



Submission to the
Senate Employment,
Workplace Relations
and Education
Legislation Committee

Inquiry into the Workplace Relations Amendment (Protecting the Low Paid) Bill 2003



28 APRIL 2003

SUBMISSION

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Executive Summary

1. The Australian Catholic Commission for Employment Relations (“ACCER”) is a body established by the Australian Catholic Bishops’ Conference (“the Conference”). It provides the Conference and Catholic Church organisations with advice, research, and advocacy on matters affecting employment in the Australian workplace, within the context of the Catholic Church’s social teachings.
2. For some years ACCER has participated in Safety Net Review hearings in the Australian Industrial Relations Commission (“the AIRC”). In doing so, its primary concern has been for the needs of low paid employees. In this respect, the ACCER welcomes the concern of the Government about the needs of the low paid.
3. In previous and current Safety Net Review hearings, ACCER has submitted that the AIRC should:
 - (a) conduct an investigation or inquiry into the needs of the low paid and review the Federal Minimum Wage; and
 - (b) establish benchmarks against which the Federal Minimum Wage could be assessed.
4. The ACCER notes that the AIRC has not been persuaded by these submissions previously, even though the AIRC is empowered to undertake such an inquiry. However, ACCER contends that, after six years, an inquiry is necessary to ensure that the needs of the low paid are being identified and addressed in a structured and systematic manner. In this context, the inquiry would need to examine the impact, if any, of the Safety Net Review Case decisions upon the level of employment of the low paid.
5. In assessing the intentions of the Bill, the ACCER makes the following points:
 - The Bill does not appear to be necessary in the context of the existing requirements upon the AIRC to have regard to, among other matters, the effect of its decisions upon inflation and the level of employment.

- The Bill, if enacted, would appear to give greater emphasis to one need of the low paid; that is, their need for employment. While ACCