individual wage agreements across the broader workforce.

340. These questions have not been the subject of close analysis over the years. The purpose of this section is more limited: to find a wage level that is a better illustrator of the impact of changes than the NMW and to provide some broad estimate of the overall impact of the real wage increases and decreases of the last 13 years.

ACCI's Effective Minimum Wage

341. Questions about the number of NMW-dependent workers have 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 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.

342. 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*" (ACCI submission March 2005, page 5-46, emphasis added).

Award classification rates

343. Table 6 sets out a cross section of entry level rates of pay in January 2014.

Table 6

Lowest classification rates in various awards, January 2014
($ per week)

Award	Introductory Rate	Lowest Classification Rate
Miscellaneous	$622.20	$664.80
Clerks Private Sector		$661.80
Car Parking		$655.40
General Retail Industry		$683.40
Cleaning Services Industry		$664.60
Hair and Beauty Industry		$683.40
Restaurant Industry	$622.20	$640.20
Hospitality Industry (General) Award	$622.20	$640.20
Fast Food Industry Award		$683.40
Aged Care		$661.60
Higher Education Industry-General Staff Award		$666.30
Waste Management		$658.90
Local Government Industry		$665.20
Manufacturing and Associated Industries and Occupations	$622.20	$640.20
Storage Services and Wholesale	$664.80	$673.10
Rail Industry- Operations		$622.20

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 in this table apply to the first three months of employment.

344. The figures in Table 6 bear out to some extent ACCI's point in 2005 and are relevant to both the need for a further increase in the NMW and the potential economic cost of such an increase. The table prompts a question about the level of the NMW when the minimum wages in some awards are significantly higher and a broader question about the consistency of award relativities.

345. Table 6 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 $683.40 per week (the minimum wage for a shop assistant) has been increased by $226.70 per week, or 49.6%, since January 2001. A wage at the cleaner’s base rate, now $664.60 per week, has increased by $225.60, or 51.4%, over that time. These increases for two significant groups of low paid workers are substantially less than the 55.4% 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.

The distribution of safety net workers across wage classifications

346. The inappropriateness of the NMW as a guide to the evaluations of the impact of wage-setting decisions on low paid workers is also found in the data on the spread of safety net-dependent workers across work classifications.

347. Data about the distribution of workers across the range of work classification is needed to enable a view to be formed about the numbers of workers who had real wage cuts or real wage increases and the overall cost or benefit of those changes. It will also provide a better guide than the NMW for measuring changes over time.

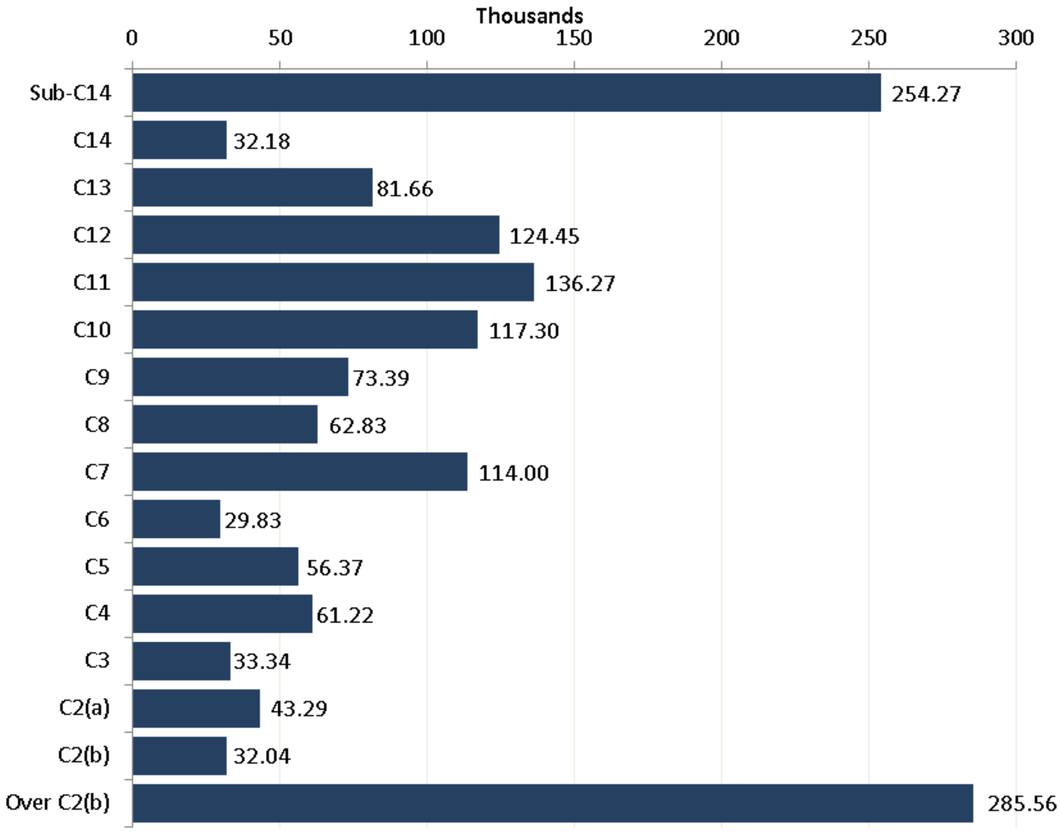
348. Information on these matters can be drawn from material considered by the FWC in its 2013 decision. The ACTU had produced some previously unpublished data from the survey material gathered by the ABS for *Employee Earnings and Hours, Australia, May* 2012, Catalogue no. 6306.0. The publication estimated that there were 1,538,100 award-only non-managerial employees in Australia in May 2012. This number was 16.6% of the 9,292,000 employees, after excluding owner-managers of incorporated enterprises. It is important to be clear about the definition of "award-only". Employees were classified as "award only" by the ABS if they were paid at the rate specified in the award, and no more than that rate. An employee on a few dollars more than the

minimum rate would not be covered by this definition, as would employees on a rate in excess of the minimum rate which is varied by reference to award increases. This material was accepted by the FWC, which noted that its decision on minimum wages "...directly affects over 1.5 million employees in Australia who are award reliant". The terms "award-only" and "award reliant" are interchangeable.

349. The distribution of award-only workers is shown in Figure 1, which is copied from Chart 6.1 of the FWC decision (at paragraph [370]).

Figure 1

Non-managerial award-only workers by classification level, imputed using hourly earnings



The FWC's footnote to this chart reads:
"ACTU calculations based on ABS 6306 (unpublished). Classifications imputed based on average hourly ordinary time cash earnings. Casual employees' earnings have been deflated by a fifth to remove an assumed 25 per cent casual loading. Each classification level includes employees employed at the relevant minimum wage and those earning up to and including one cent below the minimum for the classification above."

350. The previously unpublished ABS data enabled award-only workers across all awards to be classified according to the wage rates prescribed for the various work classifications in the *Manufacturing and Associated Industries and Occupations Award 2010* (the

manufacturing award). Employees were assigned to, for example, the “C14” category if they had earnings between $15.51 and $15.96 (one cent below C13). (Since the May 2012 survey award rates have increased by 2.9% and a further 2.6 %.)

351. A striking feature of Figure 1 is the very high number of workers apparently paid below the lowest minimum wage. The explanation is that they are junior employees paid on junior award rates, but the underpayment of workers may explain a small part of that figure. Junior rates in the manufacturing award are fixed at various percentages of the C13 rate: over the ages of 16 to 20 the percentages are 47.3, 57.8, 68.3, 82.5 and 97.7, respectively. These figures are relevant to some of our following calculations.

352. Another striking feature of the chart is the high number of income earners on minimum award rates that are in excess of the top rate in the manufacturing ward. The ACTU submission explained that "... workers were assigned to the C2(b) classification if they had hourly earnings between $24.42 and $25.42 per hour. Those over C2(b) therefore had earnings higher than $25.42 per hour." This equated to a minimum of $966.30 per week. The FWC commented:

> "[372] The ACTU analysis of award reliance by occupation shows that there were 163 800 managers and professionals employed at award rates in 2012 (10.6 per cent of all award-reliant employees) and of these, 40 per cent were health professionals. These health professionals are likely to account for a significant portion of those employed on award rates above the C2(b) rate.
> [373] Although caution is required in drawing conclusions as to the precise extent of award reliance at higher classification levels, the ACTU’s analysis suggests a significant incidence of award reliance higher up the classification scale. Given the context of this Review, in which we are reviewing modern award minimum rates of pay, it is appropriate that we take into account the relative living standards of all award-reliant employees." (Footnotes omitted.)

353. An income of $966.30 was not high by community standards, given that at the same time Average Weekly Ordinary Time Earnings were $1,353.30 per week; see *Average Weekly Earnings, Australia, November 2013* Catalogue no. 6302.0, Table 1. With minimum wage increases of 2.9% and 2.6% since May 2012, this group would now be on an award rate of not less than $1,020.20.

354. The material in the ACTU submission and the FWC decision does not disclose how many hours are worked each week by the workers in each of these categories. The ABS's published material shows the total figure being split into 603,000 full time employees (or 39.1%) and 941,100 part time employees and the total also being split into 825,400 permanent and fixed term employees and 718,700 casuals. Because, for example, a casual may be employed full time, we are unable to generate further

categories of work patterns, but it is clear that the great majority of full time employees are not casuals.

355. Figure 1 shows that the median for both groups is between the C8 and C9 rates. As we saw earlier in this chapter, a wage classification that now pays $785.00 or more per week has had a real wage cut since 2001. This figure (adjusting for rate changes in the past two years) is within the C8 range in Chart 1, ie between C7 and C8. The C7 classification (now $790.50 per week) and higher classifications have had real wage cuts since 2001.

Bringing the data together

356. Table 7 is based on the figures accepted by the FWC in 2013 and calculates the weekly real gains and losses by award-only employees over the period January 2001 to January 2014.

Table 7

Estimated Impact on Real Wages of Safety Net Workers

(Based on full time employment)

($ per week unless otherwise stated)

Wage group	January 2001	January 2001 x CPI	January 2014	Difference	Number of employees	Total
Sub-C14	360.40	516.20	560.00	43.80	254,270	11,137,026
Level C14	400.40	573.60	622.20	48.90	32,180	1,573,602
Level C13	417.10	598.10	640.20	42.10	81,660	3,437,886
Level C12	439.60	630.40	664.80	34.40	124,450	4,281,080
Level C11	460.50	660.40	687.60	27.20	136,270	3,706,544
Level C10	492.20	705.80	724.50	18.70	117,300	2,193,510
Level C9	513.10	735.80	747.20	11.40	73,390	836,646
Level C8	533.90	765.60	769.90	4.30	62,830	270,169
Level C7	552.80	792.70	790.50	-2.20	114,000	-250,800
Level C6	592.50	849.60	830.60	-19.00	29,830	-566,780
Level C5	613.40	879.60	847.60	-32.00	56,370	-1,803,840
Level C4	634.20	909.40	870.30	-39.10	61,220	-2,393,702
Level C3	675.90	969.20	915.80	-53.40	33,340	-1,780,356
Level C2(a)	696.80	999.20	938.60	-60.60	43,290	-,2623,374
Level C2(b)	736.50	1056.10	979.70	-76.40	32,040	-2,447,856
Over C2(b)	773.50	1020.20	1,109.00	-89.00	285,560	-25,414,840

The 2001 wage rates are taken from the *Metal, Engineering and Associated Industries Award 1998* and the 2014 rates are taken from the *Manufacturing and Associated Industries and Occupations Award 2010*. The "above C2(b)" figures are derived from the weekly sum of $966.30 at the time of the May 2012 survey (see above). The 2001 is calculated by deducting the 3.4% increase in award rates in 2011and deducting a further $161 for increases over the period January 2001 to January 2011 (see the "$700.00" column in Table 1). The 2014 figure is calculated by increasing $966.30 by the percentage increases granted in 2012 and 2013 (2.9% and 2.6%).

357. In the absence of data about the varying hours of work across the classifications Table 7 assumes that all award-only employees are full time, rather than being 39.1% of the total, as shown in the ABS survey. It also assumes that the workers on wage rates less than the C14 rate are on junior wage rates equal to 90% of the C14 rate, that all of the highest paid group are on the lowest wage point of $966.30 per week and that employees who have been translated into the wage ranges between the various steps in the manufacturing award classification structure are paid at the lowest end of the each range, ie precisely the minimum in the manufacturing award. These assumptions will have the effect of understating the negative real wage impact on safety net workers.

358. Table 7 applies the CPI increase of 43.4% to the January 2001 wage rates in order to calculate the wage level required for the maintenance of real wages and compares those figures with the actual January 2014 rates. It then uses the data in Chart 1 to calculate the impact on all award only employees, calculating the weekly margin above or below real wages for each wage level. It shows that the real wage increases are $27,436,463 per week and the real wage decreases are $37,281,548 per week. This is a combined real wage loss of $9,845,085 per week for the estimated 1,544,100 award-only employees. Averaged out, it is a real wage cut of $6.38 per week, based on full time employment.

359. We know that this underestimates the reduction in the position of award-only workers because the beneficiaries of the real wage increases are more likely to work fewer hours, as part time employees or as casuals, than the recipients of real wage cuts, who are more likely to work full time. To provide an indication of the real impact we might assume that the workers with real wage increases worked an average of 20 hours per week and the workers with real wage cuts worked an average of 30 hours per week. This would reduce the total real increases to $14,440,243 per week and reduce the total real cuts to $29,432,801 per week, producing a weekly net loss of $14,992,558, or an average real wage cut of $9.71 per week.

360. The ABS survey in May 2012 is part of an ongoing series. In research by the Minimum Wages and Research Branch of Fair Work Australia based on unpublished data in an earlier ABS survey, *Employee Earnings and Hours, Australia, May 2006*, it was calculated that the median wage for permanent workers was between the C6 and C7 rates and the median for casual workers was between C10 and C11; see *Earnings of employees who are reliant on minimum rates of pay*, Tom Bolton and Troy Wheatley, February 2010. This has the median at a lower level than the ABS's 2012 survey

found. This suggests that significant changes may have occurred in the dispersion of workers over this six year period.

361. The ABS's data on the dispersion of award only workers appears to be inconsistent with some findings in a very recent FWC-commissioned research project on award reliance. In the *Award reliance, Research Report 6/2013,* by Sally Wright and John Buchanan of the Workplace Relations Centre, University of Sydney, it is estimated that 75% of award-reliant employees are paid at the C10 rate or less. By contrast, the most recent ABS-based material has 48.5% at or below the C10 level. In regard to higher paid classifications, where the ABS found 18.4% of award only employees are employed, the research report found that the proportion was 2.0%.

362. The report addresses some of the differences between the two surveys and stress that "...it is not possible to directly compare the estimates of award-reliance in the Award reliance project with those estimates published in the ABS EEH Survey" (page viii). Three of the reasons given by the authors (at pages vii to viii) are presently relevant. First, the "exclusion of public sector organisations from the sample in the Award Reliance Survey means that care should be undertaken in making comparisons with the estimates published in the ABS EEH 2012 Survey". We might note that, while award reliance is relatively low in the public sector, estimated at 7% in the ABS survey, it is likely that those employees will be concentrated in the higher paid classifications. Second, "while the ABS EEH Survey makes reference to the industrial arrangement by which the 'main part' of an employee's pay was set, the Award Reliance Survey referred, more broadly, to how an employee's pay was set". Third, "organisations for the Award reliance project were asked to report on pay-setting arrangements for all of their employees whereas the ABS EEH Survey asks organisations to draw a random sample of employees from their payroll."

363. For these reasons, the ABS's estimate of the distribution of award employees is an appropriate one for the analysis in the previous paragraphs. The purpose of that analysis was not to quantify the real wage loss, but to demonstrate that, on average, the real wages of safety net workers have been cut. The best data on the matter establishes that contention.

Conclusion

364. The overall impact of wage-setting decisions on safety net workers and their families will depend on the spread of wage classifications, the distribution of safety net-dependent workers across those classifications and the number of hours worked by

workers within each income level. Although past research has not been specifically directed at the broad question of the overall impact of wage-setting decisions, the ABS data to which we have referred provides a firm basis for concluding that, overall, safety net-dependent workers have had significant real wage cuts over the 2001 to 2014 period. Furthermore, as we will detail later, this has occurred in a period of economic growth and increasing average national income which have meant that even those safety net workers who have had real wage increases have fallen behind rising community standards.

365. The wage-setting decisions until 2010 show a clear intention by successive wage-setting tribunals to re-allocate compensation for price increases. Workers in higher paid classifications have had their real wages reduced in order to support increases in real wages for the lower paid. Workers on minimum rates of $785.00 per week or more have had a real wage cut. The consequent compression of once carefully formulated award wage relativities is a matter of concern in itself, but the compression raises more fundamental issues about justice, equity and fairness. Perhaps the last three decisions granting uniform percentage increases mark a new direction, but this kind of change will not, of itself, address the particular circumstances of the low paid and, especially, the most lowly paid workers who are living below or near the poverty line. Uniform percentage increases will not target poverty among the lowest paid workers and their families.

366. In determining the impact of these decisions we need to take into account the impact that they have on the setting of wages through informal over-award payments, individual agreements and collective agreements. In many areas minimum rates are displaced by market forces as the major or sole determinant of over-award payments of one kind or another. In the above-mentioned *Award reliance, Research Report 6/2013*, it was found that in addition to the 19% of employees who were award-reliant another 21% of employees in non-public sector organisations had their pay based on awards "in some way" (page ix).

367. Assessments of the impact of wage decisions on safety net dependent workers and low paid workers in particular have focussed on the NMW. The varying outcomes across the range of safety net rates would be hidden by the use of a single wage rate. If one were to be used, the C10 rate is a much better indicator of the impact of wage decisions than is the NMW. A clearer picture is provided by the three rates in Tables 2 to 5, ie the NMW, C10 and C4 rates.

368. 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. Those who want to put the wages system in its best light are likely to point to changes in the NMW over the past decade or more. Those wishing to emphasise the difficulties of low income families will start with the current position of NMW-dependent workers and their families. Perversely, the concentration on the NMW might prejudice the prospects of improvement in the NMW: some might ask, in effect, "What is all the fuss about if very few are employed on the NMW"?

369. It is important that those advocating for low paid workers do not limit their advocacy to the NMW and its impact on workers and families or be seen to be simply focussed on this group. The concentration has to be on the much larger group of working families living in poverty and on wage rates up to, at least, the cleaner's base rate of $664.60 per week so that the central question does not turn on the NMW and divert attention from the broader concern. The debate is not whether poverty exists among wage-earners (because it does), but how poverty in the workforce is to be addressed over time. The "bottom up" strategy of incremental increases in the NMW, as proposed by ACCER, is the best strategy to address that broader issue.

CHAPTER 4

SAFETY NET WORKERS HAVE NOT RECEIVED PRODUCTIVITY INCREASES

A. PRODUCTIVITY AND REAL WAGE GROWTH

370. Productivity and how to improve it are at the centre of economic debate in Australia. Productivity growth, which is, simply put, increasing the quantity of output relative to the quantity of inputs, is vital for the continuing strength of the economy and the maintenance and improvement of living standards. Productivity growth enables increases in real wages.

371. The evaluation of the outcomes for workers who are dependent on the National Minimum Wage (NMW) and other low paid safety net workers cannot be judged only by reference to Consumer Price Index (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 as a matter of fairness and because productivity is one of the matters that have to be taken into account when the Fair Work Commission (FWC) sets wage rates.

372. The "minimum wage objective" of *Fair Work Act* requires the FWC to take into account, "the performance and competitiveness of the national economy, including productivity..." (section 284(1)(a)). This is particularly relevant when the FWC sets the NMW each year. When the FWC is setting wage rates in awards additional factors under section 134(1)(f) have to be taken into account, including "the need to encourage collective bargaining and...the likely impact...on business, including on productivity...".

373. All workers are entitled to expect that their real wages and living standards will increase as a result of national productivity increases. 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 any productivity dividend. Even in those cases where real safety net wages have been increased, the increases have not been a fair reflection of productivity improvements.

374. Since 2001, and earlier, we have seen substantial increases in wages across the Australian workforce without undue inflationary pressures partly because the economy has generated substantial productivity increases. Higher terms of trade have also contributed to higher wages. The country's future economic prosperity depends on

productivity improvements, especially because the terms of trade can change substantially even over the short term.

375. The substantial increases in productivity since 2000 are shown in Table 8 by way of movements in the ABS index of Gross Domestic product (GDP) per hour worked at December in each of those years. This represents an increase of 20.1% over the 13 year period December 2000 to December 2013, averaging 1.55% per year.

Table 8

Labour productivity
2000 - 2013
(Index of GDP per hour worked)

2000	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**
86.4	90.4	91.0	92.8	93.9	94.6	94.9	95.9	95.9	98.6	97.7	99.6	102.1	103.8

Source: *Australian National Accounts: National Income, Expenditure and Product, Dec 2013,* Catalogue No. 5206.0, Table 1 (trend estimates). The figures are at December in each year.

376. The measurement of productivity improvements is not easy and, in one respect, may not be necessary when setting wages. The AIRC was required to take into account current "living standards generally prevailing in the Australian community" and the FWC must take into account "relative living standards". Current and improving living standards are partly the result of changing productivity levels, which means that productivity improvements will be taken into account if community incomes are used a yardstick for wage increases. As the FWC observed in its 2013 decision:

> "To the extent that productivity growth is reflected in average real wages growth, it will be a relevant consideration for minimum wage fixation because of the requirement in both the modern awards and minimum wages objectives to take into account the relative living standards and needs of the low paid." (*Annual Wage Review 2012-13*, paragraph [144], footnote omitted)

377. Under *Work Choices* system of 2006 to 2009 (inclusive) there was no requirement on the Australian Fair Pay Commission (AFPC) to consider productivity. The *Work Choices* system marked a departure from the previous wage-setting scheme which required that the Australian Industrial Relations Commission (AIRC) have regard to, amongst others, “levels of productivity” when setting safety net wages and other award terms and conditions of employment.

378. In its four decisions the AFPC did not deal use productivity growth as a basis for its decisions on the level of safety net rates. There was no productivity dividend for safety

net workers. Not only did the AFPC reduce the real wages of *all* safety net-dependent workers, it also transferred their productivity gains to their employers. This meant that the substantial increases in average wages (which we discuss in the next chapter) and living standards across the community over the four years of the AFPC's operation were not reflected in the safety net wages set by it; and all safety net workers were substantially worse off relative to the rest of the community at the end of those four years.

B. PRODUCTIVITY, THE TERMS OF TRADE AND WAGES

379. Over the past 13 years Average Weekly Ordinary Time Earnings (AWOTE measure) have increased by 80.0% (see Table 10), while prices, as measured by the CPI have increased by only 43.4% (see Table 1). Inflation has been contained and CPI increases have generally been within the within the Reserve Bank's "zone of comfort". The margin of average wages over prices, 36.4%, shows a very large increase in real wages that is not explained by the substantial increase in labour productivity of 20.1%.

380. Why it is that prices have remained stable when the gap between prices and productivity (up 64.5%) and wages (up 80.0 %) is now 15.5%? The answer is to be found in the changing terms of trade, which have increased dramatically in Australia's favour and provided the capacity for workers to receive more than prices and productivity.

381. The FWC, like the AIRC until 2005, has been required to deal with a number of issues around the concept, calculation and distribution of productivity, which were considered in its June 2013 decision at paragraphs [138] to [175]. Much of that discussion relates to the following observation in 2013 in regard to the use of relevant statistical series and their divergence:

> "... the various productivity, factor share and unit labour cost series mostly have a settled relationship with each other and with other measures of economic prosperity and real wage growth. But the large rise (and volatility) in the terms of trade associated with the resources boom has disturbed many of these relationships, adding further complexity to issues concerning productivity. This requires us to examine more closely how and why the measures are diverging and what the preferred measures are in terms of setting minimum wages." (Paragraph [141])

382. The impact of changing terms of trade over the past 13 years can be seen in Table 9. The index figures are at December of each of the years from 2000 to 2013. The steady

improvement in the terms of trade over the first eight years has been followed by some volatility, but, more significantly, a substantial decline over the past two years.

Table 9

Terms of Trade
2000 - 2013
(Index)

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
52.1	53.0	53.8	57.1	62.3	69.8	75.3	77.6	90.3	78.1	99.1	103.4	90.2	87.8

Source: *Australian National Accounts: National Income, Expenditure and Product, Dec 2013*, Catalogue No. 5206.0, Table 1.

383. The terms of trade issue has not played a significant issue in wage-setting, despite it being present for some years. Table 9 suggests that the turning point in the Terms of Trade index was in 2003. The terms of trade were flat prior to 2000; for example in December 1996 the Terms of Trade index was 52.8, slightly higher than the December 2000 figure of 52.1.

384. An associated issue in regard to the distribution of productivity is the size, and changes in, the labour share of national income. The Australian Council of Trade Unions (ACTU) presented detailed research to the FWC in 2013 on longer term trends in the distribution of income to capital and to labour. The ACTU showed that since 2000 labour's share of real hourly labour income has not kept pace with labour productivity. It argued that in recent years, the share of national income going to labour has been at its lowest on record and that the failure "to award real minimum wage increases that account for productivity growth will mean that, all other things equal, average labour income will rise more slowly than it otherwise would have, thus putting downward pressure on the labour share and further redistributing national income towards the owners of capital" (ACTU submission, March 2013, paragraph 170). It claimed that wages and productivity had "decoupled".

385. The very substantial divergence of wages and productivity among safety net workers cannot be denied. The declining labour share of income must be partly caused by the treatment of safety net workers, whose productivity increases have been transferred to their employers. Furthermore, this loss will be reflected in other workplaces where award rates of pay are used as a guide for agreement-making.

386. While there is an obvious link between the failure of the successive Australian tribunals to distribute productivity increases and changes in the balance of returns to labour and capital, there appears to be a broader and overarching change taking place in the national economy and other similar economies, resulting in increased inequality and social segmentation in previously reasonably cohesive economies. It has been the subject of considerable debate which has identified various causes, including attitudinal changes within society and political processes, globalisation, institutional changes and capital intensification.

387. The FWC addressed some of these issues in 2013 by first drawing a distinction between GDP growth and the impact of the changes in the terms of trade: between changes in the GDP and changes in Real Net National Disposable Income (RNNDI). The two are measured by different kinds of indexes: one on the production side affecting employers and the other on the consumption side affecting workers. In regard to the former, GDP is measured by an index (the GDP deflator) which is specially designed to measure the prices paid and received by producers, including exporters. RNNDI looks at the latter.

> "RNNDI measures the purchasing power of the income generated by domestic production. It is the best measure of the incomes available to Australians arising from their productive efforts in the year in question. *It adjusts GDP to include the increased purchasing power arising from improvements in the terms of trade (or declines arising from falls in the terms of trade).* It also deducts depreciation of the capital stock and net income flowing overseas. In recent times, most of the divergence between GDP and RNNDI has arisen from changes in the terms of trade, although there has been some increase in amounts of depreciation." (*Annual Wage Review 2012-13*, paragraph [150], footnote omitted, emphasis added)

388. The impact of the changes in the terms of trade affects producers and consumers in different ways.

> "In understanding changes in productivity, labour's share of income and the costs of employing labour, we need to keep in mind that:
>
> - RNNDI has been moving differently than GDP for at least the past decade, as the terms of trade first rose then, in the last 18 months, fell; and
>
> - the prices facing producers (on which measures of GDP, labour productivity and real unit labour costs are based) have been moving differently than the prices facing consumers (on which real wage measures are based). In particular, producers of mineral resources have seen large rises in the prices that they receive while consumers (and producers) have seen falls, or low rates of increase, in the prices they pay for imported goods. *In summary, until mid 2011, real incomes in Australia have been*

rising faster than real output, and producer prices have risen faster than consumer prices. Both of these differences arose from the rise in the price of exports compared with imports—the terms of trade." (Paragraph [160], emphasis added)

389. The FWC was demonstrated this by a chart (Chart 4.7) which compared RNNDI per capita and GDP per capita from December 2002 to December 2009. It showed that RNNDI had increased by 9.4 percentage points more than GDP per capita over that period, with the margin having decreased in the previous 12 months. Consistent with the data in Table 9, above, the declining terms of trade has reduced the margin even more. In the twelve months to December 2013 there was a fall of 0.5% in RNNDI per capita compared to a rise of 0.9% in GDP per capita, with the changing margin reflecting a 2.6% fall in the Terms of Trade index; see *Australian National Accounts: National Income, Expenditure and Product, Dec 2013*, Catalogue No. 5206.0, Table 1. It is uncertain how long and deep this trend will be, and whether it will be reversed. The trend may be starting to have an effect on average weekly ordinary time wages (using the AWOTE measure), which have increased by 4.5% and then 3.2% over the last two years (see Table 10).

C. THE TERMS OF TRADE AND WAGE-SETTING

390. The FWC made some concluding comments on wages, productivity and the terms of trade, which, for convenience, we have reproduced with the insertion of dot points to highlight the five points made:

- "We appreciate that a gap exists between increases in modern award wages and productivity growth over the past decade which is a relevant consideration in fixing minimum wage rates.
- However, we are not confident that the forces behind that phenomenon, or the effect on factor shares in the event of a reversal of the divergence between consumer and producer prices in the future, have been adequately explored nor have the implications for minimum wage fixation been clearly identified.
- However, we have considered recent movements in productivity and the relative living standards of the low-paid in adjusting minimum wages in the current review.
- We do not propose, on the information currently before us, to draw conclusions about that gap for the purpose of our current determination.
- In the 2013–14 annual wage review, we will invite further submissions on the implications of the fall in the labour share of national income over the last decade for minimum wage fixation within the statutory parameters applying to the review. " (Paragraph [167])

391. There can be no doubt about the first point. Measured in terms of GDP per hour worked, the increase in productivity in the 13 years from December 2000 was 20.1%. On our analysis based on the ABS survey of award only workers (at Table 7), over the period from January 2001 to January 2014, there was no distribution of productivity gains to safety net workers because, on average, wage increases had not matched price increases. The re-allocation of the compensation for price rises across the classifications left some with a notional, but small, benefit from productivity gains, but others with real wage cuts. For example, the increase at the base trades, C10 level, was 47.2% while the CPI increase over the same period was 43.4% (see Table 1), leaving the worker with a real wage increase along way short of the 20.1% increase in labour productivity. As we also showed in Chapter 3, classifications that are now paid $785.00 per week or more have had a real wage cut and, therefore, no productivity benefit. Furthermore, this kind of outcome is likely to be found in those enterprises where above award wages in formal and informal agreements are closely linked to movements in safety net wages.

392. It follows from this that safety net workers have received no benefit from the improvement in the terms of trade over the past decade. Had community earnings been taken into account and safety net wages risen in response to those changes it would have been different. We will explore the issue of community-wide incomes and measures of wealth in Chapter 5 and show that there have been strong indicators of rising community incomes and wealth that have not been taken seriously in the setting of safety net wage rates, even though in recent years there has been an obligation on the FWC to take into account relative living standards.

393. As a matter of principle, and the application of the terms of *Fair Work Act* in requiring account to be taken of relative living standards, terms of trade-induced increases should be taken into account as factors in setting wages; not directly through the application of the Terms of Trade index, but through the manifestation of those changes in average weekly earnings. Much to their disadvantage, safety net workers have not received any benefit through their wages of the major changes in the terms of trade over the past decade. Safety net wages do not need to be in lockstep with average income measures, but they should follow a similar path and have a reasonable connection with them.

394. The continuing capacity to distribute a terms of trade dividend depends on the terms of trade. In a very dire situation declining terms of trade may rob the economy of its capacity to deliver wage increases based on prices and productivity. Unless safety net

workers have had the opportunity of sharing in the benefits of rising national incomes through a rising terms of trade index, why should they be burdened by falls in the terms of trade?

D. THE LOSS OF PRODUCTIVITY BENEFITS THROUGH WAGE-DECISIONS

395. Safety net workers have lost more than just their share of the nation's terms of trade dividend. They have not received any net benefit from the large increases in labour productivity over the same period. Even when productivity has been taken into account its distribution has been parsimonious, and has left them in deficit.

396. In the above-quoted paragraph [167] of the June 2013 decision, the FWC accepted that there is a gap between increases in modern award wages and productivity growth (first point), but has desisted from drawing conclusions about that gap (fourth point). However, it did consider "recent" productivity increases in making its decision. The decision to award a 2.6% increase was made in the context of an annual CPI increase of 2.5%, including an estimated 0.7% increase on account of the introduction of carbon pricing (and for which Commonwealth tax cuts and transfers compensated). On the basis of uncompensated price increases of 1.8%, the FWC awarded, in effect, an increase of 0.8% on account of recent movements in productivity and/or relative living standards. This was a very small recognition of productivity improvements, especially in the light of the following summary of them:

> "On all measures, labour productivity increased over the year to the December quarter 2012. Labour productivity, as measured by GDP per hour worked in trend terms, was 2.9 per cent higher; gross value added in the market sector per hour worked increased by 2.4 per cent; and GDP per capita increased by 1.2 per cent." (*Annual Wage Review 2012-13*, paragraph [17], footnote omitted)

397. The reason for the discounting of productivity growth is evident in the following conclusion:

> "Our productivity performance as a nation underpins our standard of living. In this context labour productivity is relevant. As we have noted, there has recently been an increase in labour productivity. Short-term variations in productivity should be interpreted with some caution and whether the recent increase is sustainable remains to be seen. It is for that reason that we have not given greater weight to recent productivity outcomes in deciding to only award a modest increase in minimum wages in this Review. If sustained, the recent improvement in labour productivity could provide the capacity to address the declining relative position of the low paid and for them to share in increasing community living standards." (Paragraph [61])

398. The last sentence was repeated in paragraphs [323] and [428]. This paragraph raises a concern and some uncertainty. First, the concern. The discounting of productivity-based wage increases because of some doubt about accuracy or sustainability will inevitably work against the fair distribution of productivity and the interests of safety net workers, unless there is a means of reviewing past assessments or the use of some averaging process. The need for a change is demonstrated in the last AIRC wage review in 2005. The tribunal 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])

399. This was an erroneous assessment because subsequently released data showed that there had been an improvement in labour productivity: over the period December 2003 to December 2004 GDP grew 1.2% (see Table 8). The problem of short term variations and initial misreporting of changes can be addressed through the adoption of a moving average.

400. The AIRC did distribute some of the productivity growth over the period from when the FMW was first set in 1997 to its last wage decision in 2005. It was a period in which the AIRC was required to have regard to productivity, amongst others matters when setting safety net wages. We have already seen how safety net wages have changed over this time. Table 3 shows that there were real wage increases for lower paid workers, although the C4 classification, for example, had a real wage cut. Over this period there were considerable productivity increases: from March 1997 to March 2005 GDP per hour worked increased by 17.4% (*Australian National Accounts: National Income, Expenditure and Product, Dec 2013,* Catalogue No. 5206.0, Table 1). Clearly, a large part of the productivity increases were not distributed to safety net workers.

401. The uncertainty raised by the last sentence in paragraph [61] and its repetition in paragraphs [323] and [428] is whether the FWC has accepted that there is a pool of

undistributed productivity that it will be prepared to distribute over subsequent years. What does it foreshadow by the following passage? "*If sustained*, the recent improvement in labour productivity *could* provide the capacity to address the declining relative position of the low paid and for them to share in increasing community living standards" (emphasis added). Will safety net workers have to rely on future increases in productivity to establish a reasonable relationship with wage rates of the rest of the community? By what process will it occur? The passage is conditional and unclear and appears to leave safety net workers without any significant change in their position.

402. Nor is it clear how the FWC will treat past and future increases in measured labour productivity. The FWC's decision (at paragraph [385]) refers to the ACTU's claim that from the June quarter 2005 to the December quarter 2012 that labour productivity rose by 9.9% while the purchasing power of all minimum wages fell. It was followed by:

> "No party disputed the above data but several questioned the inferences to be drawn from it. Ai Group, for example, reiterated its view that capital deepening was a substantial cause of the rise in labour productivity and there should be no assumption that wages rise commensurately." (Paragraph [386])

403. The claim referred to by the FWC is that not all of the increases in measured labour productivity are attributable to increases in the productivity of workers. This sets the scene for a further debate in 2014 about the causes and measurement of productivity increases. However, if full and proper effect is to be given to the statutory obligation to take into account relative living standards the productivity issues are subsumed by another broader consideration.

404. The denial of safety net-dependent workers access to their share of productivity gains is unjust and inconsistent with the statutory 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 able to take advantage of productivity gains while workers with no bargaining power have been denied the benefits of increases in their own productivity.

CHAPTER 5

SAFETY NET WAGES HAVE FALLEN BEHIND GENERAL WAGE LEVELS AND OTHER KEY INDICATORS

A. BROAD INDICATORS OF INCREASING COMMUNITY INCOMES

405. Any proper assessment of the wage increases for low paid work classifications has to be evaluated in the light of what has happened in the rest of the community. The needs of the low paid have to be identified in a social context. Fair wages have to be set with regard to relative living standards across the community. We now turn to a comparison between safety net wages and various measures of wages and incomes.

406. Table 10 compares the changes in the National Minimum Wage (NMW) and the base trade-qualified C10 wage rate with broader measures of changes in national wages and incomes since 2001. These broader measures may also be compared with the other safety net rates set out in Table 1.

Table 10
Safety net rates compared to other wages and incomes
2001-2014
($ 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	Household Disposable Income per head	Cumulative increase in Household Disposable Income	Cumulative Increases in Wage Price Index	Median earnings
2001			798.80		418.33			694.00
2002	3.3%	3.0%	843.10	5.5%	458.77	9.7%	3.4%	712.00
2003	7.7%	6.7%	882.20	10.4%	456.90	9.2%	6.9%	750.00
2004	11.9%	10.2%	929.60	16.4%	482.92	15.4%	10.8%	769.00
2005	16.7%	14.0%	964.90	20.8%	519.56	24.2%	14.9%	800.00
2006	20.9%	17.5%	1014.50	27.0%	541.30	29.4%	19.6%	843.00
2007	27.8%	23.0%	1045.40	30.9%	581.28	39.0%	24.5%	900.00
2008	30.4%	25.1%	1100.70	37.8%	632.19	51.1%	29.5%	940.00
2009	35.8%	29.5%	1158.50	45.0%	695.85	63.3%	35.0%	1000.00
2010	35.8%	29.5%	1225.20	53.4%	696.43	66.5%	39.0%	1000.00
2011	42.3%	34.8%	1274.10	59.5%	732.43	75.1%	44.3%	1050.00
2012	47.2%	39.4%	1333.40	66.9%	765.67	83.0%	49.6%	1100.00
2013	51.4%	43.3%	1392.70	74.4%	785.17	87.7%	54.7%	1150.00
2014	55.4%	47.2%	1437.70	80.0%	801.89	91.7%	58.6%	-

Save as noted below, the figures are at January of each year. AWOTE figures are trend estimates of full-time adult ordinary time earnings, public and private sectors, at November of the preceding years; see *Average Weekly Earnings, Australia, November 2013*, Catalogue no. 6302.0 and earlier publications in this

series. Wage Price Index figures are from *Wage Price Index, December 2013*, Catalogue no. 6345.0. Household Disposable Income figures are taken from the Melbourne Institute's *Poverty Lines: Australia September Quarter 2013* and are in respect of December of the preceding year, save for 2014, where the figure for September 2013 is used for January 2014. Median earnings (of full time employees in main job) are taken from various issues of *Employee Earnings, Benefits and Trade Union Membership,* Catalogue no. 6310.0 and the FWC Statistical Report of 21 March 2014, Table 8.1, page 26.

407. Table 10 includes data on the cumulative changes in the two wage rates and other measures. The cumulative changes show, for example, that safety net wages lost substantial relative value during the *Work Choices* years, which are represented by the January 2006 to January 2010 figures.

408. The comparison between safety net rates and Average Weekly Ordinary Time Earnings (AWOTE), published by the Australian Bureau of Statistics (ABS), is of particular importance. As a measure of ordinary time earnings, the AWOTE figures exclude cyclical factors such as the amount of overtime worked and are an appropriate comparator over time for the safety net rates.

409. The figures show that safety net wage rates have fallen substantially against AWOTE, which increased by 80.0% over the past 13 years. The NMW increase of 55.4% compares unfavourably with the increase in AWOTE. The NMW fell from 50.1% to 43.3% of AWOTE over the 13 years to January 2014. At the other end of our calculations in Table 1, a safety net rate starting at $700 per week in January 2001 increased by only 34.3% over the same period. In 2001 it was 87.6% of AWOTE and in January 2014 it was 65.4%. If the NMW had increased at the same rate as AWOTE, the NMW would now be $720.70 per week, $98.50 more than it is. Had the $700.00 per week safety net rate maintained its 2001 relativity to AWOTE it would have risen to $1,260.00 per week, an extra $320.00. These are startling comparisons.

410. We do not argue for a strict arithmetical nexus between safety net rates and AWOTE, because the ratio between them may go up or down depending on circumstances, but these figures show how much the NMW and other safety net workers have 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; and must do so if the social value of safety net wages is to be maintained.

411. It is important to note that AWOTE covers the population as a whole, including safety net workers, and that a comparison between the wages of safety net workers and the rest of the workforce would require the extraction of safety net workers from a measure like AWOTE. It 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 30.0% over the decade, while the overall community increase is 60.0%, the five-sixths who are able to bargain (formally or informally) for higher wages will have had an increase of about 66.0%.

412. Table 10 includes median earnings figures taken from successive issues of the ABS's *Employee Earnings, Benefits and Trade Union Membership* and records changes in the incomes of full time employees in their main job. Each of the figures is for August of the previous year recorded in the table. The August 2013 figures are not yet available. Median wages rose by 65.7% over the 12 years from May 2000 to May 2012. The utility of this data is limited by the degree of apparent rounding adopted in recent years.

Wage Price Index

413. The Wage price Index (WPI) increased by 58.6% over the 13 years to January 2014, rather less than AWOTE, but rather more than the 43.4% increase in the CPI. In contrast to AWOTE and similar measures which actually reflect levels of remuneration received by employees and changes in those levels, the WPI is 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 Price Index, December 2013,* Catalogue no. 6345.0, page 16. Because it is an indicator of changes over time, the WPI is not an indicator of current relative living standards, which the legislation requires to be taken into account when setting minimum wages.

414. Changes in the WPI have been used by the Fair Work Commission (FWC) as a comparator for wage rate adjustments. In 2012 the FWC referred to the WPI in the context of relative living standards, and in doing so raised some broader questions:

> "We are required to take into account the relative living standards and needs of the low paid. 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, the relative position of the lowest award rate has been maintained, but this is not so for higher award rates. 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." (*Annual Wage Review 2011–12, Decision,* paragraph [15])

415. We will come back to the issue of inequality later in this chapter because it raises matters of substantial importance.

416. The first point to make about this passage is that the divergence of the higher award rates from the WPI has been substantial. Table 10 shows the actual position of the WPI relative to the NMW and the C10 rate shortly before the 2012 decision where the quoted passage appears. In fact, the NMW had not kept pace with the WPI; another 2.4 percentage points was needed to keep up with the WPI.

417. The position of safety net workers relative to the WPI has deteriorated further. In January 2013 the gap at the NMW level was 3.3 percentage points and in January 2014 it was 3.2 percentage points. Given that the NMW was 3.2 percentage points behind the WPI at the start of 2013, we cannot agree with the following passage in paragraph [392] of the 2013 decision: "...the evidence is clear that even the lowest award rates have barely kept pace with growth in rates of pay for the job more generally (as measured by the WPI)". The lowest award rates had lost pace compared to the WPI, not barely kept pace.

418. Had the NMW followed the WPI there would have been a significant increase for low paid workers. Had the NMW increased by 54.7%, as the WPI did, in January 2013 it would have been $619.40 per week, not $606.40; a difference not much short of the $15.80 increase awarded in 2013. It is a substantial amount for the low paid. Of course, the NMW was the high point in any comparison with the WPI. By January 2013, the C10 rate had an increase of 43.3% compared to an increase of 54.7% in the WPI. Had the C10 followed the WPI it would have been $55.30 per week higher than it was in early 2013. As Table 1 has shown, the increases for higher paid classifications were much less relative to the WPI.

419. This raises the question of whether any classification should get any less than the WPI. Why, for example, is the lowest rate at the start of 2014 for a graduate engineer in the *Professional Employees Award 2010* only 39.9% more than the rate at the start of 2001 when the WPI has increased by 58.6%? (The 2001 rate was prescribed in the predecessor award, the *Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Award 1998*.) This is a bad price signal, apart from any other consideration. The justification cannot be found in any claim that it was done in order to give more to the lowest paid, because, as we have seen, the lowest paid have fallen behind.

420. We refer later to the Remuneration Tribunal, which sets rates of pay for Australia's most senior and highest paid public officials (including members of the FWC). In doing so, it has often referred to the WPI and, in effect, used it as a floor for its decision-making. When the quoted passage was written by the FWC in 2012, the Remuneration Tribunal's arbitrated increases for the lowest level of Principal Executive Officers totalled 59.1% (see Table 13, below), well in excess of the WPI increase of 49.6% and the NMW increase of 47.2%. As we discuss later, Deputy Presidents and Commissioners of the FWC have their rates of pay set by the Remuneration Tribunal.

421. Our concern with the use of the WPI is not just about the relative numbers. There is a fundamental point to be made about the nature and design of the WPI. In order to develop this point it is necessary to say something about awards and the compilation of the WPI.

422. Award classifications are broadly drawn to enable a range of work within firms and across industries to be performed within a particular classification. Broad-banded classification structures were introduced in the early 1990s to replace narrowly-defined work classifications that had too often imposed limitations on enterprise flexibility and the ability of workers to acquire skills, experience and enhanced promotional opportunities. Under these modern classifications, work can change without the need to re-classify the worker into another or a higher classification; that is, work value increases may occur within a work classification. A new worker may, for example, do more skilled work than his or her predecessor, yet fall within the same wage classification. Work classifications are, therefore, not static and can accommodate change. If it were not so, the FWC would need to constantly review, amend and extend many work classifications. The purpose of having a productivity component in safety net wages (which has been denied to safety net workers in recent years) is to reflect these kinds of change across the economy.

423. The WPI is about something different. It separates the static from the dynamic in work classifications. The procedure for the compilation of the WPI is set out in paragraph 8 of the Explanatory Notes of *Wage Price Index, Australia December 2013*:

> "Price-determining characteristics of the jobs are fixed to ensure that changes in these characteristics do not contribute toward index movements. The following are examples of changes in price-determining characteristics which are not reflected in index movements:
>
> - changes in the nature of work performed (e.g. different tasks or responsibilities)..."

424. The data used in the WPI is compiled from surveys of employers, with particular employers reporting over a period of time in respect of relevant aspects of their businesses. This is how it is explained by the ABS:

> "9.4 Pure price movements are allowed to contribute to the ordinary time price. These movements will include: those due to inflation; cost of living; enterprise or agency agreements; award rises; minimum wage rises; individual contracts (both formal and informal); and salary reviews.
>
> 9.5 Elements that are excluded from changes in the ordinary time price are those that relate to changes in the quality or quantity of work performed. Quality changes within a job can occur in a number of ways including:
>
> - changes in the level of performance of the occupant
> - changes in the age, grade or level of qualification of the occupant
> - changes in the duties required to perform the job.
>
> A range of procedures have been developed to quality-adjust the data collected to ensure only pure price changes are reflected in the indexes.
>
> 9.6 Only those jobs that exist in both the current and the previous quarter (i.e. matched jobs) contribute to the index calculations. Jobs are matched by collecting detailed job specifications and ensuring job occupants do not deviate from these specifications over time. When an employee moves out of the sampled job, the WPI will continue to collect information about the job, rather than the employee." (*Wage Price Index: Concepts*, *Sources and Methods*, Catalogue no. 6351.0.55.001, Chapter 9)

425. The WPI seeks to measure changes in the price of labour in jobs that are unchanged between ABS surveys. Changes in wage levels are recorded, but where there has been a substantial change in the work of the employee, the position in question is excluded from the survey, as is the recording of any increase in wages for that employee. This recording exercise has nothing to do with the scope and extent of work classifications and the particular question of whether there has been any change in the appropriate work classification. An employee may drop out of the WPI sample even though he or she would stay within the work classification.

426. There is another fundamental point to be taken into account. The price of labour may increase in the unchanged jobs because of, for example, an increase in the safety net wage for safety net-dependent workers, an increase in wages as a result of a new collective bargain or because of individual market-related adjustments. The WPI is, therefore, partly determined by the FWC; and past wage decisions are reflected in the WPI to some extent. The limited increases in safety net rates have had a depressive effect on the WPI. The decisions of the tribunals over the past 13 years to disconnect

safety net wage increases from community wage movements have reduced the utility of the WPI as a guide in setting those wages. If one wanted to know what was happening in the labour market in order to provide some guide for the setting of safety net rates, it would be necessary to exclude safety net workers.

427. The WPI, properly used, should recognise the point that we made earlier in regard to the comparability of AWOTE. Extracting that part of the WPI index that is the product of safety net decisions would give a higher figure for those who are not safety net workers. The precise figure would depend on the calculation of the average safety-net dependent worker's wage. If we were to assume that the average is at the C10 rate, where the wage increase has been 47.2% and adjust the index, now at 58.6%, to reflect the proportion of safety net workers in the workforce (about one-sixth), the adjusted figure will be over 60.0%. Even assuming it is only 60.0%, the adjusted WPI is 4.6 percentage points above the NMW increase and 25.7 percentage points above the increase for the safety net worker who is now on $940.00 per week (see Table 1).

428. As a measure of "pure price changes" the WPI is of limited use in wage-setting and is not a measure that should operate as a ceiling, as it has tended to be treated by the FWC in the passage quoted. Rather it should be treated more as a floor, with a margin above it, in the setting of wage increases; and as the figures demonstrate many safety net workers have found themselves very much below that pure price floor. When the WPI is adjusted upwards to take account of the fact that it covers safety net workers, who have their wages fixed by the FWC, the gap between safety net rates and the pure price changes in the rest of the labour market is even greater.

The Melbourne Institute's calculations of HDI and long-term trends in income distribution

429. Table 10 shows changes in seasonally adjusted household disposable income per head (HDI) over the period 2001 to 2014. These figures are drawn from the most recent issue of *Poverty Lines: Australia*, a quarterly newsletter published by the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute) at the University of Melbourne. There is an arithmetical relationship between each poverty line contained in the newsletter and the estimated HDI, so that each of the 10 households for which poverty lines are calculated move in line with the changes in the HDI. The quarterly HDIs are based on data in *National Accounts* (Catalogue no. 5206.0), September 2013 and *Australian Demographic Statistics* (Catalogue no. 3101.0), June Quarter 2013 and are available for all quarters since September 1973. The next issue, in respect of the December quarter 2013, is due by April 2014.

430. The 91.7% increase in HDI since January 2001 exceeds other income measures in Table 10; it is substantially greater than, for example, the 80.0% increase in the AWOTE over the same period. Unlike the AWOTE, which is a pre-tax measure, the HDI measures disposable incomes. As we will see later, changes to income tax rates have had a significant effect on after tax incomes. The extent to which changes in taxation rates and other factors explain the differences between the AWOTE and HDI measures is unclear; for example, compositional changes in the population might have some effect on the HDI comparisons over time. We will return to changes in disposable incomes when discussing poverty levels and ABS data on disposable household income.

431. Table 11 compares HDI changes with the changes in the disposable incomes of two households, the single worker and the couple with two children, with reference to August 1973, January 2001 and January 2014. This enables a comparison of the kind of outcomes in the first 28 years and the last 13 years covered by the Melbourne Institute's research.

Table 11

Disposable incomes of safety net workers and families relative to Australian Household Disposable Income per head
1973- 2014
$ per week, unless otherwise indicated)

	Single Worker (NMW or equivalent)	**Couple with two children** (NMW or equivalent)	**Household Disposable Income** (Per head)
August 1973	54.00	58.50	53.07
January 2001	346.38	503.37	418.33
January 2014	569.44	865.40	801.89
Ratio 2001-1973	6.41:1	8.60:1	7.88:1
Ratio 2014-1973	10.55:1	14.79:1	15.11:1
Ratio 2014-2001	1.64:1	1.79:1	1.92:1

The 1973 figures are extracted from Table 3.14 of the *First Main Report of the Commission of Inquiry into Poverty, April 1974*. 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.
Household disposable income figures are from calculations by the Melbourne Institute. The earliest calculation is for the September Quarter 1973. The most recent calculation is for September 2013 in *Poverty Lines Australia September Quarter 2013*. That figure has been used for January 2014. Rental assistance, which was available in 2001 and 2014 for the family, is not included.

432. Table 11 demonstrates that the family's position relative to the HDI has deteriorated since 2001; as has its position relative to the poverty lines calculated from them. The deterioration is even greater in the case of safety net workers employed in higher work classifications. Over the first period of 28 years there was a marked increase in the disposable incomes of the family relative to the HDI. Since 2001 the family has lagged behind this community wide measure.

433. The change which is reflected by the position of low income households relative to each other and to the HDIs was the result of policy decisions to change the respective contributions made by the wage packet and the public purse for the support of families. The change came out of a widespread concern in the late 1960s and early 1970s for low income families who were living in poverty. The substantial increase in family support is evident in the changes through to 2001. Families received more than the increase in HDI over these years and single workers received less than the increase in the HDI. An economic argument can be made for this change in relative proportions: shifting part of the cost of family support to the taxpayer means that wage increases can be less than they would otherwise be; but it is a change that comes at a cost to the public purse. Although the single worker may be relatively worse off, the reduction in his or her wage is the result of the removal of part of the single's "overcompensation" when wages are set by reference to the needs of workers with family responsibilities.

434. The changes between 1973 and 2001 are in sharp contrast to the changes between 2001 and 2014. Since 2001 families have had significantly smaller increases than those in the HDI. The change in the position of the single worker relative to the HDI has been dramatic. The difference between outcomes for the two households reflects the increase in family payments over this period. Even with very substantial increases in family payments, families fell below the community average, as measured by the HDI. The underlying reason was the decline in the wage packet. While the relative decline in the single person's position through to 2001 might be welcomed, the change in the position of the single worker from that date is a matter of great concern.

435. We conclude this section on comparative wage rates with a reference to the equal remuneration case in the social and community services sector; see *Equal Remuneration Case* [2011] FWAFB 2700. The social and community services sector has been characterised by a high degree of government funding, with funding agreements based on award rates of pay. For years, workers within this sector, especially in the higher skilled classifications, had real wage cuts while their colleagues

in similar work in the public sector, with access to collective bargaining, received substantial real wage increases. Many of these not-for-profit workers were within or above the higher paid classifications in Table 1.

436. Employers in the no-for-profit sector, faced with unrealistic funding levels, had to dig into their reserves (often using past donations and legacies) to meet the market and/or to provide fairness through enterprise agreements or over-award payments. Apart from fairness considerations, the limiting of award wage increases was inconsistent with the setting of rates that promote and reward high skill and support those with a commitment to work in areas that typically serve the most needy. Unlike, say, professional engineers who also suffered real cuts to their award wages, the social and community services sector workers managed to get broad community support and a favourable outcome on the basis of the equal remuneration provisions of the *Fair Work Act 2009*. Other groups of low paid and safety net-dependent workers have no realistic prospects of a similar outcome, despite having the same kind of award rates, and being affected by the same factors, as those previously operating in the social and community services sector.

437. Some commentators might regard that equal remuneration decision as a good outcome for the wrong reasons. However, the decision does have an evidentiary basis. It is very arguable that the treatment of, especially, higher-paid safety net workers as a whole has been discriminatory, partly because of the large number of women employed in this cohort of workers. The decision in the *Equal Remuneration Case* is commonly regarded as a decision that remedies one area of gender discrimination. The obvious point to make is that if there has been gender discrimination, or any other kind of discrimination, it has been by reason of the decisions of successive wage tribunals.

B. DIVERGING STATE AND FEDERAL WAGE DECISIONS

438. While the Australian Fair Pay Commission (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. The workers outside the Federal jurisdiction were covered by State awards made by employment tribunals in States other than Victoria (which had already referred most of its employment-regulating powers to the Commonwealth). 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 early 1990s 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 C10 rate, or its equivalent, as the key reference point for establishing consistency between awards. 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.

439. The differences between State and Federal tribunals are illustrated in Table 12, which compares the FMW/NMW and its State equivalents in each January from 2009 to 2014. The differences between Federal and State rates in January 2009 mostly reflect the decisions of the various tribunals in the first three years of the *Work Choices* legislation.

Table 12

Comparison of FMW/NMW and relevant State rates
January 2009-January 2014
($ per week)

	January 2009	January 2010	January 2011	January 2012	January 2013	January 2014
FMW/NMW	543.78	543.78	569.90	589.30	606.40	622.20
New South Wales	552.70	568.20	569.90/592.30	-	-	-
Queensland	552.00	568.20	588.20	610.20	630.70	646.50
Western Australia	557.40	569.70	587.20	607.10	627.70	645.20
South Australia	546.65	560.65	580.30	600.00	617.40	633.50
Tasmania	546.10	558.10	569.90	589.30	606.00	622.20

440. State industrial tribunals have had a limited role in wage-setting since the Commonwealth began to exercise its powers under the corporations power in 2006. 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), Western Australia, which has not transferred powers as the other States have done, retains a broader State system, albeit without coverage of corporations because they are covered by the Commonwealth legislation. As a result of legislative changes in New South Wales in 2011 there was no State Wage Case after 2010. In late 2010 the Tasmanian Industrial Commission adopted the NMW, thereby eliminating the earlier

margin between the Tasmanian and Federal rates. Because of its reference of powers, Victoria has always been covered by the FMW/NMW since it was introduced in 1997. Western Australia, Queensland and South Australia still set a State minimum wage. Because of the breadth of the referrals by Queensland and South Australia, the State minimum wages in those States are of very limited operation.

441. In January 2010, which followed the AFPC wage freeze, the unweighted average of the lowest adult minimum rate in each of the States other than Victoria was $564.97 per week, $21.19 per week more than the Federal rate. In January 2014 the average of the three States which set their own rates was $641.97, $19.77 more than the NMW. The gap is substantial: it is more than the amount by which the NMW was increased in 2013. The difference remains a considerable amount in the budget of low income families. The margins from 2010 to 2014 also show that, by the standards set by the three State tribunals, the Federal rates have barely recovered from the AFPC's wage freeze.

C. THE REMUNERATION TRIBUNAL AND THE COMMONWEALTH'S OWN PRACTICES

442. The trend in national safety net wage rates since 2001 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 the FWC), Parliamentary office holders (including Ministers) judicial and related officers and the holders of Principal Executive Offices (PEOs). The Tribunal determines 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 13.

443. Table 13 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 Band 4 PEO rate was increased by 67.7% between 2000 and 2014. The Commonwealth has the ability to employ PEO employees within a total remuneration band, which in the case of the Band 4 PEO is now between $326,170 to $598,400. SES salaries are not set by the Tribunal, but by governmental processes. We have included the SES data in Table 13 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. The SES figures for 2013 will not become available until about mid-2014 when the Australian Public Service Commission releases its Remuneration Report. We expect the 2013 increase to be around 3.0%. The percentage increases in Table 13 for the SES positions are calculated to January 2013 and, therefore, understate the expected increase at the start of 2014.

Table 13

Remuneration of Commonwealth officers and public sector employees 2000-2014

($ 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
2001	92000	209900	132287	160882	194309	887.40
2002	95600	218100	135541	166041	202884	925.60
2003	98800	225300	139948	171672	210725	960.50
2004	102760	234320	154097	187959	229147	1004.70
2005	106770	243460	164981	203410	250607	1046.10
2006	111150	253450	170416	210861	260983	1097.30
2007	113930	259790	177857	220691	276446	1142.60
2008	127060	289700	185606	233526	293404	1177.10
2009	132530	302160	196880	248133	315007	1228.30
2010	136500	311230	202589	255328	324142	1303.50
2011	142100	324000	209274	263754	334838	1371.30
2012	146380	333720	216936	272316	343532	1428.10
2013	150780	343740	228312	285608	362950	1488.60
2014	154399	351990	-	-	-	1538.20
% increase	67.8%	67.7%	>72.5%	>77.5%	>86.8%	73.3%

The figures are at January of each year.
The figures for Principal Executive Officer holders are for the prescribed "reference salary" in the two bands and are taken from determinations and decisions of the Tribunal, supplemented by ACCER calculations. The reference salary was a figure within the salary bands set by the Tribunal. In 2013 the Tribunal omitted reference to the reference salary and the figures used in the table are calculated by applying the 2.4% increase awarded in each of the salary bands.
The public sector AWOTE entries are trend figures taken from *Average Weekly Earnings, Australia, November 2013*, Catalogue. no. 6302.0 and earlier publications in this series. The ABS figures are for November in each of the years preceding the entries in the table.
SES figures are for total remuneration, but do not include performance pay. Total remuneration includes base salary plus superannuation; motor vehicles; and other benefits (including Fringe Benefits Tax where applicable). The SES figures for 2001 to 2009 are taken from decisions of the Remuneration Tribunal. Subsequent figures are from, or calculated from, successive Remuneration Reports by the Australian Public Service Commission, the most recent being the Remuneration Report for 2012, published in 2013.

444. Information about SES remuneration was contained in the Tribunal's 2009 and 2010 decisions. The Tribunal had a particular interest in SES remuneration because of the organisational and work connections between many of those within its jurisdiction and those within the SES. 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"

445. The Australian Public Service Commission Remuneration Reports of 2012 and 2013, in regard to 2011 and 2012 respectively, confirm the essential point being made by the Tribunal: SES remuneration, which is within the control of the Commonwealth, had grown at a faster rate than remuneration set by the Tribunal.

446. We would expect that the Commonwealth’s justification for these increases in SES remuneration is that they reflect relevant wage levels and remuneration in the private sector. If so, they stand as a guide to the kind of increases being received by the more highly paid in the private sector.

447. Table 13 also includes AWOTE for the public sector, which includes more than the Commonwealth’s agencies. The public sector AWOTE rose from $887.40 in November 2000 to $1488.60 in November 2013, an increase of 73.3%. The increase in the public sector AWOTE over the year to November 2013 was 3.3%. This public sector increase over the period since January 2001 is 6.7 percentage points less than the combined public and private sector AWOTE that we use in Table 10.

448. Members of the FWC 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 FWC's predecessor, the Australian Industrial Relations Commission (AIRC), and judicial salaries. In 2001 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 $335,110 per year (base salary) and the salaries of Commissioners have risen from $141,578 to $265,220 per year (base salary); Tribunal Determinations 2000/13 and 2013/10. These increases are 65.7% and 87.3%, respectively, and, on average, are not outside the range of increases that have been awarded in the senior echelons of the public sector. They are, however, substantially greater than the increases in the safety net rates set by the FWC and its predecessors, especially the more skilled wage rates, such as, for example, the graduate engineer rate which the tribunals have increased by 39.9% over the same period.

449. 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 73.3% while, for example, the trade-qualified rate increased by 47.2%. The contrast is even starker in, for example, classifications that now pay a modest wage of $940.00 per week. In those classifications the increase since 2001 was 34.3%, substantially less than half of the public sector increases.

450. 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, but with a systemic failure. 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. Over the years the Commonwealth (under successive Governments) has stood mute on this matter while the wage system has become increasingly less equal and more unfair.

451. Our complaint is not with the outcomes of the Tribunal's decisions, but with the fact that safety net workers have been treated inequitably. We submit that they are entitled to the same kind of outcomes. We ask, rhetorically, why is it that public sector workers and the most senior members of government can have such better and sustained outcomes?

D. THE CAUSES OF INEQUALITY: WAGE DECISIONS OR A RESTRUCTURING ECONOMY?

452. It has been apparent for some time that there has been growing inequality across the labour market, partly caused by the increasing disconnection between going rates in the labour market and the safety net rates prescribed by the NMW and awards. The tribunals have not been obviously concerned about this trend, apparently treating it as a generally benign development. However, in its 2013 decision the FWC has raised its concern about the future consequences of this development:

> "[424] We are conscious that there is a broad shift in the economy toward *higher-skilled jobs and that this is affecting measures of average and even median earnings.* Even the WPI will be affected if the pay rates of the higher skilled are rising more rapidly as a result of the increased relative demand. For this reason, we would not expect award rates, especially for the lower-skilled jobs, to rise as fast as the average. Nonetheless, the average or "typical" wage influences typical living standards and norms about how the households of employees live. In this way it is relevant to our task of considering relative living standards. It remains one of a number of considerations that we must take into account.
>
> [425] If not addressed, increasing earnings inequality and the persistent decline of modern award minimum wages relative to wage increases generally may have broader implications, both for our economy and for the maintenance of social cohesion." (*Annual Wage Review 2012-13*, emphasis added)

453. The reason for the FWC's implicit acceptance of increasing disconnection between minimum wage rates and going rates in the labour market and growing inequality over recent years is the view that fundamental changes in the composition of the Australian workforce have produced a greater proportion of higher skilled jobs, with the effect of pushing up average incomes at a faster rate than lower paid wage rates. The FWC said that the changes "may" be a threat to social cohesion. To the FWC's concerns about social cohesion, we might add social exclusion and poverty, which are present, not merely potential.

454. To put this reference to growing wage inequality into context we refer to the 2012 decision where the FWC twice claimed that:

> "…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." (*Annual Wage Review 2011-12*, paragraphs [15] and [183], emphasis added)

455. The FWC is not merely stating the obvious point that inequality is caused by higher skilled workers being paid proportionately more money; rather it was pointing to more people moving into higher paid jobs, ie into jobs with a higher work value. In effect, the FWC has been saying that it has not caused the inequality, but that the changing and growing economy has been the cause.

456. What is the factual basis for the claim that the changing workforce composition is the cause of growing inequality? To work our way through this issue we need find the evidence that was before the FWC in regard to these matters. The only relevant reference for the basis of the FWC's conclusion is in the 2013 decision:

> "[391] In reflecting on the rise in inequality of earnings, the Australian Government drew attention to the fact that it can have a number of causes and particularly noted the "*significant shift towards higher skilled occupations and rising skill levels* in the workforce over recent decades, reflecting stronger demand for higher skilled workers.
>
> [392] The NMW and modern award minimum rates are rates of pay for the job. In an economy with a *changing structure of jobs, including towards the higher skilled*, we would not expect minimum rates of pay to rise as fast as average earnings. Nonetheless, the evidence is clear that even the lowest award rates have barely kept pace with growth in rates of pay for the job more generally (as measured by the WPI). Higher award rates have fallen well behind growth in the WPI over the decade. While the lower award rates have had small increases in their real purchasing power, all award rates have fallen substantially relative to measures of average or median earnings. The *changing structure of earnings* has meant that earnings from jobs paid at the award rate are contributing less to the maintenance of relative living standards than they have in the past decade." (*Annual Wage Review 2012*-13, footnote in [391]omitted, emphasis added)

457. The footnote in paragraph [391] is to paragraph 287 of the Australian Government's March 2013 submission, which was written in the context of material on increased earnings inequality and the reasons for it. It read:

> "Also, movements in earnings over time can be affected by both changes in wages and *compositional changes, such as changes in hours worked and changes in employee's skill mix*. As discussed in Chapter 3, there has been a significant shift towards *higher skilled occupations and rising skill levels in the workforce over recent decades*, reflecting stronger demand for higher skilled workers. This is likely to have contributed to this increase in earnings inequality." (Emphasis added)

458. The only part of Chapter 3 of the Australian Government submission that is relevant to this matter is Chapter 3.7, entitled "Labour market conditions by skill level", which referred to ABS data on the changing skill levels of the Australian workforce. A footnote states:

> "The Australian Bureau of Statistics classifies occupations according to five skill levels commensurate with a qualification(s) as follows: Skill level 1: Bachelor degree or higher qualification; Skill level 2: Advanced Diploma or Diploma; Skill level 3: Certificate IV or III (the Certificate III requirement for this skill level includes at least two years on-the-job training); Skill level 4: Certificate II or III; and Skill level 5: Certificate I or secondary education. In some cases relevant work experience may be a substitute for formal qualifications, or relevant work experience and/or on-the-job training may be required in addition to formal qualifications."

459. Leaving aside for the moment a table setting out the ABS findings in relation to skill level changes, including changes over the previous year and the previous decade, the following is the only reference to compositional changes in the Australian Government submission:

> "141. Low skilled workers are more likely to be on the minimum wage or award-reliant than higher skilled workers, making an examination of labour market developments by skill level important and relevant.
>
> 142. In a continuation of the ongoing structural shift toward a more highly skilled and service based economy, employment growth has been driven by more highly skilled occupations, demonstrating the increasing importance of attaining educational qualifications. This structural change in demand for skills *might have contributed* to the increase in earnings inequality as shown in Chapter 6.
>
> 143. Indeed, over the 10 years to February 2013, employment growth has been dominated by the higher skill levels, with skill levels 1, 2 and 3 accounting for 65.9 per cent of employment growth. Skill level 4 also recorded strong growth and accounted for 28.4 per cent of total employment growth. By contrast, skill level 5 occupations, the lowest skill occupations, accounted for just 5.7 per cent of total employment growth over the period.
>
> 144. Over the last decade, the share of employment comprised by skill level 5 has decreased from 19.9 per cent to 17.3 per cent, whereas the employment share of skill level 1 occupations has grown from 26.4 percent to 29.3 per cent over the same period.
>
> 145. Over the year to February 2013, the largest increase in employment was in skill level 4 occupations (growth of 133 200 workers or 4.4 per cent) whereas employment in skill level 1 and skill level 2 occupations declined slightly over the year (see Table 3.2). Given the long term trend towards higher skilled occupations, however, this decline is unlikely to be sustained." (Footnotes omitted, emphasis added)

460. Table 3.2 of the Australian Government's submission was entitled "Changes in employment by skill level, one and 10 years to February 2013". The data source was the ABS's *Labour Force, Australia, Detailed, Quarterly,* (Catalogue no. 6291.0.55.003), February 2013, and "DEEWR trend data".

461. The Australian Government's reference to the connection between growing inequality and the changing skills mix of the Australian workforce was tentative: structural change "might have contributed to" growing inequality. There was, however, no analysis or attempted quantification by the FWC of this important part of its reasoning. There was no attempt to find out how much of the change may be the result of positive compositional changes in the workforce and whether that change might explain and justify the growing disconnection of award and going rates and, consequently, increasing inequality.

462. In the following paragraphs of this section we have attempted to find out how much compositional change has taken place and how much it explains the growing inequality. Whether any compositional change justifies increasing inequality is taken up later.

463. Table 14 uses the data presented by the Australian Government regarding the number of employees in each of the five skill levels in 2003 and 2013. The table sets out the compositional mix in each of those years.

464. In order to give an estimate of the degree of overall change in skill levels it is necessary to provide an estimate of the respective work values (measuring skills, responsibilities, etc) of each of those skill levels. The relativities used in Table 14 are estimations based on the relativities in Schedule B of the *Manufacturing and Associated Industries and Occupations Award 2010*. The classifications in this award and its predecessor awards (the *Metal Industry Award 1984* and the *Metal, Engineering and Associated Industries Award 1998*) arose out of the award re-structuring processes of the early 1990s when the AIRC and State tribunals engaged in a cooperative process to modernise award classifications, provide appropriate relativities within awards and provide consistency between awards. The *Metal Industry Award* was varied to provide for a range of classifications with a specified relativity to the C10, trade-qualified rate. The C10 rate was set at 100, with the other classifications set at relativities around it. The relativities have broken down, but they still remain in the current award, perhaps because they provide a useful guide for the setting of wage rates in collective and other agreements. Clause 2.2 of its Schedule B states:

> "The percentage wage relativities to C10 in the table in clause B.2.1 reflect the percentages prescribed in 1990 in *Re Metal Industry Award 1984—Part I* (M039 Print J2043). The minimum wages in this award do not reflect these relativities because some wage increases since 1990 have been expressed in dollar amounts rather than percentages and as a result have reduced the relativities."

465. When the relativities were first established C14 rate (which was later adopted as the FMW/NMW) was set at 78% of the C10 trade-qualified rate. Other relativities for qualification-based positions included degrees (at a minimum of 180%), diplomas (130%), Certificate V (115%), Certificate IV (100%) and Certificate I (87.4%).

466. Rather than use the C10 rate as the reference value, Table 14 uses Skill Level 5 as the reference level with a value of 100, with the other skill levels at higher values to reflect their increasing work values. The skill values used are in the second column of the table. These values are approximations for the purpose of estimating the magnitude of the changes in skill levels over the 10 year period. There is room for debate about the relative values to be given to the Skill Levels, but it is apparent from Table 14 that the overall impact of a change in them is likely to be small.

Table 14

Estimated Changes in Skill Levels

February 2003 to February 2013

Skill Level	Skill value of levels	Workforce 2003 000s	Proportion in skill levels 2003	Workforce 2013 000s	Proportion in skill levels 2013	Skill value of levels 2003	Skill value of levels 2013
1	210	2492.7	26.4%	3,399.6	29.3	5,544	6,153
2	150	999.0	10.6%	1,299.8	11.2	1,590	1,590
3	130	1549.7	16.4%	1,745.6	15.1	2,132	1,963
4	115	2534.3	26.8%	3,139.8	27.0	3,082	3,105
5	100	1883.6	19.9%	2,004.0	17.3	1,990	1,730
Total		9,459.3		11,588.8		14,338	14,541
Average value of skill levels						143.3	145.4

467. Table 14 shows a 1.5% increase in average skill levels over the period February 2003 to February 2013. It was quite small compared to the increases in average incomes to which we referred earlier. To put this in context, over the period January 2003 to January 2013 the increase in AWOTE was 57.9%, while the NMW increased by 40.6% and the C10 wage rate increased by 34.4% (see Tables 1 and 10).

468. Increasing skill levels over this period have not been a substantial cause of growing inequality between safety net workers and the rest of the workforce. Nor can the change in skill levels explain or justify the decrease in safety net wages for the higher-paid safety net classifications. Alongside the good news of an increase in the skill mix

of Australian workers we have more skilled safety net-dependent workers at a greater disadvantage relative to community incomes. The primary cause of growing inequality has not been compositional change in the work force, but the minimum wage decisions of successive tribunals.

469. Finally, a comment on productivity and work value in and between skill levels. The productivity and work value of workers will increase as they move from one skill level to a higher one, but productivity also grows within the various skill levels, just as they do within award classifications. Over the 10 years from December 2002 to December 2012 labour productivity increased by 12.2% (see Table 8), compared to the estimated increase of 1.5% resulting from increased skills over a similar period. National productivity growth primarily occurs within skill levels and the movement between skill levels is a relatively small component of productivity growth. Despite this, safety net rates have not been adjusted to reward workers for productivity increases, as we explained earlier.

CHAPTER 6

TAX CUTS AND FAMILY PAYMENTS HAVE NOT MAINTAINED LIVING STANDARDS

A. TAX CUTS DO NOT JUSTIFY REAL WAGE CUTS

470. Some commentaries on the fairness of safety net wage increases over the past decade or more 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 Consumer Price Index (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 2001 have had a major impact on disposable incomes, but they cannot justify real wage cuts, or discounting wage increases.

471. Table 15 builds on the information in Table 1 about safety net wage rates and the details in Table 10 regarding Average Weekly Ordinary Time Earnings (AWOTE).

Table 15

After-tax changes to safety net wages and AWOTE 2001-2014

($ per week, unless otherwise indicated)

	NMW		C10						**AWOTE**
2001 Gross	400.40	450.00	492.20	500.00	550.00	600.00	650.00	700.00	798.80
2001 Net	346.38	378.37	406.53	412.39	446.13	480.38	514.63	548.88	616.55
2014 Gross	622.20	676.10	724.50	732.80	787.40	838.70	887.50	940.00	1437.70
2014 Net	569.44	612.30	648.47	653.81	686.03	722.13	753.60	787.46	1110.88
$ increase in Gross	221.80	226.10	232.30	232.80	237.40	238.70	237.50	240.00	638.90
% increase in Gross	55.4%	50.2%	47.2%	46.6%	43.2%	39.8%	36.5%	34.3%	80.0%
$ increase in Net	223.06	233.93	241.94	241.42	239.90	241.75	238.97	238.58	494.33
% increase in Net	64.4%	61.8%	59.5%	58.5%	53.8%	50.3%	46.4%	43.5%	80.2%
$ loss in Gross relative to Gross AWOTE	98.52	133.90	161.46	167.20	202.60	241.30	282.50	320.00	-
$ loss in Net relative to Net AWOTE	54.74	69.52	84.10	89.32	117.90	143.51	173.76	201.62	-

The figures are at 1 January 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 2013/14 the full LITO is $445.00 per year and reduces at 1.5 cents for each dollar above $37,000 and cuts out once a taxpayer's assessable income reaches $66,667.

472. Table 15 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. It also shows that the changes in taxation levels have advantaged lower paid workers relatively more than middle income workers on the AWOTE measure of average earnings. That, however, is only part of the picture of changes to income tax rates since the introduction of the "new tax system" when the GST was introduced in July 2000. When the position of higher income earners is taken into account it is apparent that low income earners have not been especially advantaged, as we will see in Table 16.

473. Table 15 illustrates an interesting feature that we return to in Table 16: the percentage of income tax paid at the AWOTE level is virtually the same as it was in 2001. If the AWOTE worker paid the same percentage of income tax in January 2014 as he or she did in January 2001, the net income in January 2014 would have been $1,109.68, not $1,110.88. The income tax changes over the past 13 years have left this worker in the middle of middle Australia with a tax cut of $1.20 per week. As we will see later in this chapter, the position of the AWOTE-dependent family with children is quite different.

474. 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. The Australian Council of Trade Union's website states that workers who "are under a union collective agreement earn on average $100 a week more than other employees".

Indexing the tax scales

475. In order to compare the impact of taxation changes on various income groups over time it is necessary take into account rising income levels by indexing the tax scales. To do this we have used the percentage increase in wage income over the 13 years, as measured by AWOTE. The indexation of taxation scales by the use of AWOTE is a

reasonable way to remove "bracket creep" and measure the impact of changes in taxation rates over time.

476. Table 16 shows what has happened to after-tax incomes for various wage groups receiving an 80.0% wage increase since 2001, ie for workers who have moved in line with the changes in average ordinary time wages. Otherwise, it is compiled on the same basis as Table 15. The dollar value of the changes has been calculated for each income group by multiplying the January 2001 after-tax figure by 180% and finding the difference between that sum and the after-tax sum in January 2014. Clearly, the position of those whose wages have moved by more or less than 80.0% will have different outcomes.

Table 16

Net income of groups receiving wage increases of 80%
January 2001 – January 2014
($ per week, unless otherwise indicated)

2001 Gross	400.00	450.00	500.00	600.00	800.00	1200.00	1600.00	2000.00	2400.00
2001 Net	346.12	378.37	412.39	480.38	617.38	859.86	1063.94	1271.86	1477.86
2014 Gross	720.00	810.00	900.00	1080.00	1440.00	2160.00	2880.00	3600.00	4320.00
2014 Net	645.55	703.60	761.66	877.76	1112.39	1559.38	2002.18	2432.96	2818.15
Net % of Gross 2001	86.5%	84.8%	82.5%	80.1%	77.2%	71.7%	66.5%	63.6%	61.6%
Net % of Gross 2014	89.7%	86.9%	84.6%	81.3%	77.2%	72.2%	69.5%	67.6%	65.2%
% increase in Net	86.5%	86.0%	84.7%	82.7%	80.2%	81.4%	88.3%	91.3%	90.7%
$ value of tax cuts	22.75	16.72	19.16	12.68	0.71	10.66	86.98	143.36	157.03

477. Table 16 shows how 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 71 cents per week for an incomes that is now at $1,440.00 per week stands out from the rest. This was foreshadowed in our comments on the AWOTE figures in Table 15. The $800/$1440 column is significant as it represents "middle income earners". The starting point of $800.00 per week is very close to the AWOTE starting point of $798.80 and the end point of $1,440.00 is only $2.30 per week above the current AWOTE figure of $1,437.70. The tax cuts have not favoured this middle income group.

478. If we extend our middle income group to those covered by the adjacent columns, the tax cuts, which are no more than $12.68 per week, pale into insignificance when

compared to high income earners. The most extreme comparison in Table 16 is between the 71 cents per week tax cut for the worker now on $1,440.00 per week ($75,139 per year) and the tax cut of $157.03 per week for the worker now on $4320.00 per week ($225,417 per year). Three times the income yields a tax cut that is 221 times greater.

479. Table 16 contains some useful information regarding the ongoing debates about income-related entitlements, including for example, the recent debate about paid parental leave. The figures used in the table happen to almost coincide with some of those used in the debates; see $1,440.00 per week ($75,139 per year), $2,160.00 per week ($112,708 per year) and $2,880.00 per week ($150,278 per year). The weekly tax cuts for these three groups over the period January 2001 to January 2014 have been 71 cents, $10.66 and $86.98, respectively. The contrast between the groups is modified when family payments are taken into account, as we show later.

480. Surprisingly, the marked divergence between the respective tax outcomes for middle and high incomes has not been the subject of national political, economic and social discourse. Perhaps the major reason for its absence from the political debate is that the key taxation changes over the three Budgets from 2008 were agreed to by both major parties in the course of the 2007 Federal election campaign. There is now debate as to whether the tax cuts over the past decade will be affordable over the longer term, but that debate has not produced discussion around the differential impact of those cuts.

481. Table 16 illustrates changes based around a uniform increase in incomes over the past 13 years. We saw in Table 15 the changes in the impact on safety net workers caused by the changes in safety net rates and tax cuts. It is useful to compare the workers in the $600.00 per week columns in Tables 15 and 16. The Table 15 safety net worker had a 39.8% increase in gross wage, but a 50.3% in net wage. The net wage in 2001 was 80.1% of the gross, but it had risen to 86.1% of the gross in 2014. The lower wage increase was partly compensated for by the tax cut. The benefit of the worker's tax cut was $29.36 per week. On the other hand, a worker on the same initial wage rate but covered by a collective agreement that moved in line with AWOTE would have had a tax cut of only $12.68 per week. The tax changes can reduce the loss in relative gross earnings for safety-net dependent workers, but they cannot eliminate them.

482. Table 16 also provides a means of estimating higher income earners who are beyond the scope of the column at the right hand margin column of Table 16. That column covers taxpayers in the highest marginal tax brackets in both 2001 and 2014. As the

reduction in the top marginal rates over this period was from 47% to 45%, the further tax saving on the income in excess of $4,320.00 per week is one-fiftieth of the excess. A person with an annual income of $500,000 per year has had tax cuts equal to $262.27 per week.

483. Another way of presenting the essence of these changes is in Table 17, which compares the percentage of tax paid in 2001 and 2014 by four income groups. Again it demonstrates that low income groups have not been targeted for special consideration, but it does show again that the middle income group has received very little by way of tax cuts.

Table 17

Income taxation for groups receiving wage increases of 80%
January 2001 – January 2014

$ per week	2001	2014
$400/$720	13.5%	10.3%
$800/$1440	22.8%	22.8%
$1600/$2880	33.5%	30.5%
$2400/$4320	38.4%	34.8%

The tax cuts of 2008 to 2011

484. 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 major parties 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. Although we (and especially Governments) talk about "tax cuts" whenever a change in taxation rates is proposed or made, a large part of the tax cuts since 2001 have been needed to offset the effects of inflation based bracket creep. A real tax cut is a tax cut after compensating for this kind of bracket creep.

485. The tax cuts of 2008 to 2011 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.

486. The May 2011 Budget for 2011-12 did not include tax cuts. On 10 July 2011 the Commonwealth Government announced major changes to the taxation system to accompany the introduction of carbon pricing. They were implemented, along with a

range of related matters, in the 2012 Budget for 2012-13, which retained the earlier income tax scales. The compensatory measures were designed to deal with increases in the costs that would flow from the introduction of carbon pricing. They were intended to remove a part of the annual Consumer Price Index (CPI) increase from wage claims both in the Annual Wage Review and in enterprise bargaining. The 2013 Budget for 2013-14 made no changes to the income taxation rates. Bracket creep has been unabated over the last three Budgets.

Tax cuts and wage increases

487. The question of whether tax cuts should be used to reduce wage increases has been ventilated in various wage cases over many years. It came before the Australian Fair Pay Commission (AFPC) in 2008, for example, 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.)

488. 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. However, as we saw earlier, at the end of its time the

AFPC used the tax cuts to excuse the cut in real wages. Because of real wage cuts safety net workers lost some or all of their tax cuts.

489. Since 2001, the low paid have not been targeted for tax cuts any more than the population as a whole, notwithstanding the limited tax cuts to middle income earners. The use of their tax cuts to justify wage-discounting deprived safety net workers of those cuts and imposed on them a burden not suffered by those workers who have the capacity to bargain for higher rates of pay. The Remuneration Tribunal, for example, did not discount 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 were restrained by the presence of tax cuts. In the broader community, wages (as measured by AWOTE) have risen by 80.0%, apparently unconstrained by the tax cuts.

490. 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 would be wrong to deprive them of the benefit intended by Parliament. If a tax cut were to be given for the purpose of improving their financial 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.

B. FAMILY PAYMENTS HAVE NOT COMPENSATED FOR WAGE CUTS

491. 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 first child restriction was removed in 1950. Limited changes were made to the scheme until 1976 when the Family Allowance replaced child endowment. The change followed the investigations and reports of the Commonwealth's Commission of Inquiry into Poverty. 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.

492. 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. It is sometimes referred to as a payment for “stay at home mums”, but this is erroneous because it is also paid to working sole parents.

493. Table 18 is adapted from the abovementioned parliamentary report by the addition of entries from 1 July 2007 and the use of weekly, rather than fortnightly, figures.

Table 18

Family payments 2001-2014

	Family Tax Benefit Part A					**Family Tax Benefit Part B**		
	Maximum Rates per Child		**Base Rate per child**	**Annual Supp. per child**	**Large Family Supp.**	**Rate per family**		**Annual Supp. per family**
	Child Under 13	**Child 13-15**	**Child 0-15**			**Youngest aged under 5**	**Youngest aged 5-18**	
	$ per week			**$ per year**	**$ per week**	**$ per week**		**$ per year**
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
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
07.13	86.10	112.00	27.58	726.35	6.02	73.22	51.10	354.05

Annual supplements (“Supp.”) were introduced in 2004, but the annual supplement for Family Tax Benefit part B was in introduced from 1 January 2005.

494. Table 18 demonstrates the importance of the age of the children in determining the level of family payments. Calculations of transfer payments by the AFPC and the Fair Work Commission (FWC) have usually been based on the children being in the 8 to 12 year range. We have adopted that practice throughout this submission. We note, however, that 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, but it may also be seen as a financial incentive (but more in the nature of a stick than a carrot) for the primary carer to enter the workforce once the youngest child turns 5.

495. Over the thirteen year period the various weekly rates have increased by 46.6% to 52.1%, which are more than the CPI increases of 43.4%. 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.

496. Table 18 does not show, however, the very substantial increases in family payments over this period as a result of the extension of eligibility and changes to the withdrawal, or taper, rates. This was in part the product of a concern that these means-tested benefits were being withdrawn at an excessive rate when family incomes rose as a result of extra income being gained through employment by one or both of the parents. The taper rates and the tax rates were providing high effective marginal tax rates, a disincentive to work and something similar to a poverty trap for those on very low incomes. The extension of family payments into higher income families is evident in Table 19.

497. Several columns in Table 19 illustrate the high effective marginal rate of taxation in 2001 for workers with family responsibilities. As a result of the dramatic tapering of family payments, in 2001 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. The effective marginal tax rate over this $100.00 range was 91.5%. It was even higher over the $550.00 to $600.00 range. By contrast, the long taper in 2014 is shown by a comparison between the “$700.00” column and the AWOTE column. The former is less than $1.00 per week inside the taper range. The gross wage of the AWOTE family is almost $500.00 per week more than the family near the start of the taper, yet the AWOTE family receives 78.3% of the maximum family payments.

498. It is important to record that the rate of increase in family payments has slowed and that the days of significant real increases in family payments are over. Annual Supplements were frozen in the 2011 Budget for a period of three years, commencing 1 July 2011 and this may continue in the future in view of the Commonwealth’s current budgetary position. There may be other measures to reduce the real value of family payments. The respective contributions of wages and family payments to family budgets will

change to some extent. Wages will become increasingly more important over the next few years.

499. Table 19 shows the impact of changes in wages, taxation and family transfers since 2001 over various income levels by reference to 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.

Table 19

Safety net-dependent and AWOTE families compared
(Couple or sole parent with two children families)
January 2001- January 2014
($ per week, unless otherwise indicated)

	Safety Net Wages (NMW)		(C10)						AWOTE
2001 Gross wage	400.40	450.00	492.20	500.00	550.00	600.00	650.00	700.00	798.80
2001 Net Wage	352.38	385.12	413.91	419.89	446.13	480.38	514.63	548.88	616.55
2001 Family Transfers	150.99	150.99	150.59	150.99	145.25	112.95	85.25	72.17	72.17
2001 Disposable Income	503.37	536.11	564.50	570.88	591.38	593.33	599.88	621.05	688.72
2014 Gross wage	622.20	676.10	724.50	732.80	787.40	838.70	887.50	940.00	1437.70
2014 Net Wage	578.77	622.44	659.34	664.80	697.84	734.71	766.91	801.56	1110.88
2014 Family Transfers	286.63	286.63	286.63	286.63	286.63	286.63	286.63	286.04	224.04
2014 Disposable Income	865.40	909.07	945.97	951.43	984.47	1021.54	1053.54	1087.60	1334.41
% Net Wage Increase	64.2%	61.6%	59.3%	58.3%	56.4%	52.9%	49.0%	46.0%	80.2%
% Transfers Increase	89.8%	89.8%	89.8%	89.8%	97.3%	154.8%	236.2%	294.2%	210.4%
$ Disposable Income Increase	362.03	372.96	381.47	380.55	393.09	428.21	453.66	466.55	645.69
%Disposable Income Increase	71.9%	69.6%	67.6%	66.7%	66.5%	72.2%	75.6%	75.1%	93.8%
$ Loss per week in Disposable Income of Safety Net family relative to AWOTE family	110.13	129.91	148.03	154.94	161.62	128.33	109.03	115.99	-

The calculations are based on a year of 52.18 weeks. Where applicable, the Medicare levy has been taken into account when calculating the net wage. At the NMW, for example, the full Medicare Levy exemption currently adds $9.33 per week to the net wage. Because all of the safety net families are exempt from the levy, the net safety net wage entries are not the same as those in Table 15. The AWOTE family is not eligible for a reduction in the Medicare Levy. Family transfers in 2014 include the weekly value of the annual supplements for FTB A and FTB B, the Clean Energy Supplements and the Schoolkids Bonus (on the basis that one child is in primary school and the other is in secondary school).

500. The figures in Table 19 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.

501. The middle income AWOTE family has had a gross wage increase of 80.0% (Table 15) and a disposable income increase of 93.8%, well in excess of similar families who depend on safety net wages. The comparable figures for the NMW-dependent family are 55.4% and 71.9%, respectively. The dollar loss per week that appears in the last row of Table 19 is the difference between what the families did receive and what they would have received if their wages had moved in line with AWOTE. It demonstrates how far they have fallen behind. We repeat the point made earlier: the AWOTE figure would be higher if we excluded safety net-dependent workers from that measure and compared the two groups without any overlapping.

Inclusions and exclusions

502. The calculation of disposable incomes requires judgements about what is included and what is excluded. In the following paragraphs we provide an overview of several issues in making those judgements.

503. 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 2001 and has been indexed to reflect price changes. It has not been included in the following Table 19 calculations, but it has been included in some tables in subsequent chapters. 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. That practice has been continued by the FWC in its various Statistical Reports prepared for the Annual Wage Reviews. Its treatment as income is troubling, especially when the maximum is used (without any evidentiary basis), because it has the effect of reducing safety net wages for all workers.

504. The Schoolkids Bonus was introduced in the May 2012 Budget to provide lump sum payments each January and July for parents of primary and secondary students. The annual payments are $410.00 for primary students and $820.00 for secondary students.

We have included the Schoolkids Bonus in our calculations on the basis that one child is in primary education and one in secondary education.

505. 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 its Post-Budget submission of May 2012 ACCER 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".

506. The Commonwealth Government intends to abolish the Schoolkids Bonus, but achieving that goal depends on its capacity to have the enabling legislation pass the Senate. The payments will be made in early 2014 and, if legislation is not passed by mid-year, again in July 2014.

507. The Clean Energy Supplement was introduced in the 2012-13 Budget as part of a compensation package to offset the expected impact of carbon pricing on a variety of households. Relevantly, it provided payments to parents in receipt of FTA (A) of $1.68 per week for each child and recipients of FTA (B) received $1.33 per week for each child if the youngest was less than 5 years old and 98 cents per week per child otherwise. These payments have been included in Table 19 on the basis that the two children are in the 8 to 12 age range.

Conclusions

508. This chapter has demonstrated that, when changes in wages, taxes and family payments over the past 13 years are 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 67.6% in its disposable income, compared to the AWOTE family's 93.8%. This amounts to a relative loss of $148.03 per week. In terms of disposable income, the C10 family has fallen from 79.4% of the AWOTE family to 70.9% over the period 2001 to 2014. A major reason for the improvement of the relative position of the AWOTE family has been the 210.4% increase in family payments received by it.

509. Much of the content of this chapter is summarised in Table 20, which shows the wage, tax and transfer outcomes at four wage levels; the NMW, the C12 rate, the C10 rate and AWOTE.

Table 20

Losses of safety net-dependent workers and their families relative to AWOTE

January 2001 - January 2014
($ per week unless indicated otherwise)

Household	Disposable Income 2001	Disposable Income 2014	Increase in gross wage	Increase in Disposable Income
NMW Single	346.38	569.44	55.4%	64.4%
NMW 2+2	503.37	865.40	55.4%	71.9%
NMW 1+2	503.37	865.40	55.4%	71.9%
C12 Single	370.50	603.31	51.2%	62.8%
C12 2+2	528.05	899.91	51.2%	70.4%
C12 1+2	528.05	899.91	51.2%	70.4%
C10 Single	406.53	648.47	47.2%	59.5%
C10 2+2	564.50	945.97	47.2%	67.6%
C10 1+2	564.50	945.97	47.2%	67.6%
AWOTE Single	616.55	1,110.88	80.0%	80.2%
AWOTE 2+2	688.72	1,334.41	80.0%	93.8%
AWOTE 1+2	688.72	1,334.41	80.0%	93.8%

The figures for the NMW, C10 and AWOTE workers and families are taken from Tables 15 and 19. The C12 figures are in Table 29. Consistent with the other figures used here, rental assistance in Table 29 has not been included in this table.

510. There is nothing in the material covered in this chapter 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. Family payments and tax cuts received by low income workers and their families have not made up for the lack of growth in the safety net wage rates set by successive tribunals The evidence demonstrates that since 2001 low paid working families *at or near* the safety net wage rates have fallen behind middle income families and living standards generally prevailing in Australia. The relative loss for higher paid safety net workers and their families has been even greater.

C. THE WAGE SAFETY NET HAS FALLEN BEHIND THE PENSION SAFETY NET

511. The FWC is obliged under section 284(1)(c) of the *Fair Work* Act to have regard to relative living standards when setting safety net wages. There is no single formula for identifying and measuring relative living standards in Australian society and positioning safety net workers relative to them. Primary emphasis needs to be given to the wages of other workers across a broad range of incomes (as we have done in the earlier part of this chapter); but that does not exclude other matters being taken into account. When a major object of the legislation is *social inclusion* and the obligation is to set a *fair safety net*, the search for relevant factors should not be constrained.

512. We have argued in Chapter 2D, that the incomes and standards of living of those who depend on the social safety net provided by Commonwealth-funded pensions are relevant to this process. We do not need to repeat those arguments here, save to repeat that the FWC's approach is unduly restrictive and not in accordance with important objects of the legislation.

513. Having shown changes in disposable incomes of workers and their families earlier in this chapter, we are now able to make some comparisons between the operation of the wages safety net and the pension safety net.

514. The Department of Social services website recently advised that:

> "Around 3.5 million pensioners receive one of the following payments:
> - Age Pension
> - Disability Support Pension
> - Wife Pension
> - Widow B Pension
> - Carer Payment
> - Department of Veterans' Affairs (DVA) Service Pension
> - Income Support Supplement." (Footnote omitted)

515. The website also advises that in September 2013 the aged pension alone covered 2.28 million Australians. This is equal to about 20.0% of the Australian workforce, which numbered 11,466,900 in January 2014: *Labour Force, Australia, Jan 2014,* Catalogue no. 6202.0. It is a substantially greater number than the safety net-dependent workforce of just over 1.5 million (see Chapter 3B).

516. 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 now-replaced 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 rely on it. This is an important concept that we come back to from time to time.

517. The Press Statement by the Treasurer, Mr Swan, 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."

518. 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 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 was taken from the website of the former 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."

519. Base pensions are increased by not less than Male Total Average Weekly Earnings (MTAWE), but the total pension increase may be less because of a relatively lower figure for the adjustment to the supplement. The linkage of the supplement to price increases is consistent with past practice. A significant part of the 2009 changes was an increase in the relativity of single pensions to MTAWE: from 25.0% to 27.7%. This increase followed widespread concern about the severe difficulties experienced by many single pensioners.

520. The MTAWE is a significantly different measure to AWOTE. There are three important differences: MTAWE covers males only, includes part time employees and measures total earnings, not ordinary time earnings. This measure goes back to the Whitlam Government of the early 1970s, which had taken a proposal to the 1972

elections to tie pensions to 25% of male average weekly earnings. The policy specified male earnings because it was proposed prior to equal pay being implemented.

521. The MTAWE linkage guarantees that single and couple pensioners share in improved community living standards as measured by wages and means that the total pension rate will continue to be adjusted by an amount that is close to the MTAWE.

522. In Table 21 we compare the changes in pension rates and two safety net rates, the NMW and the base trade-qualified (C10) rate, over the period 2001 to 2014. The pension rates are the base pension rate and the Total Maximum Periodic Pension-related payments (TMPPP). The data is set out in Appendix B and is taken from the Commonwealth Government's *Guide to Social Security Law*, at Chapter 5.2.2.05: *Total Maximum Periodic Pension-related Payment - 1909 to Present Date*.

Table 21

Comparison of pensions and safety net wages
January 2001 – January 2014
($ per week, unless otherwise indicated)

	Single Pension (Base)	**TMPPP single**	**Couple Pension (Base)**	**TMPPP couple**	**FMW/ NMW Gross**	**FMW/ NMW Net**	**C10 Wage Gross**	**C10 Wage Net**	**CPI**
2001	189.45	201.27	316.30	333.12	400.40	346.38	492.20	406.53	73.1
2014	375.85	413.55	566.60	623.40	622.20	569.44	724.50	648.47	104.8
% increase	98.4%	105.5%	79.1%	87.1%	55.4%	64.4%	47.2%	59.5%	43.4%

523. Table 21 shows that pensions have outstripped both gross and net wage outcomes for safety net workers. The substantial divergence between the wages safety net and the pension safety net over the whole period is caused by the linkage of pensions to MTAWE. From May 2000 to May 2013, the most recently released figures prior to the relevant pension increases prior to January 2001 and January 2014, respectively, MTAWE increased from $757.60 to $1,356.70, or 79.1%, considerably more than the NMW increase of 55.4%.

524. The divergence between pensions and gross safety net wages occurred before and after the 2009 reforms, but the divergence has been particularly apparent in recent years.

Table 22 shows a substantial divergence between pensions and safety net wages since the 2009 reforms, by reference to the CPI, MTAWE, the NMW and the C10 wage.

Table 22

Changes in pensions and safety net wages

January 2010 – January 2014

		January 2010 $ per week	January 2014 $ per week	$ increase per week	Percentage increase
Single	Base	307.90	375.85	67.95	22.1%
	Supplement	28.05	37.70	9.65	34.4%
	Total	335.95	413.55	77.60	23.1%
Couple	Base	464.20	566.60	102.40	22.1%
	Supplement	42.30	56.80	14.50	34.3%
	Total	506.50	623.40	116.90	23.1%
CPI		92.9	102.8		10.7%
MTAWE		1,110.30	1,356.70		22.2%
NMW Gross		543.78	622.20	78.42	14.4%
NMW Net		500.04	569.44	69.40	13.9%
C10 Gross		637.48	724.50	87.02	13.7%
C10 Net		575.78	648.47	72.69	12.6%

Pensions are adjusted each March and September. The figures for the CPI index are those at June 2009 and June 2013, the most recently reported increases prior to the pension changes of September in each of those years. (The CPI increase from December 2009 to December 2013 was 11.1 %.) The Supplements in 2014 include the Clean Energy Supplements of $6.85 per week for the single pension and $10.30 per week for the couple pension. MTAWE figures are for May 2009 and May 2013, the most recently published figures prior to the setting, in September of each year, of the rates recorded for January 2010 and January 2014.

525. Table 22 covers the period in which the first four 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 four years pensions have increased by 7.7 percentage points more than the NMW; and by more than that in comparison with other safety net rates. Comparing like with like, in terms of disposable incomes, pensions have increased by 8.2 percentage points more than the NMW and even more compared to the C10 and other higher award rates. Over the four years MTAWE increased by 22.2% while the NMW increased by 14.4%.

526. The disconnection between the wage safety net and the pension safety net 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.

527. 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 should not the wage safety net be move in a similar way, subject, to the proper consideration of unusual circumstances? A proper consideration of relative living standards in Australia today, cannot disregard these numbers and should take into account the changes to, and the level of, the pension safety net.

528. We return later to a comparison and an analysis of the standards of living provided to pensioners by a pension system predicated on the provision of a basic acceptable standard of living and the standards of living provided by safety net wages that have not been predicated on this or any similar criteria.

CHAPTER 7
WHAT IS POVERTY AND HOW DO WE MEASURE IT?

A. THE MEANING OF POVERTY

529. A major purpose of this book is to demonstrate that low income working families have fallen behind rising living standards, many are now living in poverty and the NMW can be properly described as a poverty wage. In order to do this we need to refer to the concept and measurement of poverty. Poverty may be described quantitatively, by reference to a poverty line, or qualitatively, by reference to a standard of living.

530. Over recent decades there has been a greater understanding of the causes, dimensions and consequences of poverty. Descriptions of poverty are now often associated with descriptions of deprivation, social exclusion, social inclusion and social participation. One of the stated objects of the *Fair Work Act 2009* is to promote social inclusion.

531. 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 and poverty may be the product of a range of social and personal factors, they are primarily the result of low income. The primary means of promoting social inclusion will be increases in income for those in poverty.

532. Following the 2007 Federal election a Minister for Social Inclusion was appointed and the Australian Social Inclusion Board was established, bringing 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)

533. The social inclusion objective in the *Fair Work Act 2009* was another manifestation of the concern to address social inclusion. There is a discussion of social inclusion in a paper published by Fair Work Australia 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."

534. The research report notes a definition by John 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."

535. 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 definition of poverty which usefully links poverty with exclusion and marginalisation is found in one 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*)

B. SAFETY NET WAGES HAVE NOT BEEN BASED ON WORKERS' NEEDS

536. An extraordinary feature of Australian minimum wage-setting over the last few decades, at least, has been the lack of any serious attempt to set wages by reference to the needs of the low paid, despite the presence for most of the time since 1996 of an explicit obligation on the decision-maker to take into account the needs of the low paid.

537. This feature was evident in the 1997 decision of the Australian Industrial Relations Commission (AIRC) in the *Safety Net Review April 1997* to establish the Federal Minimum Wage (FMW). The AIRC, by a majority, decided to adopt the C14 award classification rate in the *Metal Industry Award* 1984 as the rate for the FMW. It did not undertake a review of the adequacy; nor had the C14 rate been set by reference to 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 which was in the final stages of implementation. In the 1998 wage review the Australian Council of Social Services (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 Australian Council of Trade Unions (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"

538. At no time since then has the FMW or its successor, the National Minimum Wage (NMW), been set at a different rate to the C14 rate. The NMW remains connected to award rates in the same way as its predecessor was in 1997, despite efforts to disconnect it.

539. In the *Safety Net Review Case 2003*, Frank Costigan QC, who appeared for ACCER, sought the establishment of an inquiry into the needs of the low paid and 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 must 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.”

540. Mr Costigan then went on to pose a number of questions about poverty and the adequacy of the FMW. His questions *“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?" have been central to ACCER's submissions over the past decade, with primary emphasis being given to the position of low paid workers with family responsibilities. Many would expect that these kinds of questions would have been ventilated and considered in the past; but not so. Unfortunately, little progress has been made since 2003.

541. In 2003 ACCER and ACOSS also asked the AIRC to hold an inquiry into the needs of the low paid. The ACTU and other parties did not support the proposal. This position, which was much the same as the ACTU put in 1998, was crucial because in the wage-setting system of the time, ACCER and ACOSS were interveners in the arbitration of industrial disputes between various unions and employers, which was being processed under the Commonwealth's power to settle industrial disputes.

542. It is surprising that the only attempt to consider the sufficiency of the lowest minimum wage rate was 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. Unfortunately, nothing appeared to come of it.

543. Starting with its inaugural decision in 2006 the AFPC used the Henderson Poverty Lines (HPLs) as a guide to living costs and the sufficiency of the FMW, taking into account a variety of family payments. It referred to 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. 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 for it to undertake or commission research into the needs of low paid workers and their families, but it did not do so. The AFPC published data on the HPLs and disposable incomes in each of its four decisions from 2006 to 2009; but they appeared to have little or no impact on the wage outcomes for low paid workers. Indeed, by the AFPC's own figures, disposable incomes fell relative to poverty lines over the four years.

544. The enactment of the *Fair Work Act* in 2009 provided a significantly different statutory framework and promised an opportunity for a fresh start on the identification of the needs of the low paid. In its March 2010 submissions ACCER asked the tribunal to "establish a research program to better inform itself and the parties on the financial and social needs of low paid workers and their families [and] that... this be done in a way

that will provide a transparent framework for the future adjustment of award wages and the National Minimum Wage". The proposal was not taken up, but the research section subsequently produced *Research Report 2/2011, Relative Living Standards and the needs of the low paid: definition and measurement*, which was released in early 2011.

545. In its submissions of March 2011, ACCER asked the tribunal to establish its own inquiry into the needs of the low paid because there had been very limited progress in answering the questions about the needs of the low paid and related matters and because the position of low paid workers and their families was worse than it was in 2003. It argued than an inquiry could build on the research report and would present the opportunity for the consideration of the utility of various empirically determined benchmarks. Other parties had similar proposals. The proposals appeared to bear fruit:

> "While there is a reasonable level of agreement on the relevant indicators of relative wages and living standards, there is no consensus on how to measure and assess the needs of the low paid. Some parties have called for a program of research and consultations to inform the Panel in this regard. We would welcome the considered views of interested parties on what were the most pertinent and valuable proxy measures of the needs of the low paid and how these are changing. The Fair Work Australia Research Report 2/2011 provides a useful starting point. One or more members of the Panel will consult with any interested parties and provide a report under s.290 of the Fair Work Act." (*Annual Wage Review 2010–11*, Decision paragraph [221])

546. The consultations were held and the report, *Measuring the Needs of the Low Paid*, was delivered on 14 December 2011 (Print PR517718). In the following year's submissions ACCER saw the investigation and report as "a significant development" and proposed that it "should be an ongoing process with consultations being held throughout the year".

547. The FWC did not respond to this request and nothing further came of the earlier process. This led ACCER to renew its claim for an inquiry in the following year and a comment about the lack of commitment in the wage-setting process:

> "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.*" (ACCER submission, Annual Wage Review 2012-13, March 2013, paragraph 57, emphasis added.)

548. The comment might not have been well-received, but it was justified by past events and inaction. The comment was made in the context of submissions by ACCER and

ACOSS in earlier years (and repeated in 2013) regarding poverty among working families and the failure of the FWC to even mention poverty in the 2012 decision. ACCER proposed that the inquiry 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". Once again, there was no response from the FWC.

549. ACCER returned to research issues in its Research Proposals for the Annual Wage Review 2013-14, in submissions of 22 August 2013. They were made in the context of a Statement by the FWC on 17 July 2013 which advised that there was "limited capacity for the Commission to undertake additional research for the upcoming review". ACCER proposed that, having regard to the financial constraints, an investigation be conducted into the data held by the ABS that is relevant to the estimation of living standards and the needs of the low paid. In doing so, it drew attention to an entry in the "People FAQs" section of the ABS website:

> "Q. Do you have any information on Australian living standards? A. The Personal, Family and Household Finances page has various information relating to personal, family and household finances. It also provides links to ABS contacts who can provide assistance in obtaining data and answer general queries. An important focus is *public policy to ensure acceptable living conditions (or living standards) for all Australians*. (Emphasis added)"

550. The highlighted words are significant because the FWC should be searching for better information on the requirements of acceptable living standards for low paid workers and their families. We will see in the following chapter some of the important data that the ABS holds on matters that relate to the ascertainment of relative living conditions and standards.

551. The submission continued with the points that the Commonwealth holds extensive data in the ABS "and elsewhere" and that "the material held by the ABS that is relevant to the assessment of living standards and the needs of the low paid and the setting of a wage safety net…is the best way to start to identify and access Commonwealth data" (paragraph 8). It went on to say:

> "We expect that the ABS would be willing to co-operate with the Commission. We propose that a process be established under section 290 of the *Fair Work Act 2009* so as to enable the Commission and interested parties to hear from the ABS about the material that it holds which is relevant to the establishment of acceptable living conditions for working Australian and their families and to enable the Commission to gather appropriate evidence on that subject." (Paragraph 9)

552. The FWC responded:

> "ACCER has proposed that the Fair Work Commission establish a process under s.290 of the *Fair Work Act 2009* (Cth) to investigate data held by government organisations relevant to the estimation of relative living standards and the needs of the low paid. However, it is not clear to the Expert Panel how ACCER intends the Fair Work Commission to undertake this investigation. We therefore suggest that this proposal be further discussed at the Minimum Wages Research Group consultation following the release of this research program. After this discussion, ACCER may wish to resubmit this proposal for the Panel's consideration as part of the Annual Wage Review 2013–14 submissions process." ([2013] FWCFB 7720, Statement, 3 October 2013, paragraph [6].

553. We remain of the view that the proposal was sufficiently specific for action to be taken. The potential value of this process is evident by the matters that we refer to in the following chapter. The ABS has international standing on the measurement of living standards and the assessment of relative living standards and has extensive data on those matters. These are matters that bear upon the FWC's legal obligation to take into account "relative living standards and the needs of the low paid".

554. The matter did not make any progress at the consultation meeting referred to by the FWC and the proposed process remains an objective of ACCER. However, we might note that there may be some opposition to the proposal on the basis that ACCER should make its own inquiries of the ABS and present to the FWC any evidence that it regards as relevant. There are several responses that may be made to this. The main one is that we are not working in an adversarial model where it is up to the parties to collect and present evidence. Under the current system there is, as we explained in Chapter 2, an obligation on the FWC to engage in an "active intellectual process" to ascertain the factors that the Parliament requires to be taken into account when setting wages. Obviously, the FWC does not have to take up every invitation offered and can make its own judgments about research and investigatory priorities; but the ABS material is one matter that requires serious attention.

C. MEASURES OF POVERTY

555. Quantitative measures produce poverty lines, which enable calculations to be made of poverty gaps and margins over poverty. A quantitative measure should be based on, and tested against, a qualitative definition. Quantitative measures fall into two categories: needs-based measures of poverty and relative measures of poverty. We will discuss relative poverty lines in the next chapter.

Measuring Disadvantage

556. Before turning to these measures we should note the development in recent years of deprivation or social disadvantage measures and indexes. For example, the UNICEF Innocenti Research Centre has developed a 14-item *Child Deprivation Index* which measures the ability of households in which children live to provide, for example, three meals a day, fresh fruit and vegetables every day and a quiet place with enough room and light to do homework; see *Measuring Child Poverty: New league tables of child poverty in the world's richest countries, Innocenti Report Card 10*, UNICEF Innocenti Research Centre, May 2012 The relevant data is available in Europe, but not in Australia and other non-European countries of the Organisation for Economic Co-operation and Development (OECD).

557. There have been a number of initiatives in Australia to produce similar kind of data on the dimensions and causes of disadvantage, with a view to formulating effective public policy. These include the Social Exclusion Monitor, a joint project of the Brotherhood of St Laurence and the Melbourne Institute. The underlying research is in the Melbourne Institute's ongoing research program Household, Income and Labour Dynamics in Australia (HILDA).

558. The Australian initiatives are discussed and evaluated in a Productivity Commission Staff Working Paper, entitled *Deep and Persistent Disadvantage in Australia*, which was published in July 2013. This paper (by Rosalie McLachlan, Geoff Gilfillan and Jenny Gordon) is a very substantial contribution to the understanding of a range of issues concerning disadvantage, social exclusion and poverty, as well as being a very helpful guide to the research and literature on the subjects. The scope of the research paper was "to find answers to a number of questions, including:

- what does it mean to be disadvantaged?
- how many Australians are disadvantaged and who are they?
- what is the depth and persistence of disadvantage in Australia?
- where do Australians experiencing disadvantage live?
- what factors influence a person's risk of experiencing disadvantage?
- what are the costs of disadvantage and who bears them?" (Page 4)

559. The paper provides the reasons for the engagement by the Productivity Commission (and government as a whole) in these issues:

> "There are a number of reasons why policy makers need a better understanding about the nature, depth and persistence of disadvantage.
>
> 1. There is a high personal cost from disadvantage. People can suffer financially, socially and emotionally, have poor health and low

educational achievement. Family, particularly children, and friends can also be affected. Given that key objectives of public policy are to improve the lives and opportunities of Australians (both today and in the future), it is important to find ways to reduce, prevent and ameliorate the consequences of disadvantage.

2. Disadvantage reduces opportunities for individuals and society. By addressing disadvantage, more Australians can be actively engaged in, and contribute to, the workforce and to society more generally. Higher levels of engagement typically lead to higher personal wellbeing — improved living standards and quality of life.
3. Disadvantage has wider consequences for Australian society. For example, persistently disadvantaged communities can erode social cohesion and have negative social and economic consequences for others. Overcoming disadvantage can lead to safer and more liveable communities.
4. Support for people who are disadvantaged and the funding of programs to overcome disadvantage involves large amounts of taxpayers' money and private funding. Policy relevant questions include: what are the most effective investments for reducing and preventing disadvantage; and what are the costs and benefits?" (Page 28)

560. The Productivity Staff Working Party raises a number of issues and points that should also be the concern of the FWC, charged as it is with promoting social inclusion through a fair wages safety net that takes into account relative living standards and the needs of the low paid. Yet the history of wage-setting for more than the last decade has seen very little interest in the kind of questions being tackled in this paper. It is hard to find in past wage decisions any substantial concern by the successive tribunals that the wages that they have set may be contributing to the unacceptable degree of disadvantage in Australia.

Poverty Lines

561. Needs-based measures of poverty are those based on an itemised assessment of the costs of basic needs. These 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. The two major Australian needs-based quantitative measures are the Henderson Poverty Lines (HPLs) and the Budget Standards research of the Social Policy Research Centre (SPRC) at the University of New South Wales.

562. Research into the extent of poverty among the working poor and the incomes needed to lift families out of poverty dates back to late nineteenth century England. This and other research followed widespread concern in industrialising countries about the living

conditions of low paid workers and their families. The general objective of the research was to establish an income threshold that would enable families to secure an adequate level of food, shelter, clothing and health.

563. There are many of these needs-based poverty lines, or measures of income sufficiency around the world, and the best known set of poverty lines is that used in the United States. Since President Johnson's War on Poverty the poverty lines have been updated and published by the U.S. Census Bureau. A comprehensive report appears each year; see *Income, Poverty, and Health Insurance Coverage in the United States: 2012*, published by the Bureau in September 2013. There are 48 poverty thresholds covering a wide range of households. The poverty thresholds are used to in a number of ways unrelated to the targeting of poverty; for example, a U.S. citizen wishing to sponsor a relative to immigrate to the U.S. must show that the sponsor can support the relative at 125% above the mandated poverty line.

564. Not only does the U.S. government publish poverty thresholds, but it publishes estimates of the number of families whose incomes leave them below poverty. This provides very useful data for public advocacy; for example, debate about the Food Stamps legislation and legislated minimum wages centres on poverty thresholds and the number living in poverty. There is nothing like this in Australia.

565. Despite the widespread use of the poverty thresholds in the U.S., it is widely accepted that they understate the incomes needed to live a life free of poverty. The term "abject poverty lines" would be more relevant. They are not up to date, despite repeated attempts to update them. The poverty lines were established in the 1960s on the basis of limited research and have been adjusted to reflect price increase, and not to reflect overall living standards in the U.S.

566. This reference to the U.S. poverty lines is to make a point that will be apparent later: a poverty line or a measure of need that has been overtaken by increased living standards still has a value. It is a relevant point because the two major needs-based Australian measures (the HPLs and the SPRC's Budget Standards) have been dismissed by the FWC because they are outdated. The HPLs, which were rejected by the FWC shortly after being used for four years by the AFPC, are a product of the same era that produced the U.S. poverty lines. The Budget Standards research, based on a basket of goods and services priced in February 1997 has been dismissed on the basis that it has "no contemporary relevance" to the adequacy of the NMW, which itself was set in April 1997.

D. HENDERSON POVERTY LINES

567. In the 1970s much public debate and policy discussion about poverty in Australia came out of a body of research produced in the 1960s by the Institute of Applied Economic Research, now the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute), under the leadership of Professor Ronald Henderson. In 1972 the Commonwealth Commission of Inquiry into Poverty (Poverty Commission) was established with bi-partisan support under the chairmanship of Professor Henderson. A major part of its task was to identify and analyse poverty among working households and to make public policy proposals.

568. The poverty lines produced by the 1960s research and the work of the Poverty Commission came to be known as the Henderson Poverty Lines. HPLs have been calculated for various kinds of households, with adjustments for working and non-working households. The HPLs include and quantify housing costs.

569. Each quarter the Melbourne Institute publishes a newsletter, *Poverty Lines, Australia*, which updates the HPLs. They are adjusted by reference to the movements in a measure of community income: household disposable income per head and seasonally adjusted (HDI), as calculated by the Melbourne Institute.

> "Updating poverty lines according to changes in per capita household disposable income means that the poverty lines are *relative* measures of poverty. As real incomes in the community rise, so too will the poverty lines. The value of the poverty lines will therefore be reasonably stable relative to general standards of living, but may change relative to the cost of living." (*Poverty Lines, Australia, September Quarter 2013*, page 2)

570. Although the HPLs did not play a significant role in Australian wage-setting over the few decades following their formulation, they were used by the AFPC in each of its decisions over the period 2006 to 2009. However, they have not been used since then. In the *Annual Wage Review 2010-11* the tribunal said:

> "[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."

571. There are two aspects to this conclusion. First, it is said, “poverty” is a different thing to "the needs of the low paid", which the FWC has to address under section 284(1) of the *Fair Work Act*. The simple response to this is that the needs of the low paid include

the need not to live in poverty and the setting of rates that leave the low paid in poverty is not consistent with the purpose of the legislation. This was Mr Costigan's point in 2003. Whether wage rates leave workers and their families in poverty is a fundamental matter that should concern a wage tribunal and its reasons for decision should reflect that consideration.

572. In the June 2012 decision poverty was not even mentioned by the FWC despite substantial submissions being made to it on the subject. However, the position changed in the June 2013 decision with a passage that alludes to Mr Costigan's point (which had been, once again, quoted in ACCER's submissions):

> "We accept the point that if the low paid are forced to live in poverty then their needs are not being met. We also accept that our consideration of the needs of the low paid is not limited to those in *poverty, as conventionally measured*. Those in full-time employment can reasonably expect a standard of living that exceeds poverty levels. In assessing the needs of the low paid *we rely on* a range of measures including comparisons of hypothetical low-wage families with *customary measures of poverty*, both before and after taking account of the impact of the tax-transfer system, and survey evidence of financial stress and material deprivation among low-paid households." (*Annual Wage Review 2012-13*, paragraph [33], emphasis added)

573. It is not readily apparent what the FWC meant by "poverty, as conventionally measured" and "customary measures of poverty", but given the FWC's own continuing calculations of the 60% relative poverty line, the rejection of the HPLs and the Budget Standards data (see below) and, when referring to assessing the needs of the low paid, the use of the words "we rely on", it appears that it is referring to relative poverty lines.

574. The second aspect of the rejection of the HPLs concerns the claimed "inconsistency between its original construction and the way it is updated". This is a reference to the fact that the Melbourne Institute updates the HPLs by changes in national household disposable income per head, and not the typically smaller increases in the Consumer Price Index (CPI) or some other price index. The Melbourne Institute's reason for doing this is a sound one; and the "inconsistency" is not a sound reason for its rejection.

575. We might add the observation that the HPLs are criticised for the fact that they are updated by reference to a measure of increasing community wealth, while, as we explain later, the CPI-adjusted budget standards are rejected, as lacking contemporary relevance, because they have only been adjusted by price changes.

576. The shortcoming of a price-adjusted basket of goods is that it becomes increasingly outdated with decreasing utility in the setting of wages based on relative living

standards and the needs of the low paid. This is the substance of the point made by the Melbourne Institute in its newsletter. Without undertaking new complex and expensive research at very frequent intervals, an adjustment mechanism needs to be found for poverty lines or measures of needs based on a basket of goods and services. The price-adjustment method is the most conservative; but the application of a measure of community wealth, such as the Melbourne Institute does for the HPLs, would be acceptable.

577. ACCER had concerns about the AFPC's use of the HPLs and referred to them in a paper published in May 2009:

> "ACCER has been concerned about the AFPC's use of the HPLs in setting safety net wages. There are three major concerns…:
> (a) the housing costs included in the HPLs are manifestly inadequate causing the HPLs to understate basic living costs;
> (b) the absence of child care costs in the HPLs and the consequent failure of the HPLs to measure the poverty line for working single parents; and
> (c) the HPL equivalence scales underestimate the costs of families compared with the costs of single persons and the equivalence scales used by the Organization for Economic Co-operation and Development (and adopted by the Australian Bureau of Statistics) are preferable." (*Housing-adjusted Henderson Poverty Lines*, pages 2-3)

578. The paper addressed the first of these concerns. The HPLs estimation of housing costs, which were set in the early 1970s and adjusted by the HDI, do not reflect contemporary housing costs. The proposal advanced in the paper was to adjust the housing component in the HPLs by the use of data, published in *Year Book, Australia*, showing the average rent paid by recipients of Commonwealth rental assistance. Currently, the most recent published data is in *Year Book Australia, 2012*. It shows the average rents paid by the various groups of recipients at 3 June 2011. In the category of a couple with one or two dependent children, the average rent paid was $297.00 per week. Applying the increase in the CPI rental index over the period June 2011 to December 2013 (9.5%), that figure rises to $325.22 per week. This estimate is $111.21 above the current HPL estimate of housing costs. We will return to this figure in the following section.

579. ACCER argued that, if modified to take account of contemporary housing costs and supplemented by data on child care costs for sole parents, the HPLs could be a useful guide in wage-setting, but, in the absence of those modifications, it had limited utility in the setting of wages.

580. The HPLs, nevertheless, provide very useful information about changes over time. They can be used to see how the lowest paid workers families have fared relative to their HPLs over the period 2001 to 2014. This is summarised in Table 23.

581. Table 23 demonstrates that very substantial changes have taken place. Even with the obvious limitations in the utility of the HPLs to set contemporary levels, the table is a useful indicator of what has happened since 2001. 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 2001 it was 1.9% above the poverty line and in 2012 it was 8.7% below the poverty line. The single worker without dependants has lost more than half of his or her initial margin over poverty. The increase in family payments has only partially offset the dramatic decline in wages, the full force of which is felt by the single worker.

Table 23

Changes in incomes relative to Henderson Poverty Lines
January 2001- January 2014
($ per week, unless otherwise indicated)

	Single Worker (NMW)	**Couple and 2 children** (NMW)
2001 HPL	263.12	494.22
2001 Disposable income	346.38	503.37
2001 DI:HPL	+31.6%	+1.9%
2014 HPL	504.38	947.36
2014 Disposable income	569.44	865.40
2014 DI:HPL	+12.9%	-8.7%

Each of the HPLs for 2001 is calculated by the formula provided in *Poverty Lines Australia September Quarter 2013*. The 2014 figures are calculated on the figures at September 2013, the latest available figures. Disposable incomes are from Tables 15 and 19, above. The rent assistance to which the family may be entitled has not been included. Maximum rent assistance increased from $50.47 to $72.84 per week over the period January 2001 to January 2014.

582. This trend was not unknown to successive wage tribunals. One of ACCER's complaints about the AFPC was that it used the HPLs, but failed to respond to the trend. In its four decisions from 2006 to 2009 the AFPC itself recorded that the single person's margin over the HPL fell from 31% to 19%, yet made no comment about this trend, especially when it decided in 2009 to freeze the NMW and other wages. Most of the deterioration since 2001 occurred during those years.

E. BUDGET STANDARDS

583. Indisputably, the best evidence in Australia about the needs of low income families is in the Budget Standards research of the SPRC. 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.

584. 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. Workers and their families should have a significant margin above the Low Cost budget.

585. 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*, by Professor Peter Saunders, SPRC 2004. The paper was commissioned by the ACTU for evidence in the *Safety Net Review Case 2004*.

586. There is no regular process for updating the SPRC budgets, but it was done in Professor Saunders' 2004 paper, with figures being updated to the September quarter 2003 on the basis of changes in the CPI. Although it has not been done, the budgets could be adjusted by reference to changes in household disposable income, as the Melbourne Institute does with the HPLs.

587. In Table 24 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 24

Extract from SPRC Low Cost Budget

Low Cost Food Budget for Couple with Two children										
Serving unit		Grams per serve	Girl aged 6		Boy aged 14		Woman aged 35		Man aged 40	
			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

588. In Table 25 we have updated the table used in Professor Saunders' evidence in 2004 so that it takes into account the CPI increase of 32.5% from the September Quarter 2003 to the December Quarter 2013.

589. ACCER has presented an updated table like Table 25 in all four past wage reviews under the *Fair Work* legislation. This year will be the fifth time it has argued that the itemised budgets are credible and, with adjustments to cover price increases since 1997, provide a sound basis upon which it can form a conservative estimate of the basic needs of low paid workers and their families. We persist in this because at no time have the substantial merits of this evidence been addressed in the various reasons for decision.

590. This year the Low Cost budget is $939.03 for the family of four, compared to the disposable income of $938.24 (Table 28) for a NMW-dependent family of similar size, although the children are not of the same age in the two estimates. Given the basket of goods and services was designed for social security recipients, the working family should have a disposable income substantially in excess of $939.03. Furthermore, given that community standards have increased, that figure is conservative and a further margin should be factored in. In presenting this information we are not seeking to establish what should be the proper relationship between the Budget Standards figure and the disposable income of a NMW-dependent working family. We rely on the material for more limited purposes: we rely on it to show that an extra increase of

$10.00 per week in the NMW is fully justified. On a reasonable view of this material, it is.

Table 25

Updated Low Cost and Modest but Adequate Budgets

January 2014

($ per week)

	Family/ household type:				
	Single Female	**Single Male**	**Couple, without children**	**Couple and girl aged 6**	**Couple, girl 6 and boy 14**
	Modest but Adequate				
Housing	219.02	219.02	219.02	265.66	312.44
Energy	12.19	12.19	15.90	20.41	24.25
Food	79.24	95.27	173.44	222.73	305.41
Clothing & footwear	37.50	28.49	56.45	77.91	93.28
Household goods & services	47.17	47.17	4.64	76.19	64.53
Health	6.89	10.20	16.83	21.47	25.04
Transport	118.46	118.06	132.90	137.14	141.38
Leisure	43.86	50.75	85.60	90.90	135.15
Personal care	35.11	15.50	43.99	47.17	48.76
Total	599.43	596.65	748.76	959.57	1150.23
	Low Cost				
Housing	190.54	193.19	193.19	243.54	293.89
Energy	11.26	11.40	15.11	18.15	21.07
Food	74.73	75.92	136.87	174.90	241.15
Clothing & footwear	22.13	22.53	50.75	64.40	81.22
Household goods & services	36.97	37.63	47.04	60.29	92.22
Health	6.36	6.63	11.40	14.71	17.62
Transport	88.51	90.10	102.03	109.71	109.71
Leisure	30.61	31.14	38.96	47.04	58.30
Personal care	8.48	8.61	14.40	20.14	23.85
Total	469.58	477.13	609.72	752.87	939.03

591. In 2004 the AIRC discussed the budget standards evidence and concluded 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.)

592. The AIRC drew a distinction between the use of the Budget Standards material as a benchmark and its utility as an indicator. The last sentence makes that clear. It had some relevance.

593. 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 as a benchmark. The budgets were based on housing costs in Hurstville, Sydney, in 1997 and were regarded as unrepresentative of the national position at that time. In our earlier discussion of the HPLs an estimate was given of the current costs of rental housing on the basis of Commonwealth data gathered from applicants for rental assistance. That figure of $325.22 per week is $31.33 per week more than the housing costs in the updated budget. This overcomes the housing issue in 2004.

594. In the first decision under the new legislation the tribunal 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*." (*Annual Wage Review 2009-10*, paragraph [243], footnote omitted, emphasis added.)

595. The tribunal's reasoning was not explained by the words "we were not persuaded". This was not an assessment of the strengths and weaknesses of Budget Standards material, but a rejection for all purposes. There is no explanation why the price-adjusted budgets had no weight and were unacceptable for all purposes.

596. We referred in Chapter 7B to the section 290 report *Measuring the Needs of the Low Paid* of 11 December 2011. In regard to the HPLs and the SPRC material, the report claimed that it lacked "contemporary relevance" read:

> "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." (*Annual Wage Review 2011-12* paragraph [41])

597. Nothing was added by way of reasons for the conclusion. In its 2012 decision the tribunal quoted the conclusion in the first sentence of this extract of the report without comment, but with apparent approval (*Annual Wage Review 2011-12*, paragraph [41]). In 2013, there was only an incidental response: in one paragraph there is reference to "the absence of robust contemporary poverty line or budget standards data" (*Annual Wage Review 2012-13*, paragraph [402]).

598. The Budget Standards were researched and established in the 1990s. Professor Saunders' evidence in 2004 was that the research was undertaken between 1995 and 1998 and that the prices were established at February 1997. The budgets were established and priced around the time that the FMW was first set in April 1997, and the research was not available until after then. It is inconsistent to reject research from 1997-98 on the ground that it has no contemporary relevance and, at the same time, not examine the NMW which was set in April 1997 when it is claimed that it has lacks contemporary relevance. Our position is that the updated Budget Standards research has relevance in determining whether the current value of the NMW has contemporary relevance. We can see no reason for its total rejection.

599. On what basis can a basket of very basic goods and services, the *basics of life*, have no relevance? Nobody would seriously suggest that families can get by on less. Why, then, does it have no utility? Because community standards have increased, a re-construction of the budgets will raise the budgets, not lower them. This is the only way in which they lack contemporary relevance. CPI adjustments are, therefore, conservative. Surely, it is relevant to the setting of a safety net wage if the disposable incomes of workers and their families are unable to afford a basket of goods and services that were set and priced sixteen years earlier.

Value judgments

600. A criticism of attempts to set, for example, a living wage, a wage that enables people to live in dignity or a wage that provides a minimum acceptable standard of living, is that the process is too subjective and involves arbitrary judgments. In its 2010-11 decision the tribunal noted the Australian Government's submission on the estimation of the needs of the low paid:

"[212] The Australian Government submitted that the Henderson Poverty Line and budget standards are subjective and do not reflect individuals' circumstances well and it preferred to rely on financial stress indicators."

601. This was not a new issue, although surprising when made on behalf of the then Commonwealth Government which had returned "needs" to the legislation and set pensions by reference to a "basic acceptable standard of living" standard. The value judgments issue had been raised in 2004 and is likely to arise whenever needs are assessed and quantified. Professor Saunders had raised the issue of value judgements 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)

602. We accept that where research, such as the Budget Standards research, is used in wage reviews 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 is 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 books for the children. In a system that is directed at an ultimate value judgment, the setting of 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.

603. Finally, it should be noted that the SPRC has secured funding grant from the Australian Research Council to establish a contemporary basket of goods and services. It is expected that the research will not be available for use in wage claims for several years. The failure to even consider the Budget Standards material means that we do not have the opportunity to discuss design and methodological issues that might be raised when this expensive research comes to fruition.

F. THE ROLE OF THE COMMONWEALTH

604. ACCER believes that the *Fair Work* reforms have failed to achieve fair outcomes for low paid workers and their families. A major reason for this has been the role of the Commonwealth Government. It was not actively engaged in issues about the needs of the low paid and their relative living standard. Indeed, its actions may be described as unhelpful, at best.

605. This conclusion is explained in the following extract from ACCER's submissions in March 2013 in the context of its request for an inquiry into the needs of the low paid. It is a lengthy passage, but an important one for the understanding of the Commonwealth's role in relation to some important issues.

> "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 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..., 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...

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.)"

606. These passages highlight the inconsistency between claims that pensioners and children are provided with a basic acceptable standard of living (without foundation in the case of children, at least) and the failure to accept that a basic acceptable standard of living might be identified in minimum wage cases. The Commonwealth’s submissions of March 2013 were in a similar form to its past submissions, giving ACCER no reason to change the views in the quoted passages.

607. The May 2013 Post-Budget submission by ACCER included the following commentary on the Government:

> “2. We preface those responses with a general observation that draws on a commentary on the Budget by the Executive Director of Catholic Social Services Australia, Paul O'Callaghan:
>
> > "The Treasurer has emphasised his belief that Labor's values and priorities are reflected in this Budget. He is keen to help the battler. Yet there is a sharp dissonance between the Government's promotion of a 'fair go' through big reforms and its evident disinterest in so many citizens whose daily financial struggles are profound." (*Flawed beauty in back-to-the-wall Budget*, *Eureka Street*, 15 May 2013)
>
> 3 In his view, this is demonstrated by the failure of the Budget to deal with the plight of those who rely on the poverty-inducing Newstart allowance. It is also evident in the Commonwealth's earlier decision to transfer sole parents from the Parenting Payment to the Newstart allowance, thereby forcing many families into poverty, even those where the parent has the capacity and opportunity to obtain substantial employment. Notwithstanding the enormous value promised by its DisabilityCare scheme, the Commonwealth has failed to see life through the eyes of the battlers and those who are on the margins of society.
>
> 4. The *Fair Work Act 2009* was a "big reform", which, at least in regard to the setting of safety net protections, we supported and welcomed. However, the Commonwealth's submissions to, and participation in, annual wage reviews have demonstrated that it is blind to the needs of the working poor and the poverty of low paid workers with family

> responsibilities. ACCER's Submission of March 2013 (at paragraphs 129 to 136) describes the Commonwealth's resistance to any serious attempt to ascertain 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. To adapt Paul O'Callaghan's commentary, the Commonwealth has demonstrated (at the least) a profound disinterest in the daily financial struggles of marginal and vulnerable workers."

608. We would never have expected in the events leading to the enactment of the new wage setting system in 2009 that four years later there would have been such profound disappointment with the Government's contribution to its implementation.

609. Perhaps not surprisingly, nothing said in ACCER's submissions elicited any response from the Commonwealth. Nor did the FWC deliver the questions suggested to them. They are perfectly reasonable questions to ask the Commonwealth and directed at a core issue before the FWC. They are no less important than a range of macroeconomic data and other matters that the FWC would expect from the Commonwealth. We again propose that the following questions be put to the Commonwealth:

> Using the standard that the Commonwealth applied in the setting of pensions in 2009, i.e. the "basic acceptable standard of living" standard, 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 the Commonwealth is unable to answer these questions (within a reasonable range of estimation), how these questions might be answered?

CHAPTER 8
LOW INCOME WORKING FAMILIES HAVE FALLEN BELOW POVERTY LINES

A. THE USE AND UTILITY OF RELATIVE POVERTY LINES

610. In Chapter 7 we discussed the concept and measurement of poverty, with particular reference to needs-based measures of poverty. The second, and most frequently used, kind of quantitative measures of poverty are relative poverty lines which are expressed as a percentage of the national median or mean *equivalised* household disposable income. They are not measures of per capita disposable income, but calculations that take into account family size and composition by the use of *equivalence scales*.

611. The purpose of equivalence scales is to calculate the various disposable incomes 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 Organisation for Economic Development and Co-operation (OECD) and which are used by the Australian Bureau of Statistics (ABS). The modified OECD equivalence scales mean, for example, that a couple needs 1.5 times the disposable income of the single person in order to achieve the same standard of living. Poverty lines for a range of different households can be calculated by the application of the equivalence scales. Relative poverty lines are usually calculated by reference to the national median equivalised disposable household income, but the mean average disposable income (which is typically higher than the median) may also be used.

612. Relative poverty lines do not measure actual needs, but, as poverty is a relative concept to be determined in an economic context, they have been widely used. The 60% of median relative poverty line is widely used in Europe, but the OECD's main relative measure of poverty is the 50% of median. There is no *a priori* reason for accepting either the 50% or the 60% relative poverty lines, or any percentage in between. Each has to be tested against experience and relevant research. One way of dealing with this issue is to treat the 60% relative poverty line as being a line where a person is "at risk" of poverty (as some do), with the 50% of median being the "deep poverty" line.

613. The 60% relative poverty line was the relative poverty line used by the Australian

Fair Pay Commission (AFPC) prior to its abolition in 2009 and is still used by the Fair Work Commission (FWC). Neither tribunal treated it as the benchmark for the setting of wages. In Australia, there is no reason to depart from the use the 60% of median relative poverty line as a useful starting point for understanding needs and the setting of wage levels. Given that working families should have a margin over poverty, 60% is the most appropriate in the absence of research suggesting another percentage or range of percentages.

614. Calculations of median incomes and equivalence scales provide a means of comparison households and to position those households within the broader community; and they provide a means of tracking the relative position of various households over time. They have a value beyond identifying poverty.

615. Relative poverty lines are also an important tool in the setting on wage rates with reference to relative living standards, as the FWC is required to do under the minimum wages objective in section 284(1) of the *Fair Work Act*, because they enable the positioning of various income groups relative to each other and to a community average. They enable, for example, the positioning of low income households relative to households which rely on unemployment benefits or pensions.

ABS data collection

616. Relative poverty lines have assumed greater prominence in Australian public policy debate as a result of the publication over the last two decades of relevant national data on incomes and income distribution. Unless you have sound data, relative poverty lines are somewhat speculative. The developments in data collection and international standards over the past couple of decades have made relative poverty lines increasingly useful for social analysis and the formulation of public policy. Their use in minimum wage cases commenced with the decision of the Australian Fair Pay Commission (AFPC) in the minimum wage review of 2008. It was a significant innovation, albeit one that did not appear to have any practical effect for the low paid.

617. ABS data collection and analysis on these and associated matters have been collated and published in accordance with international standards. There is a considerable body of learning on these matters. The basic resource material is found in the *Canberra Group Handbook on Household Income Statistics*, published in 2011 by the United Nations Economic Commission for Europe. As the name suggests, the ABS was instrumental in developing this publication and its antecedents. Included in the

publication are the following:

> "The *Canberra Group Handbook on Household Income Statistics, Second Edition* (2011), provides a consolidated reference for those involved in producing, disseminating or analysing income distribution statistics. It reflects the current international standards, recommendations and best practice in household income measurement. It also contains updated and expanded information about country practices in this field of statistics and provides guidance on best practices for quality assurance and dissemination of these statistics." (page iii)
>
> "The aim of the Handbook is to contribute to the availability of more accurate, complete, and internationally comparable income statistics, greater transparency in their presentation, and more informed use of what are inevitably some of the most complex statistics produced by national and international organisations." (page 1)

618. Under the heading *Why is income distribution important?* it responds:

> "Economic analysts and policy makers identify three main purposes for compiling information on income distribution.
>
> The first is driven by a desire to understand the pattern of income distribution and how this can be related to the way in which societies are organised.
>
> The second reflects the concern of policy makers to assess the impact of both universal and targeted actions on different socio-economic groups. Examples of policy issues where data on income distribution are important include welfare, taxation and other fiscal policies, housing, education, labour market and health.
>
> The third is an interest in how different patterns of income distribution influence household well-being and *people's ability to acquire the goods and services they need to satisfy their needs, for example, studies of poverty and social exclusion*, and research on consumer behaviour." (Page 1, emphasis added)

619. Drawing on its expertise in these matters, the ABS has produced five pamphlets under the series title *Household Economic Wellbeing*. They five pamphlets are: *What is household economic wellbeing? Understanding measures of income and wealth, Low economic resource households*, *Key data sources* and *Changes over time*. Clearly, there is great expertise and substantial data in Canberra on economic wellbeing, living standards and poverty that has not been accessed for wage-setting purposes.

B. ESTIMATING MEDIAN EQUIVALISED DISPOSABLE HOUSEHOLD INCOME

620. The fundamental task in setting a median-based relative poverty line is identifying the median equivalised disposable household income (MEDHI) and its changes over time.

MEDHI is the foundation stone for poverty lines based on the median: the 60% relative poverty line is simply 60% of MEDHI.

621. MEDHI has to be calculated by appropriate research. In Australia, data on disposable incomes is collected by the ABS in accordance with internationally recognised standards. The most recent ABS publication on this aspect is *Household Income and Distribution, Australia 2011-12*, Catalogue no. 6523.0, published in August 2013, where median and mean disposable incomes were calculated for 2011-12.

622. ABS surveys of household income in the *Household Income and Income Distribution* series are available back to 1994-95. As a result of this ongoing ABS data series we can collate MEDHI figures to present another aspect of the changes in the circumstances of workers and their families since 2001. However, there is a note of caution about the comparability of the material. The following appears in the latest publication:

> "Estimates presented from 2007–08 onwards 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 to present the years on a comparable basis." (*Household Income and Distribution, Australia 2011-120,* cat. no. 6523.0, page 25.)

623. Because the ABS usually collects the relevant data for this purpose every two years and there is a necessary delay between collection and publication. As the data will be outdated by the time of its publication it is necessary to adopt a appropriate adjustment process to generate contemporaneous MEDHI and poverty lines. In calculating its relative poverty lines the AFPC adopted the same method used by the Melbourne Institute to update its poverty lines in its quarterly editions of *Poverty Lines, Australia,* ie the quarterly changes in per capita household disposable income (HDI). This method has also been adopted by the FWC.

162. In Table 26 we have calculated changes in MEDHI over the period January 2001 to January 2014. The MEDHI figures are taken from ABS surveys over the relevant period, with the non-survey years being calculated by the use of the Melbourne Institute's calculations of HDI.

163. The median equivalised figures for 2013 and 2014 are based on the 2012 ABS figure, adjusted in accordance with movements in HDI per head, published by the Melbourne Institute in *Poverty Lines Australia, September 2013*. For each of the

years between the ABS surveys, ie 2002, 2005, 2007, 2009 and 2011, the median equivalised disposable income is calculated by the proportionate changes in the HDI over the two year period. If, for example, 70% of the increase in HDI over the two year period occurred in the first 12 months, the MEDHI figure for the mid-point would be calculated at 70% of the difference between the ABS figures at the start and the end of the two year period.

Table 26

Median equivalised disposable household income
January 2001 – January 2014
($ per week)

	Median equivalised disposable household income (ABS)	Household Disposable Income per head (Melbourne Institute)	Median equivalised disposable income
January 2001	413.63	418.33	413.18
January 2002	-	458.77	450.66
January 2003	448.50	456.90	448.50
January 2004	500.17	482.92	500.17
January 2005	-	519.56	543.31
January 2006	568.86	541.30	568.86
January 2007	-	581.28	621.21
January 2008	687.87	632.19	687.87
January 2009	-	695.85	714.55
January 2010	714.79	696.43	714.79
January 2011	-	732.43	755.97
January 2012	790.00	765.67	790.00
January 2013	-	785.17	810.15
January 2014	-	801.89	827.37

Household Disposable Income (HDI) per head figures are taken from *Poverty Lines Australia, September 2013,* published by the Melbourne Institute, and, save for January 2014, the figures are those published for the immediately preceding December quarter. We have used the September quarter 2013 figure for January 2014, with the result that the annual increase in MEDHI is likely to be slightly understated. The next issue of the newsletter, for the December quarter 2013, is due for release by April 2014.

The financial year figures calculated by the ABS have been used for each January within the survey periods

The median equivalised disposable household income figures for 2001, 2003, 2004, 2006, 2008, 2010 and 2012 are respectively taken from the calculations for 2000-01, 2002-03, 2003-04, 2005-06, 2007-08, 2009-10 and 2011-12 in *Household Income and Income Distribution, Australia, 2011-12,* Catalogue no. 6523.0, at Table 1 As the published figures for all of those years are in 2011-12 prices, the earlier years have been re-calculated in accordance with the disclosed price adjustments.

C. CONSTRUCTING RELATIVE POVERTY LINES

624. In this section we have four tables which present the basic data for the construction of three relative poverty lines covering three low income families over the period January 2001 to January 2004. They are summarised in the graph in Figure 2.

625. Table 27 shows the poverty lines for single workers, couples with two children and sole parents with two children. This table uses the modified OECD equivalence scale used by the ABS, which sets the single person at 1.0, a second adult at .5 and each child at .3.

Table 27

Poverty lines for workers and families
January 2001 – January 2014
($ per week)

	Median equivalised disposable household income	**Poverty Line Single**	**Poverty Line Couple and 2 children**	**Poverty Line Sole parent and 2 children**
January 2001	413.18	247.91	520.61	396.65
January 2002	450.66	270.40	567.83	432.63
January 2003	448.50	269.10	565.11	430.56
January 2004	500.17	300.10	630.21	480.16
January 2005	543.31	325.99	684.57	521.58
January 2006	568.86	341.42	716.76	546.11
January 2007	621.21	372.73	782.72	596.36
January 2008	687.87	412.72	866.72	660.36
January 2009	714.55	428.73	900.33	685.97
January 2010	714.79	428.87	900.64	686.20
January 2011	755.97	453.58	952.52	725.73
January 2012	790.00	474.00	995.40	758.40
January 2013	810.15	486.09	1020.79	777.74
January 2014	827.37	496.42	1042.49	794.28

626. Tables 28, 29 and 30 respectively cover workers paid at the National Minimum Wage (NMW) and the C12 and C10 wage rates in the *Manufacturing and Associated Industries and Occupations Award 2010* and its predecessor awards. For single workers, the disposable incomes are those in the "net" columns. For those

workers with family responsibilities we have provided the detail of the various kinds of family transfers, with a disposable income calculated for each year. As we have explained, the transfer payments are the same for couple parent and sole parent families.

627. In January 2014 the 60% poverty line for a single adult was calculated on a median equivalised disposable household income of $827.37 per week and was $496.42 per week. For a family of two adults and two children the 60% poverty line was $1042.49; 2.1 times the poverty line of the single adult. The 60% poverty line for the sole parent and two children was $794.28 per week; 1.6 times the single person's.

628. Table 28 shows wage, tax and family payment calculations for NMW-dependent workers and families over the period January 2001 to January 2014. The data for this and Tables 29 and 30 are mostly from Tables 19 and 15. The family comprises a couple where one parent stays at home to care for two children or a working sole parent with two children. The breadwinner in each family is employed full time and is paid the safety net rate.

Table 28

Wages, taxes and family payments for NMW-dependent workers and families

January 2001 –January 2014

($ per week unless otherwise indicated)

Year	NMW	NMW per year	NMW net	Medicare exemption	FTB A	FTB B	FTB A Supp.	FTB B Supp.	Rental assist. max.	Disposable income
2001	400.40	20,893	346.38	6.00	116.20	34.79	-	-	50.43	553.80
2002	413.40	21,571	354.76	6.20	122.92	36.82	-	-	52.46	573.16
2003	431.40	22,510	366.37	6.47	126.70	37.94	-	-	53.93	591.41
2004	448.40	23,397	377.93	6.73	130.48	39.06	-	-	55.40	609.60
2005	467.40	24,389	396.78	7.01	133.56	39.97	23.50	2.87	56.80	660.49
2006	484.40	25,276	412.84	7.27	139.06	41.02	24.06	5.88	58.27	688.40
2007	511.86	26,709	449.93	7.68	140.84	42.14	24.76	6.02	60.58	731.95
2008	522.12	27,244	467.59	7.83	147.46	43.54	25.60	6.23	61.84	760.09
2009	543.78	28,374	494.29	8.16	151.34	44.87	26.20	6.44	64.63	795.93
2010	543.78	28,374	497.17	8.16	156.94	46.55	27.28	6.65	65.61	808.36
2011	569.90	29,737	521.86	8.55	160.30	47.53	27.84	6.79	67.57	840.44
2012	589.30	30,750	537.49	8.84	164.64	48.79	27.84	6.79	70.02	864.41
2013	606.40	31,642	556.87	9.10	193.25	50.53	27.84	6.79	71.16	915.54
2014	622.20	32,466	569.44	9.33	199.74	52.26	27.84	6.79	72.84	938.24

The figures are at January of each year. Family Tax Benefits are taken from Table 19. Rent assistance, is calculated on the basis of 52.18 weeks per year. The "net" amount includes the Medicare levy. For families, the exemption from the Medicare levy (all families fall under the prescribed thresholds) is taken into account by it being treated as a transfer in the "Medicare exemption" column.

Table 29

Wages, taxes and family payments for C12-dependent workers and families

January 2001 – January 2014

($ per week unless otherwise indicated)

Year	C12	C12 per year	C12 net	Medicare exemption	FTB A	FTB B	FTB A Supp.	FTB B Supp.	Rental assist. max.	Disposable income
2001	439.60	22,938	370.50	6.59	116.20	34.79	-	-	50.43	578.51
2002	452.60	23,617	380.05	6.79	122.92	36.82	-	-	52.46	599.04
2003	470.60	24,556	391.74	7.06	126.70	37.94	-	-	53.93	617.37
2004	487.60	25,443	408.93	7.31	130.48	39.06	-	-	55.40	641.18
2005	506.60	26,434	421.18	7.60	133.56	39.97	23.50	2.87	56.80	685.48
2006	523.60	27,321	438.14	7.85	139.06	41.02	24.06	5.88	58.27	714.28
2007	551.00	28,751	475.17	8.26	140.84	42.14	24.76	6.02	60.58	757.77
2008	561.26	29,287	500.28	8.42	147.46	43.54	25.60	6.23	61.84	793.37
2009	582.92	30,417	526.67	8.74	151.34	44.87	26.20	6.44	64.63	828.89
2010	582.92	30,417	529.54	8.74	156.94	46.55	27.28	6.65	65.61	841.31
2011	609.00	31,778	553.15	9.14	160.30	47.53	27.84	6.79	67.57	872.32
2012	629.70	32,857	569.59	9.45	164.64	48.79	27.84	6.79	70.02	897.12
2013	648.00	33,813	589.96	9.72	193.25	50.53	27.84	6.79	71.16	949.25
2014	664.80	34,689	603.31	9.97	199.74	52.56	27.84	6.79	72.84	972.75

See notes to Table 28.

Table 30

Wages, taxes and family payments for C10-dependent workers and families

January 2001 – January 2014

($ per week unless otherwise indicated)

Year	C10	C10 per year	C10 net	Medicare exemption	FTB A	FTB B	FTB A Supp.	FTB B Supp.	Rental assist. max.	Disposable income
2001	492.20	25,683	406.53	7.38	116.20	34.79	-	-	50.43	615.33
2002	507.20	26,466	416.81	7.61	122.92	36.82	-	-	52.46	636.62
2003	525.20	27,405	429.14	7.88	126.70	37.94	-	-	53.93	655.59
2004	542.20	28,292	444.77	8.13	130.48	39.06	-	-	55.40	677.84
2005	561.20	29,283	457.78	8.42	133.56	39.97	23.50	2.87	56.80	722.90
2006	578.20	30,170	475.40	8.67	139.06	41.02	24.06	5.88	58.27	752.36
2007	605.56	31,598	510.94	9.08	140.84	42.14	24.76	6.02	60.58	794.36
2008	615.82	32,133	538.06	9.24	147.46	43.54	25.60	6.23	61.84	831.97
2009	637.48	33,263	570.03	9.56	151.34	44.87	26.20	6.44	64.63	873.07
2010	637.48	33,263	572.90	9.56	156.94	46.55	27.28	6.65	65.61	885.49
2011	663.60	34,627	596.56	9.95	160.30	47.53	27.84	6.79	67.57	916.54
2012	686.20	35,806	614.52	10.29	164.64	48.79	27.84	6.79	70.02	942.89
2013	706.10	36,844	636.14	10.59	193.25	50.53	27.84	6.79	71.16	996.30
2014	724.50	37,804	648.47	10.87	199.74	52.56	27.84	6.79	72.84	1018.81

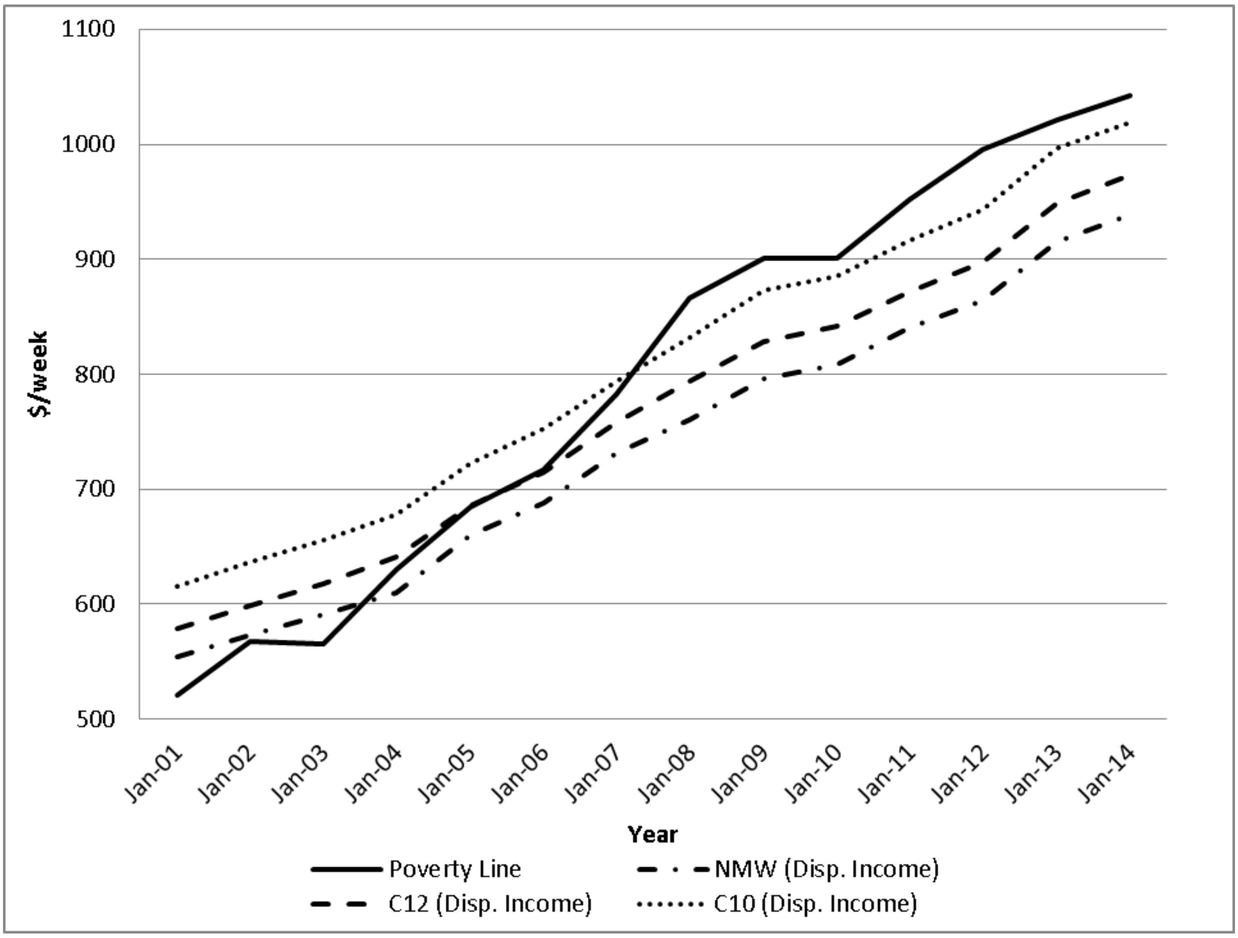
See notes to Table 28

629. Table 29 shows wage, tax and family payment calculations for C12-dependent workers and families over the period January 2001 to January 2014. This wage classification is very close to the cleaner's base wage rate that ACCER has argued should be adopted as the target level for the NMW pending the completion of research into the financial needs of low paid workers and their families. The C12 rate is currently $664.80 per week, 20 cents a week more than the base cleaner's rate.

630. Table 30 covers similar data for a worker paid at the C10, trades-qualified rate. Something very significant has happened when a family supported by a worker in a skilled trade has fallen into poverty.

631. Figure 2 shows how the disposable incomes of each of three couple parent families in Tables 28, 29 and 30 have moved in comparison with the 60% relative poverty line over the period January 2001 to January 2014.

Figure 2
Disposable Incomes of Safety Net-dependent Families Relative to Poverty Line
(Couple and two children)
January 2001 – January 2014



632. The ABS has advised (as we noted above) that the earlier estimates of equivalised disposable household income should be treated with some caution. We have treated the 2001 to 2003 estimates with some caution. The ABS figures show a 21.1% increase from January 2001 to January 2004. This seems too high and sits uncomfortably with the increases for those years which are shown in Table 10; for example HDI only increased by 15.4%. If we were to use HDI to work back from January 2004 to estimate January 2001, the MEDHI figure would be $433.42, not $413.18. In view of the uncertainty in the early years we will concentrate our comparisons on the decade January 2004 to January 2014.

633. Comparing the changes over the decade January 2004 to January 2014, we find:

- The NMW-dependent family of four fell further into poverty: from 3.3% below the poverty line to 10.0% below it, with a poverty gap in January 2014 of $104.25 per week;
- The C12-dependent family of four fell into poverty: from 1.7% above the poverty line to 6.7% below it, with a poverty gap in January 2014 of $69.74; and
- The C10-dependent family of four fell into poverty: from 7.6% above the poverty line to 2.3% below it, with a poverty gap in January 2014 of $23.68.

634. The position of single workers over this period is worse because their falling wage levels have not been partly offset by increased family payments. In January 2004 the single C12-dependent worker was 33.2% above the poverty line, but by January 2014 had fallen to 21.5% above the poverty line. Because of the more limited increases to higher paid classifications, as shown in Tables 1 and 15, the fall in the standard of living was even more dramatic for workers in those classifications.

635. The basic data in the foregoing paragraphs has been well known in wage reviews; but it was not commented on. The AFPC and the FWC presented some of this kind of material from 2008 on a yearly basis, without drawing conclusions from the trend shown by them.

636. The setting of wages based, in part on need, should not be limited to finding the poverty line and placing the lowest paid workers on it. Work should deliver something above poverty. 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 along with all of the other factors that the legislation requires the FWC to take into account.

D. COMPARING THE PENSION AND WAGES SAFETY NETS

637. 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. The calculations in the previous section and Chapter 6C provide a basis for comparing the operation of the wage safety net with the operation of the pension safety net.

638. It is important to keep in mind that when the pension system was reformed in 2009 pension rates were set on the basis that they would provide a *basic acceptable standard of living*. We accept that this may be contested, ie some will argue that pensions are insufficient, but we are proceeding on the basis that the pensions do provide a basic acceptable standard of living that is appropriate in Australian society.

639. Table 31 compares the living standards of pensioners and three safety net-dependent families. It is not concerned with 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. It compares relative living standards. The purpose of the last column is to put each of the households in a community-wide context.

640. Table 31 shows, by reference to the equivalence scales used by the ABS, that the pension safety net for a couple, $684.06 per week, produces a standard of living that is 1.1 percentage points higher than that of NMW-dependent family of two adults and two children with a disposable income of $938.24. In equivalised terms, the family is $9.26 per week below parity with the pensioner couple. It is worse than this because the NMW-dependent family has the costs of work, unlike pensioners. The equivalence scales do not take into account the costs of work, which will be considerable. As we saw in the previous chapter, the Melbourne Institute's *Poverty Lines, Australia* estimated the costs of working in September 2013 as $95.40 per week.

641. The working families in Table 31 have a significantly lower standard of living than the pensioner couple after taking into account the costs of work. The same conclusion applies, but with more force, in a comparison between the working families and single pensioners. Furthermore, there should be some reward for work.

642. These comparisons are relevant to the setting of a fair safety net, which must be set in a social context, and the need to take into account the promotion of social inclusion and the proper consideration of relative living standards. Furthermore, because pensions

have been set on the basis that they provide a basic acceptable standard of living, the comparisons between wage-dependent and pension-dependent households are relevant to the estimation of the needs of low paid workers. A basic acceptable standard of living must be more than the current living standards of the three working households. After taking into account the costs of work, a basic acceptable standard of living would be in excess of 60% of the Australian median equivalised disposable household income.

Table 31

Relative living standards of pension and NMW-dependent families January 2014

Household	Disposable income $ per week	Modified OECD Equivalence scale	Equivalised income $ per week	Disposable income as percentage of median equivalised disposable household income
NMW-dependent family, second parent not seeking employment, 2 children	938.24	2.1	446.78	54.0%
C12-dependent family, second parent not seeking employment, 2 children	972.75	2.1	463.21	56.0%
C10-dependent family, second parent not seeking employment, 2 children	1018.81	2.1	485.15	58.6%
Sole parent on disability pension, 2 children	774.45	1.6	484.03	58.5%
Single person on disability pension	475.55	1	477.20	57.8%
Couple on age pension	684.06	1.5	456.04	55.1%
Single person on age pension	475.55	1	477.20	57.8%

Median equivalised disposable household income used for January 2014 is $827.37 per week. The disposable incomes of the NMW, C12 and C10-dependent families are taken from Tables 28, 29 and 30. The pension rates are from Table 21 and supplemented by the *Centrelink Estimator* and the *Family Assistance Estimator* and include maximum rental assistance. Maximum rental assistance rates are $62.00 (single) and $116.60 (couple), $72.59 (two children) per week. The pensions have been re-calculated on the basis of a year of 52.18 weeks in order to be consistent with the calculations for the family in Tables 19 and 28. The Schoolkids Bonus is included in relevant entries on the basis that one child is in primary school and the other in secondary school.

E. THE WORKING FAMILY PROFILE: ISSUES AND DATA

643. Our review of the relative position of low income workers shows, unsurprisingly, that the workers most in need are those with family responsibilities. This has to be, unless

we were to find ourselves in a social system that provides public funding for all of the needs of a worker's dependants. We do not live in that kind of system and, because of budgetary constraints, are most unlikely to do so for the foreseeable future.

644. The argument that a wage increase is needed to enable workers to provide for their dependants is often met with the response that many of the low paid are not workers with family responsibilities and that a substantial number of low paid workers are living in higher income households. In both cases, it is said, that these workers have fewer needs than the single-breadwinner families. The first point in response to this has been developed earlier: the purpose of a safety net is to provide for those who need it, even if many do not need it. This response can be traced back to, for example, the *Harvester Case* in 1907, and beyond. Because of the value that society places on the family and the proper support of children, an element of over-compensation occurs in the case of workers without family responsibilities. To the extent that government provides financial support for families, the amount of over-compensation can be reduced. These are matters that we addressed in more detail earlier.

645. The opposition to wage increases then moves to claims that society has changed and that we have moved from the single-breadwinner families to diversified family structures and working patterns. Mostly, this line of argument focuses on the increase in the number families in which both parents work, often with the second parent working part time, and the increasing number of part time and casual juniors in the workforce. The argument based on the number of juniors has no merit in view of the basic purpose of the safety net; but, in any event, in Australia they are paid junior rates of pay which are set having regard to the fact that they are juniors and do not have the same kinds of needs that adult employees have.

646. The proportion of couple parent families in which both parents work has increased. A substantial proportion of safety net-dependent workers are part time and female and many of them are in a family in which the main breadwinner has a full time job. We discussed this trend earlier in the discussion of the right of parents to have an effective choice on whether or not the second parent works. Whether the changes in workforce participation by mothers are the result of free choice or economic pressure is a matter of debate, but 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.

647. The argument that these part time and casual adult workers reduce the relevance of the single breadwinner fails to recognise why they need to work. If the family is living in poverty, or unable to achieve a basic acceptable standard of living, the family is under pressure for the second parent to work, just to make basic ends meet. In low income families the second parent does not get part time work for “pin money”. ACCER’s argument has been that if the second parent choses to undertake full or part time employment, it should not be done in order for the family to escape poverty or achieve a basic acceptable standard of living. Coming back to our comparison with those on pensions, it should not be necessary for both parents to work in order to achieve the basic acceptable standard of living provided to pensioners.

648. The evidence, to which we refer shortly, shows that there are many part time and lowly paid female workers are workers with family responsibilities who, in many cases, live below the poverty line, despite their work. If it were not for their income many more families would be in poverty.

649. The FWC raised questions about the number of single breadwinner families in 2012 and 2013 and has touched on the matters in the previous paragraph. In the 2012 consultations ACCER was asked if it had "any evidence at all about what proportion of award wage workers, or low-wage workers, are in fact couple families with two children and, in particular, with only one of them employed?" The answer was that it did not and that the issue was one of principle. The purpose of the safety net is to ensure that it is there for people who may need it, regardless of the number. That has remained ACCER's position, but the factual issue can now be assisted by data from the 2011 Census, as we discuss later.

650. A similar question was raised in the 2013 Annual Wage Review through the FWC's written questions to the parties. The question was: "Does ACOSS, ACCER or the Australian Government have any information on how many single earner couple families there are that are reliant on award rates of pay?" This question was about the proportion of award-reliant workers within the broader group of single earner couple families. It is a different, but related, question to the one asked in 2012. The Australian Council of Social Services (ACOSS) did not respond to the question, but the Australian Government and ACCER did.

651. The Australian Government responded:

> "We are not aware of any data source which contains the specific information requested.

> However, using the Household, Income and Labour Dynamics in Australia (HILDA) survey data, we can estimate the number of single - income couple families where the single earner is on relatively low wages.
> Using the latest available wave of the HILDA survey, DEEWR estimated that in 2011 there were around 575,000 single earner couple families on a low wage (defined as hourly earnings below 2/3 of the median – this will include people beyond minimum wage workers). This represents around 16 per cent of single earner couple families." (*Responses to Consultation Questions for the Fair Work Commission Annual Wage Review 2013,* Australian Government, 17 May 2013, page 4,*)*

652. The footnote to this passage referred to the definition of low wage earners in the Commonwealth's initial submissions of March 2013. Low paid workers were there defined as those employees who are 21 years of age and over and are earning up to two-thirds of the median hourly earnings for employees. The full time median wage in August 2011 was $1,100 per week. There were an estimated 575,000 single earner couple families on a wage of less than $773.33 per week. This wage figure was used by the FWC in its discussion of the term "low paid" and relative living standards in the 2013 decision; see paragraphs [363] and [387].

653. We can estimate, for example, the disposable incomes of families with two children who depended on a wage of $733.33 in August 2011. At this time the family payments for two children were $248.06 per week (ACCER submission March 2012, page 85). In the 2011-12 tax year the net income for the worker on $733.33 was $38,265.00 per year (based on 52.18 weeks), with a net income of $659.35 (after taking into account the Medicare levy exemption for the family). The disposable income was $907.41 per week. Table 27 shows that the 60% relative poverty line increased from $952.52 to $995.40 over the period January 2011 to January 2012. So an unknown proportion, but most likely a substantial proportion, of the 575,000 single breadwinner couple families would have been families with two children, with a disposable income well below the poverty line. Of course, the data did not disclose how many were award-reliant, but that was less important than the fact that many were living in poverty and low wages were the cause of it. This aspect was taken up in ACCER’s response.

654. ACCER's written response to the question was:

> "ACCER does not have any information on the number of single earner couple families who are reliant on award rates of pay. We submit that the question of whether or not one parent stays at home to care for the children or undertakes part or full time employment would not be affected by the award reliance, or not, of the sole breadwinner. We expect that a major determinant of whether or not the second parent seeks employment is the level of income paid to the sole breadwinner, whether that

> income is pursuant to an award, a collective agreement or an individual overward agreement...
> As we have shown in the Supplementary Reply, at Graph 3, families comprising a couple and two children (aged 8 and 12) are living below the poverty line. This places great pressure on the second parent to undertake employment, with the pressure being most acutely felt by those on the lower rates of pay, whether they be set by awards or otherwise. As a result of the increasing numbers falling into poverty over the past decade, we would expect that a much greater number of couples now experience the financial pressure for both of them to work. In some cases the pressure would cause the breadwinner to work overtime or shiftwork or take a part time job... (*Responses to Questions for Consultations by the Australian Catholic Council for Employment Relations*, May 2013, paragraphs 8 and 9)

655. The FWC apparently remained concerned about the data and made the following comments in its Decision:

> "ACCER reiterated its concern that the modelling shows the “dire position” of low-income working families. Based on ACCER calculations using figures for disposable income of selected households earning at the C14 level from the Statistical Report, ACCER estimated that in December 2012, a family of four is very much below the widely recognised 60 per cent of median income relative poverty line, being only 53.2 per cent of that level. *We did not receive any evidence as to how many people might actually be in that position*." (Paragraph [409], emphasis added)

656. Several points need to be made about this passage, especially the reference to there being no evidence about how many people might actually be in the position described. First, ACCER's concern was not simply with those on the NMW, but it extended to families on higher award rates; up to, and beyond, the lowest rate fixed for cleaners. The NMW, as the worse case, was proposed as the starting point to address poverty, with a proposal that it be increased by an extra $10.00 per week. Second, we can assume that if the Commonwealth was unable to provide any more specific data, then there was no data to fully answer the question asked or deal with the particular matter about the NMW in the passage just quoted. You have to do the best you can with the data that is available. The data that was available showed that there were 575,000 single earner couple families relying on a wage of no more than $773.33 per week in August 2011; and a significant proportion of them must have been families with children living below the poverty line. Third, the FWC also had evidence from a research report by the ACOSS, which we discuss below, showing that that 17.7% of those living below the 50% poverty line (estimated to be 401,000) were in, or relied on, fulltime employment. Using the 60% poverty line the ACOSS report estimated that 20.5% of those living in poverty (estimated to be 760,000) were in, or

relied on, full time employment. In referring to this report the FWC commented "Low-paid employment appears to contribute more to the total numbers in poverty than does unemployment." (*Annual Wages Review 2012-13, Decision*, paragraph [408])

657. The evidence pointed to many working families being in poverty, even where there was a person in the household in full time employment, yet the FWC appeared to want more precise information before acting. This cannot be a reason for inaction. Why desist from action because the many families living in poverty cannot be quantified?

F. THE 2011 CENSUS AND THE WORKING FAMILY PROFILE

658. Since the June 2013 decision, we have been able to access data from the August 2011 national Census regarding the working patterns and incomes of various kinds of families.

659. According to the 2011 Census, the total number of couple families with dependent children was 2,086,269 and there were 600,892 sole parent families with dependent children. The term "dependent children" covers children under 15 years or dependent students aged 15 to 24 years. Each of those figures can be broken down by the number of children (up to six and more), the incomes of the families and the labour force status of the couple or sole parent. The Census records 897,885 couple parent families with two dependent children. The number of sole parent families with two children was 194,554. The Census also records that there were 448,133 couples with children who were not dependent children, as described, and 2,150,299 couples without children. The tables in Appendix A have been extracted from the Census data by the Pastoral Research Office of the Australian Catholic Bishops Conference.

660. In the Table 32 we have collated the data in Appendix A on the working characteristics of couple parent families by reference to family income levels. The Census collected income data by reference to various income ranges. The Census question was "What is the total of all wages/salaries, government benefits, pensions, allowances and other income the person usually receives?" Tax was not to be deducted. Separate data was required for each person in the household. Because of the space limitations we have reduced the number of columns of income related information. The information is self-reported and some inaccuracy in the Census returns is to be expected. Table 32 has two purposes: to provide evidence about the

extent of poverty among low income working families and to provide an employment profile of those families.

Table 32

Working arrangements of couple parent families with two dependent children August 2011

		Total income less than $1000.00 per week	Total income $1,000.00 per week or more	Total families
1	One full time and other not in labour force	28,300 (26.6%)	130,757 (19.2%)	159,057 (20.2%)
2	One part time and other not in labour force	13,942 (13.1%)	12,095 (1.8%)	26,037 (3.3%)
3	One away from work and other not in labour force	3,038 (2.9%)	5,621 (0.8%)	8,659 (1.3%)
4	One unemployed and other not in labour force	5,061 (4.8%)	1,774 (0.3%)	6,835 (0.9%)
5	Both not in labour force	14,197 (13.4%)	5,937 (0.9%)	20,134 (2.6%)
6	Both full time	5,937 (5.6%)	162,074 (23.7%)	168,011 (21.3%)
7	One full time and other part time	15,580 (14.7%)	274,579 (40.2%)	290,159 (36.8%)
8	Both part time	6,712 (6.3%)	22,376 (3.3%)	29,088 (3.7%)
9	Both (employed and) away from work	731 (0.7%)	7,024 (1.0%)	7,755 (1.0%)
10	One away from work and other unemployed	431 (0.4%)	774 (0.1%)	1,205 (0.2%)
11	One part time and other away from work	1,276 (1.2%)	10,151 (1.5%)	11,427 1.4(%)
12	One full time and other away from work	1,407 (1.3%)	27,136 (4.0%)	28,543 (%)
13	One full time and other unemployed	3,796 (3.6%)	16,018 (2.3%)	19,814 (2.5%)
14	One part time and other unemployed	3,164 (3.0%)	2,809 (0.4%)	5,973 (0.8%)
15	Both unemployed	1,794 (1.7%)	547 (0.1%)	2,341 (0.3%)
16	Status of one or both not stated	857 (0.8%)	1,262 (0.2%)	2,119 (0.3%)
Total		106,223 (100%)	680,914 (100%)	787,137 (100%)

Source Census 2011, Australia and Appendix A. These figures do not include families that have negative income or nil income, families where partial income was not stated and families where all income was not stated.

661. Table 32 draws a distinction between those with incomes of less than $1,000 per week and those with incomes of $1,000 or more per week. The recorded figures are pre-tax figures. After taking into account the inclusion of income tax, the disposable income of a family of four on an income that is recorded as $1000.00 per week in the Census

would be about $932.00, substantially below the 60% poverty line, which in August 2011 would have been somewhere between $952.52 (January 2011) and $995.40 (January 2012); see Table 27. We can say, therefore, that all of the people covered by the “less than $1000.00” column in Table 32 were in households under the 60% relative poverty line, subject, of course, to the accuracy of the individual returns.

662. The table shows that 106,223 families, or 13.5% of the total were living in poverty. This amounts to almost 424,892 people, half of them children. The number with at least one full time breadwinner was 55,020. This means that just over 110,000 children were living in poverty even though there was a full time worker in the home. In addition, there were 25,094 families where one or both of the parents worked part time (and disregarding part time employment where there was one parent working full time). Full time work is not necessarily a path out of poverty.

663. The second purpose of Table 32 is to provide evidence of the working profiles of low income families. As we explained in Chapter 6E, the FWC has raised questions about the extent of single breadwinner families among low income families, which suggested that it would not target poverty among single breadwinner families unless it had more evidence on the extent of single breadwinner family poverty. Table 32 shows the number of single breadwinner families living in poverty and classifies the total number according to the working arrangements of the parents in two children families. Table 32 shows that 39.7% were single breadwinner families. If the number of families in which the single breadwinner was unemployed or "away from work", that percentage rises to 47.4% of single breadwinner. By comparison, 20.3% of the families had at least one full time worker. If one adds in families where the second breadwinner was unemployed or away from work, that figure rises to 25.2%. In 13.4% of the households both parents were not in the labour force. In 6.3% both parents worked part time. Among couple parent families with two children living in poverty the number of single full time breadwinner families out-number the families with more than a full time breadwinner by almost two to one: 39.7% to 20.3%; or, on the broader classification, 47.4% to 25.2%.

664. ACCER has argued that, as a matter of principle, wages should be set on the basis of a single breadwinner family. This data confirms that, in practice the single breadwinner family is the most common, by far, among families living in poverty. The Census data provides more reason for the FWC to specifically target poverty by granting

successive additional increases in the NMW.

665. Table 33 presents data from the 2011 Census regarding the employment status of sole parents with two dependent children. We have used the lower demarcation line in this table than the one used in Table 32 in order to reflect the lower relative poverty line sole parent families. From Table 27 we know that the 60% relative poverty line for August 2011 was between $725.73 (January 2011) and $758.40 (January 2012). From the choices available in the Census return, the "less than $800.00 per week" column is the most appropriate, especially given that the Census returns include tax earned on income.

Table 33

Working arrangements of sole parents with two dependent children

August 2011

		Total income less than $800.00 per week	**Total income $800.00 per week or more**	**Total families**
1	Employed, full time	9,913	40,412	50,325
2	Employed, part time	32,828	19,295	52,123
3	Employed, away from work	2,518	2,281	4,809
4	Unemployed	9,550	1,574	11,124
5	Not in labour force	44,532	7,967	52,499
6	Labour force status not stated	382	96	478
Total		99,723	71,625	171,358

Source Census 2011, Australia and Appendix A hereto. These figures do not include families that have negative income or nil income, families where partial income was not stated and families where all income was not stated.

666. Table 33 shows the working patterns among sole parents with two children, with $800.00 per week as the best fit for the poverty line. On this basis, the majority of sole parent families, 58.2%, were living in poverty at the time of the Census. This represented 199,446 children. Most were in families where the parent was not working. Among those living in poverty, only 9.9% of the parents were employed full time, but 32.9% were employed part time. Table 4 of Appendix A shows that most of the part time workers reported an income of less than $600.00 per week. These figures are very troubling and raise issues far beyond the scope of the FWC's responsibilities. However, it does emphasise the urgency of increasing low wage rates in a measured and sustained manner.

667. ACCER has argued over the years that high child care costs have forced sole parent families into poverty and/or unsatisfactory latch key arrangements and has requested tribunal-sponsored research into child care costs. This has been put on the basis that the costs of child care for sole parents is a matter that should be taken into account when considering and providing for the needs of the low paid. It is not only a welfare issue. ACCER's request in the *Annual Wage Review 2012-13* for research into child care cost was unsuccessful. On 17 November 2013 the Federal Treasurer, Mr Hockey, announced that he had requested the Productivity Commission to undertake an Inquiry into Child Care and Early Childhood Learning. The terms of reference include issues concerning affordable high quality child care. In December 2013 the Productivity Commission published an Issues Paper, *Childcare and Early Childhood Learning*, which includes a discussion of childcare costs. This initiative appears to obviate the need at this time for research on the costs of childcare to be undertaken by or sponsored by the FWC; and should do if there is sufficient attention paid to the sole parents in the columns on the left hand side of Table 33.

G. NATIONAL MEASURES OF POVERTY IN THE LUCKY COUNTRY

668. Over the past two years two significant reports have been published on the extent of poverty in Australia. Together they present a grim picture of the emergence of poverty during more than a decade of economic growth. For many this is not the Lucky Country. That point is driven home in the latter part of this section when we compare Australia’s record with that of other broadly comparable countries.

669. *Poverty, Social Exclusion and Disadvantage in Australia*, a report prepared by the National Centre for Social and Economic Modelling (NATSEM) for UnitingCare and published in October 2013. The focus of the report is on children in poverty and changes in poverty patterns since 2000-01. Poverty is considered by reference to the 50% of median relative poverty line. The report is based on ABS data from successive issues of the Survey of Income and Housing over the period to 2011-12. The report's overview is:

> "The 2011-12 ABS data suggest that around 2.6 million (11.8 per cent) Australians live under the poverty line. Of these, almost one-quarter (618,000) are dependent children aged less than 25 years of age and 494,000 aged less than 15 years of age. Around 11.5 per cent of children under 25 years and 11.8 per cent of children under 15 are living in poverty. The overall rate of poverty amongst persons has increased since 2000-01 from around 10.2 per cent to 11.8 per cent, representing a statistically significant increase. Child poverty rates (for

both those aged less than 15 years and less than 25 years) remain virtually unchanged since 2000-01 when compared with 2011-12 (Figure 2). All forms of poverty were lower in 2005-06 and 2009-10 compared to the first and last years of analysis." (Page 8, footnotes omitted)

670. The NATSEM/UnitingCare report covers the extent of poverty in households by reference to labour force status. Full time employment was defined as greater than or equal to 35 hours per week, consistent with ABS usage. It found that a person in a family with a person employed full time had only a 3% chance of being in poverty, but amongst children under 15, the rate rose to 4.5% (Figures 7a and 7b, page 19). While these are low percentages, they refer to a large proportion of the population. When considered overall, 20% of those living in poverty live in a family where a person is employed full-time (Figure 8, page 21).

671. *Poverty in Australia 2012*, was first published by ACOSS in 2012. The report was based on research undertaken in 2010 by the Social Policy Research Centre; see *Poverty in Australia: New Estimates and Recent Trends - Research Methodology*, Peter Saunders, Bruce Bradbury and Melissa Wong, 2012. Another edition of the ACOSS report was issued in November 2013 with some additional data. The following page references are to the 2013 edition.

672. The ACOSS report considers the extent of poverty in Australia by reference to the 50% and 60% relative poverty lines. It describes the 50% line as "one that equates to a very austere living standard" (page 12), an assessment we agree with. In particular, it looks at the risk of poverty within different sectors of the population and the composition by sector of those in poverty.

673. 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 32).

674. The statistics just quoted were before the FWC in 2012. The FWC referred to the report in the decision, concluding with:

> "The data in *Poverty in Australia 2012* show that of all people with disposable incomes below 60 per cent of the median, 20.5 per cent were employed full-time, 13.5 per cent were employed part-time and 5.9 per cent were unemployed—the remainder were not in the labour force. *Low-paid employment appears to contribute more to the total numbers in poverty than does unemployment*." (Paragraph [408], footnote omitted, emphasis added)

675. This passage, with its acceptance of the connection between low paid employment and poverty, highlights a point that we have made elsewhere: the FWC failed to target poverty despite compelling data on the presence of poverty among working families.

676. In commenting on the NATSEM/UnitingCare report, the ACOSS report, 2013 edition, notes the difference in approach between the two:

> "Uniting Care and NATSEM research found that in 2012, 2.6 million, or 11.8% of Australians were below the poverty line, and almost a quarter of those were children. Poverty increased to 2012, up from 9.3% of people in 2010. Child poverty also increased - from 10.6% of children in 2010 to 11.8% in 20121. The findings differ from ACOSS analysis, which finds that 17.3% of children were in poverty in 2010, compared to the 10.6% of children reported by Uniting Care and NATSEM. The difference is explained by the fact that the ACOSS figures are based on after housing income, and thus tends to capture less households where housing costs are low (e.g. many retirees), and instead captures more low income households with high housing costs (e.g. younger households), including more households with children under the age of 15." (Page 16)

677. The significance of housing costs and the reason for their different treatment in the ACOSS material is discussed in the following passage from the ACOSS report, 2013 edition:

> "In Australian and international poverty research, the poverty line for a single adult is usually calculated as a proportion of the disposable income - in this case 50% and 60% - of a ‘middle income’ (median) household. There are different poverty lines to take account of the number of adults and children in a household. The research used in this report takes into account people’s housing costs as well as their incomes. This makes a difference because people who have low housing costs (such as those who own their homes outright) are able to achieve a higher standard of living on the same income than those with higher housing costs (for example, tenants and mortgagers). This research deducts housing costs (rent, mortgage payments and rates) from income before calculating the median income on which the poverty lines are based (which reduces the poverty lines) and deducting each household’s housing costs from their income (which reduces household incomes). In this way, it compares different households’ ability to meet their basic living costs apart from housing." (Page 15, footnote omitted)

678. The ACOSS and NATSEM/UnitingCare reports demonstrate that a very significant part of child poverty occurs in homes in which there is fulltime employment. The obvious conclusion from this is that the current wage levels are part of the reason for child poverty and their increase is needed if child poverty is to be minimised and eliminated.

679. The foregoing figures are very worrying and confirm that the working poor in Australia are not confined to the ranks of the unemployed and the underemployed. To

put these figures into a broader perspective we now turn to some international comparisons using relative poverty lines. There is a range of material about international comparisons on relative poverty lines as a result of improved standards for collection and analysis and the collection of more comprehensive data. This has prompted more local commentaries on international comparisons.

680. A major source of data and commentary on inequality and poverty across nations is in *Divided We Stand: Why Inequality Keeps Rising* published by the Organisation for Economic Co-operation and Development (OECD) in 2011. The introduction to the overview of the study states:

> "Over the two decades prior to the onset of the global economic crisis, real disposable household incomes increased by an average 1.7% a year in OECD countries. In a large majority of them, however, the household incomes of the richest 10% grew faster than those of the poorest 10%, so widening income inequality. Differences in the pace of income growth across household groups were particularly pronounced in some of the English speaking countries, some Nordic countries, and Israel." (Page 22)

681. In May 2013 the OECD followed this earlier work with an inequality and poverty report entitled *Crisis squeezes income and puts pressure on inequality and poverty*. It introduced the report with the following assessment:

> "The OECD's report on income inequality, *Divided We Stand* (2011), documented that the gap between rich and poor in OECD countries had widened continuously over the three decades to 2008, reaching an all-time high. New OECD data show that the global economic crisis has squeezed incomes from work and capital in most countries. Excluding the mitigating effects of the welfare state, via taxes and transfers on income, inequality has increased by more over the past three years to the end of 2010 than in the previous twelve. Tax-benefit systems, reinforced by fiscal stimulus policies, were able to absorb most of this impact and alleviate some of the pain. But, as the economic and especially the jobs crisis persists and fiscal consolidation takes hold, there is a growing risk that the most vulnerable in society will be hit harder as the cost of the crisis increases." (Page 1)

682. The report refers to changes in poverty levels from 1995 to 2010, noting that relative poverty increased in Australia, amongst others. Australia ranked 26th in the 34 OECD countries in this study.

683. Another report on international comparisons of poverty rates is *Measuring Child Poverty: New league tables of child poverty in the world's rich countries, Innocenti Report Card 10*, UNICEF Innocenti Research Centre, 2012. Part of the report compared the child poverty rates in 20 OECD countries, selected from the more advanced economies among the OECD membership. The child poverty rate is the

percentage of children living in households with equivalent income lower than 50% of the national median. Of the 20 countries in the group, 12 had a lower child poverty rate than Australia. The UNICEF report also sets out the child poverty rates by the 60% relative poverty line for 35 countries. Of the 20 more advanced economies, 10 had a lower child poverty rate at the 60% level.

684. The most recent report was published by the OECD on 18 March 2014. The report provides an overview of social trends and policy developments in OECD countries and selected non-member countries using a variety of indicators from the OECD and other sources; *Society at a Glance 2014.* Using the 50% relative poverty measure it found Australia's 14.4% poverty rate is considerably higher than the EU average of 9.4% and substantially higher than the OECD average of 11.3%. In regard to inequality the Gini coefficient is 0.334, considerably higher than the more egalitarian EU (0.029) and marginally behind the OECD average of 0.313; *Society at a Glance 2014 Highlights: Australia, OECD Social Indicators*. Australia ranked 26th out of 34 countries in the OECD study.

685. These are not good figures for a country that has had one of the most prosperous decades in its history and has come through the Global Financial Crisis with barely a bruise. Our political leaders continue to tell us that Australia is "the envy of the world". The reality of poverty in Australia in 2014 is very different.

Appendix A

Table 1. Count of Dependent Children in Couple Parent Families by Total Family Income (weekly), 2011

	Negative and Nil income	$1-$199 ($1-$10,399)	$200-$299 ($10,400-$15,599)	$300-$399 ($15,600-$20,799)	$400-$599 ($20,800-$31,199)	$600-$799 ($31,200-$41,599)	$800-$999 ($41,600-$51,999)	$1,000-$1,249 ($52,000-$64,999)	$1,250-$1,499 ($65,000-$77,999)	$1,500-$1,999 ($78,000-$103,999)	$2,000-$2,499 ($104,000-$129,999)	$2,500 or more ($130,000 or more)	Partial income stated and All incomes not stated	Total
Couple family with: No dependent children	1,695	857	1,515	822	4,503	14,051	14,948	30,312	29,452	57,743	56,418	139,961	95,856	**448,133**
Couple family with: One dependent child	4,304	5,152	2,361	4,274	18,729	33,414	39,156	54,277	58,606	110,258	96,767	211,905	97,548	**736,751**
Couple family with: Two dependent children	3,912	4,859	1,988	3,963	17,362	33,023	45,030	66,606	75,790	143,665	117,138	279,379	105,170	**897,885**
Couple family with: Three dependent children	1,501	1,929	917	1,710	7,690	13,923	18,349	28,551	30,280	54,539	37,984	97,463	44,063	**338,899**
Couple family with: Four dependent children	513	670	317	679	3,016	4,912	6,016	8,298	8,400	13,736	8,051	18,941	12,783	**86,332**
Couple family with: Five dependent children	94	157	83	165	807	1,201	1,453	1,864	1,820	2,799	1,667	2,816	2,991	**17,917**
Couple family with: Six or more dependent children	87	78	52	81	362	646	692	916	870	1,332	752	1,015	1,603	**8,486**
Total	12,106	13,702	7,233	11,694	52,469	101,170	125,644	190,824	205,218	384,072	318,777	751,480	360,014	**2,534,403**

Table 2. Count of Dependent Children in Sole Parent Families by Total Family Income (weekly), 2011

	Negative and Nil income	$1-$199 ($1-$10,399)	$200-$299 ($10,400-$15,599)	$300-$399 ($15,600-$20,799)	$400-$599 ($20,800-$31,199)	$600-$799 ($31,200-$41,599)	$800-$999 ($41,600-$51,999)	$1,000-$1,249 ($52,000-$64,999)	$1,250-$1,499 ($65,000-$77,999)	$1,500-$1,999 ($78,000-$103,999)	$2,000-$2,499 ($104,000-$129,999)	$2,500 or more ($130,000 or more)	Partial income stated and All incomes not stated	Total
One parent family with: No dependent children	1,998	3,140	2,086	5,500	16,622	41,217	33,597	39,795	26,950	36,375	24,208	23,306	45,954	**300,748**
One parent family with: One dependent child	6,337	8,183	17,006	30,604	57,603	41,399	30,777	28,534	19,437	22,928	6,009	13,883	29,735	**312,435**
One parent family with: Two dependent children	3,342	3,907	8,768	15,205	42,516	29,322	19,665	17,432	11,343	12,913	2,336	7,941	19,864	**194,554**
One parent family with: Three dependent children	1,038	1,128	2,664	5,011	15,073	13,136	6,469	5,207	3,239	3,299	582	1,928	8,153	**66,927**
One parent family with: Four dependent children	295	280	700	1,359	4,048	4,851	1,879	1,403	750	682	161	367	2,652	**19,427**
One parent family with: Five dependent children	67	71	199	355	979	1,303	738	371	218	198	54	85	857	**5,495**
One parent family with: Six or more dependent children	33	20	54	94	261	415	302	188	110	89	29	46	412	**2,053**
Total	**13,110**	**16,729**	**31,477**	**58,128**	**137,102**	**131,643**	**93,427**	**92,930**	**62,047**	**76,484**	**33,379**	**47,556**	**107,627**	**901,639**

Table 3. Labour Force Status of Couple Parents in Families by Total Family Income (weekly), Two Dependent Children in Family, 2011

	Negative and Nil income	$1-$199 ($1-$10,399)	$200-$299 ($10,400-$15,599)	$300-$399 ($15,600-$20,799)	$400-$599 ($20,800-$31,199)	$600-$799 ($31,200-$41,599)	$800-$999 ($41,600-$51,999)	$1,000-$1,249 ($52,000-$64,999)	$1,250-$1,499 ($65,000-$77,999)	$1,500-$1,999 ($78,000-$103,999)	$2,000-$2,499 ($104,000-$129,999)	$2,500 or more ($130,000 or more)	Partial income stated and All incomes not stated	Total
Couple family: Both employed, worked full-time	612	508	104	158	640	1,360	3,167	4,159	9,493	24,459	36,520	87,443	13,068	181,691
Couple family: One employed full-time, other part-time	515	763	181	339	1,400	3,835	9,062	20,946	28,652	62,321	57,104	105,556	15,237	305,911
Couple family: One employed full-time, other away from work	84	76	13	26	126	352	814	1,630	2,279	5,226	5,911	12,090	1,913	30,540
Couple family: One employed full-time, other unemployed	60	84	27	62	406	1,219	1,998	2,958	2,635	4,030	1,089	5,306	1,163	21,037
Couple family: One employed full-time, other not in the labour force	488	685	285	511	3,092	8,779	14,948	22,767	20,986	31,471	6,463	49,070	8,422	167,967
Couple family: One employed full-time, other labour force status not stated	12	4	5	6	54	80	142	163	128	156	59	222	17,530	18,561
Couple family: Both employed, worked part-time	106	189	46	199	779	2,011	3,488	3,796	3,668	5,112	3,962	5,788	1,941	31,085
Couple family: One employed part-time, other away from work	34	55	12	34	175	380	620	1,072	1,202	2,402	2,054	3,421	1,097	12,558
Couple family: One employed part-time, other unemployed	22	103	69	195	754	1,110	933	703	478	619	309	700	396	6,391
Couple family: One employed part-time, other not in the labour force	170	382	313	787	3,015	5,036	4,409	3,611	2,325	2,643	967	2,549	1,857	28,064
Couple family: One employed part-time, other labour force status not stated	9	7	7	12	35	40	43	33	22	22	18	23	16,835	17,106
Couple family: Both employed, away from work	84	43	11	21	81	214	361	554	717	1,413	1,443	2,897	1,603	9,442
Couple family: One away from work, other unemployed	14	17	4	28	75	152	155	146	140	187	73	228	178	1,397
Couple family: One away from work, other not in the labour force	106	109	71	153	539	972	1,194	1,517	1,291	1,780	426	2,307	1,672	12,137
Couple family: One away from work, other labour force status not stated	0	3	3	4	8	26	24	31	22	15	6	33	2,507	2,682
Couple family: Both unemployed	191	217	96	141	531	562	247	155	115	114	43	120	177	2,709
Couple family: One unemployed, other not in the labour force	301	432	221	395	1,486	1,727	800	529	322	361	103	459	501	7,637
Couple family: One unemployed, other labour force status not stated	3	0	3	7	3	9	7	4	3	3	0	6	1,499	1,547
Couple family: Both not in the	1,050	1,148	507	866	4,066	5,066	2,544	1,755	1,252	1,256	559	1,115	2,248	23,432

	Negative and Nil income	$1-$199 ($1-$10,399)	$200-$299 ($10,400-$15,599)	$300-$399 ($15,600-$20,799)	$400-$599 ($20,800-$31,199)	$600-$799 ($31,200-$41,599)	$800-$999 ($41,600-$51,999)	$1,000-$1,249 ($52,000-$64,999)	$1,250-$1,499 ($65,000-$77,999)	$1,500-$1,999 ($78,000-$103,999)	$2,000-$2,499 ($104,000-$129,999)	$2,500 or more ($130,000 or more)	Partial income stated and All incomes not stated	Total
labour force														
Couple family: One not in the labour force, other labour force status not stated	24	22	6	7	57	46	34	34	23	24	3	9	12,780	13,069
Couple family: Both labour force status not stated	25	10	4	13	40	45	41	42	39	53	26	33	2,550	2,921
Total	**3,910**	**4,857**	**1,988**	**3,964**	**17,362**	**33,021**	**45,031**	**66,605**	**75,792**	**143,667**	**117,138**	**279,375**	**105,174**	**897,884**

Table 4. Labour Force Status of Sole Parents in Families by Total Family Income (weekly), Two Dependent Children in Family, 2011

	Negative and Nil income	$1-$199 ($1-$10,399)	$200-$299 ($10,400-$15,599)	$300-$399 ($15,600-$20,799)	$400-$599 ($20,800-$31,199)	$600-$799 ($31,200-$41,599)	$800-$999 ($41,600-$51,999)	$1,000-$1,249 ($52,000-$64,999)	$1,250-$1,499 ($65,000-$77,999)	$1,500-$1,999 ($78,000-$103,999)	$2,000-$2,499 ($104,000-$129,999)	$2,500 or more ($130,000 or more)	Partial income stated and All incomes not stated	Total
One parent family: Employed, worked full-time	191	338	260	493	2,522	6,300	7,679	9,102	7,095	9,033	1,435	6,068	6,169	56,685
One parent family: Employed, worked part-time	134	780	1,589	3,433	13,502	13,524	7,796	5,116	2,614	2,281	497	991	4,639	56,896
One parent family: Employed, away from work	61	110	188	306	1,033	881	602	571	381	409	94	224	890	5,750
One parent family: Unemployed	395	466	1,283	1,856	4,591	1,354	631	415	199	175	47	107	1,051	12,570
One parent family: Not in the labour force	2,514	2,184	5,376	9,030	20,744	7,198	2,924	2,197	1,036	1,013	261	536	5,013	60,026
One parent family: Labour force status not stated	47	33	72	86	125	66	34	29	18	4	3	8	2,105	2,630
Total	**3,342**	**3,911**	**8,768**	**15,204**	**42,517**	**29,323**	**19,666**	**17,430**	**11,343**	**12,915**	**2,337**	**7,934**	**19,867**	**194,557**

Table 5. Summary

	Negative and Nil income	$1-$199 ($1-$10,399)	$200-$299 ($10,400-$15,599)	$300-$399 ($15,600-$20,799)	$400-$599 ($20,800-$31,199)	$600-$799 ($31,200-$41,599)	$800-$999 ($41,600-$51,999)	$1,000-$1,249 ($52,000-$64,999)	$1,250-$1,499 ($65,000-$77,999)	$1,500-$1,999 ($78,000-$103,999)	$2,000-$2,499 ($104,000-$129,999)	$2,500 or more ($130,000 or more)	Partial income stated and All incomes not stated	Total
Total famlies with two dependent children	7,254	8,766	10,756	19,168	59,878	62,345	64,695	84,038	87,133	156,578	119,474	287,320	125,034	1,092,439
Total famlies with two dependent children (% of total)	*0.7*	*0.8*	*1.0*	*1.8*	*5.5*	*5.7*	*5.9*	*7.7*	*8.0*	*14.3*	*10.9*	26.3	*11.5*	*100.0*

Source of data: Australian Bureau of Statistics - 2011 Census of Population and Housing (TableBuilder - CDCF by FINF)
Table prepared by ACBC Pastoral Research Office (www.pro.catholic.org.au)

Appendix B

Periodic pension payments, January 2001 to January 2014

The data in this Appendix is taken from the Commonwealth Government's *Guide to Social Security Law,* at Chapter 5.2.2.05 *Total Maximum Periodic Pension-related Payment - 1909 to Present Date* (http://guidesacts.fahcsia.gov.au/guides_acts/ssg/ssguide-5/ssguide-5.2/ssguide-5.2.2/ssguide-5.2.2.05.html)

Total Maximum Periodic Pension-related Payment (TMPPP)

The TMPPP has been constructed in the *Guide to Social Security Law* for the purpose of enabling comparisons to be made between the overall total amounts payable to pensioners at different points in time. The pensions include the Age Pension and the Disability Support Pension (for those over 21).

The TMPPP is the sum of the maximum amounts of only the following payments:

From January 2001 to Jul19 September 2009:

- The maximum basic rate of pension (MBR).
- Pharmaceutical Allowance (PhA).
- Telephone allowance (TA). The Telephone Allowance was increased for those with an internet service, with the higher rate being included in the following tables from 20 March 2008.
- The Goods & Services Tax Pension Supplement (GSTPS).
- Utilities allowance (UA).

From 20 September 2009:

- The maximum basic rate of pension (MBR)
- The Pharmaceutical Allowance, the Telephone Allowance (at the internet rate), the Goods and Services Tax Pension Supplement and the Utilities Allowance were rolled into the new Pension Supplement.
- The Clean Energy Advance (CEA) was paid as a lump sum for the period from 1 July 2012 to 19 March 2013. The Clean Energy Supplement (CES) was paid as a fortnightly or quarterly payment from 20 March 2013 onwards.

Table B1

Historical rates of Total Maximum Periodic Pension-related Payment (Single pensioner) 1 January 2001 to 1 January 2014

Date	MBR p.a.	PhA p.a.	TA p.a.	GSTPS p.a.	UA p.a.	PS p.a.	CEA/CES p.a.	TMPPP p.a.	TMPPP p.w.
01/01/2001	9,851.40	150.80	68.80	395.20				10,466.20	201.28
01/07/2001	10,049.00	150.80	72.00	403.00				10,674.80	205.29
01/01/2002	10,262.20	150.80	72.00	410.80				10,895.80	209.54
01/07/2002	10,550.80	150.80	74.40	416.00				11,192.00	215.23
01/01/2003	10,740.60	150.80	74.40	423.80				11,389.60	219.03
01/07/2003	11,018.80	150.80	76.80	429.00				11,675.40	224.53
01/01/2004	11,338.60	150.80	76.80	434.20				12,000.40	230.78
01/07/2004	11,629.80	150.80	79.20	439.40				12,299.20	236.53
01/01/2005	11,793.60	150.80	79.20	444.60	100.00			12,568.20	241.70
01/07/2005	11,934.00	150.80	81.60	449.80	101.20			12,717.40	244.57
01/01/2006	12,256.40	150.80	81.60	455.00	102.80			13,046.60	250.90
01/07/2006	12,529.40	150.80	85.60	462.80	105.20			13,333.80	256.42
01/01/2007	12,841.40	150.80	85.60	473.20	106.00			13,657.00	262.64
01/07/2007	13,176.80	150.80	88.00	475.80	107.20			13,998.60	269.22
01/01/2008	13,499.20	150.80	132.00	481.00	500.00			14,763.00	288.91
01/07/2008	13,728.00	150.80	138.40	488.80	514.00			15,020.00	298.85
01/01/2009	14,112.80	156.00	138.40	501.80	518.80			15,427.80	296.69
01/07/2009	14,307.80	156.00	140.80	507.00	522.00			15,633.60	300.65
20/09/2009	16,010.80					1,458.60		17,469.40	335.95
20/03/2010	16,749.20					1,479.40		18,228.60	350.55
20/09/2010	17,118.40					1,500.20		18,618.60	358.05
20/03/2011	17,443.40					1,518.40		18,961.80	364.65
20/09/2011	17,914.00					1,554.80		19,468.80	374.40
20/03/2012	18,077.80					1,565.20		19,643.00	377.75
01/07/2012	18,077.80					1,565.20	338.00	19,981.00	384.25
20/09/2012	18,512.00					1,575.60	338.00	20,425.60	392.80
20/03/2013	19,076.20					1,591.20	351.00	21,018.40	404.20
20/09/2013	19,544.20					1,604.20	356.20	21,504.60	413.55
01/01/2014	19,544.20					1,604.20	356.20	21,504.60	413.55

MBR: maximum basic rate of pension; PhA: Pharmaceutical Allowance; TA: Telephone Allowance; GSTPS: Goods and Services Tax Pension Supplement; UA: Utilities Allowance; PS: Pension Supplement; CEA: Clean Energy Advance; CES: Clean Energy Supplement; TMPPP: Total Maximum Periodic Pension-related Payment.

Increases to payments prior to September 2009 were made at up to six different times per year, but only the figures at 1 January and 1 July of each year are reproduced from the original data.

Table B2

Historical rates of Total Maximum Periodic Pension-related Payment (Partnered Pensioners)

(Per partner, except where stated otherwise)

1 January 2001 to 1 January 2014

Date	MBR p.a.	PhA p.a.	TA p.a.	GSTPS p.a.	UA p.a.	PS. p.a.	CES/CEA p.a.	TMPPP p.a.	TMPPP p.w. Combined
01/01/2001	8,223.80	75.40	34.40	327.60				8,661.20	333.12
01/07/2001	8,390.20	75.40	36.00	332.80				8,834.40	339.78
01/01/2002	8,569.60	75.40	36.00	338.00				9,019.00	346.88
01/07/2002	8,811.40	75.00	37.20	343.20				9,267.20	356.43
01/01/2003	8,970.00	75.40	37.20	348.40				9,431.00	362.73
01/07/2003	9,201.40	75.40	38.40	353.60				9,668.80	371.88
01/01/2004	9,469.20	75.40	38.40	358.80				9,941.80	382.38
01/07/2004	9,713.60	75.40	39.60	364.00				10,192.60	392.02
01/01/2005	9,848.80	75.40	39.60	369.20	50.00			10,383.00	399.35
01/07/2005	9,965.80	75.40	40.80	374.40	50.60			10,507.00	404.12
01/01/2006	10,233.60	75.40	40.80	379.60	51.40			10,780.80	414.65
01/07/2006	10,462.40	75.40	42.80	384.80	52.60			11,018.00	423.77
01/01/2007	10,725.00	75.40	42.80	395.20	53.00			11,291.40	434.28
01/07/2007	11,003.20	75.40	44.00	397.80	53.60			11,574.00	445.15
01/01/2008	11,273.60	75.40	66.00	403.00	250.00			12,068.00	464.15
01/07/2008	11,466.00	75.40	69.20	410.80	257.00			12,278.40	472.25
01/01/2009	11,785.80	78.00	69.20	421.20	259.40			12,613.60	485.14
01/07/2009	11,949.60	78.00	70.40	423.80	261.00			12,782.80	491.65
20/09/2009	12,069.20					1,099.80		13,169.00	506.50
20/03/2010	12,625.60					1,115.40		13,741.00	528.50
20/09/2010	12,903.80					1,131.00		14,034.80	539.80
20/03/2011	13,148.20					1,144.00		14,292.20	549.70
20/09/2011	13,504.40					1,172.60		14,677.00	564.50
20/03/2012	13,626.60					1,180.40		14,807.00	569.50
01/07/2012	13,626.60					1,180.40	254.80	15,061.80	579.30
20/09/2012	13,954.20					1,188.20	254.80	15,397.20	592.20
20/03/2013	14,380.60					1,198.60	265.20	15,844.40	609.40
20/09/2013	14,731.60					1,209.00	267.80	16,208.40	623.40
01/01/2014	14,731.60					1,209.00	267.80	16,208.40	623.40

See notes to Table 101. The annual payments are per partner and the weekly calculations are the totals for both partners.

Appendix C

The following is extracted from ACCER's March 2013 submissions to the Annual Wage Review 2012-13

WHY WE ADVOCATE FOR LOW PAID WORKERS AND THEIR FAMILIES

1. 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.
2. *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

3. 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.
4. 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)

5. 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.

6. 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.

7. 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

8. 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.

9. 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.

10. 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.)

11. 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.)

12. 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.

13. 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.

14. 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.)

15. This passage is not about the term social inclusion *per se*, but it demonstrates why social inclusion in the *Fair Work Act* is important and how it is linked to justice.

16. 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.

17. 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

18. 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.

19. 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.

20. 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.

21. 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.

Assessing the Fair Work Act 2009

22. 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' 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.)

23. 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.

Appendix D

THE BISHOPS' STATEMENT OF 25 NOVEMBER 2005 ON *WORK CHOICES*

In 2005 the then Commonwealth Government introduced legislation to amend major aspects of the national employment legislation contained in the *Workplace Relations Act 1996*. The following is a statement made by the Australian Catholic Bishops Conference on 25 November 2005 in relation to the Commonwealth Government's *Workplace Relations Amendment (Work Choices) Bill 2005*:

Introduction

The Commonwealth Government's proposals for reforms to Australian employment law have prompted wide debate throughout the country. It is a debate that has caused many of us to reflect on the fundamental values that should underpin our workplaces and society as a whole.

Economic growth is needed to provide prosperity and economic security for all and to provide equity and social cohesion. Economic growth is needed to enhance social justice.

Catholic Social Teaching

The Catholic Bishops of Australia have been scrutinising the religious and ethical implications of the Commonwealth Government Workplace Relations Amendment (Work Choices) Bill (2005). Given the fact that the Catholic Church is a major employer in Australia, this legislation is of particular interest to us. We are guided by our own social teaching that offers us ethical principles and terms of reference.

A major concern of Catholic Social Teaching is always the effect legislation has on the poor and vulnerable and its impact on family life. As Pope John Paul II wrote in his encyclical *Laborem Exercens*:

> "…in many cases they [the poor] appear as a *result of the violation of the dignity of work*; either because 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)*

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.

Role of Governments

Governments have a responsibility to promote employment and to ensure that the basic needs of workers and their families are met through fair minimum standards.

Catholic Social Teaching recognises and supports a proper balance between the rights and responsibilities of employers and workers. The terms of employment cannot be left wholly to the marketplace. The responsibility of government is to ensure that there is a proper balance between respective legal rights, especially when bargaining positions are not equal.

Our Concerns

Does the proposed national system of employment regulation include the objectives of employment growth, fair remuneration and security of employment? Does it promote truly cooperative workplace relations and ensure the protection of the poor and the vulnerable?

We are concerned that the proposed legislation, as it is presently drafted, does not provide a proper balance between the rights of employers and workers in several respects. Changes are necessary to alleviate some of the undesirable consequences of the legislation, especially in regard to its potential impact on the poor, on the vulnerable and on families.

Minimum Wage

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.

Minimum Conditions and Bargaining

The legislation proposes a major change in the guaranteed safety net for workers and the procedure for making employment agreements. Our concern is that many workers, especially the poor and vulnerable, may be placed in a situation where they will be required to bargain away some of their entitlements. In particular, we refer to overtime rates, penalty rates and rest breaks. The legislation should be amended to provide that these are appropriately protected.

Unfair Dismissals

The Government proposes the removal of unfair dismissal laws in regard to businesses with up to 100 employees and to make changes to the laws applying to larger firms. Such changes would reduce job security. Workers should have appropriate redress against unfair dismissals. This does not ignore that termination of employment is justified in particular cases. There is

also a case for the amendment of the existing unfair dismissal laws to improve their efficiency and effectiveness. However, unfair dismissal rights should not be dependent upon the size of the employer's undertaking.

The Role of Unions

The legislation should enable cooperation between workers so that they can advance their mutual interests and enable them to participate freely in unions. The legitimate rights of unions are derived from the rights of their members. In their proper role in the workplace they are not "third parties" or outsiders to the employment relationship. We ask the Parliament to give close consideration to the potential impact of the proposed legislation on the capacity of unions to represent their members. It would be wrong for the Parliament to enact laws that impede or frustrate unions in carrying out their lawful representative activities.

Conclusion

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.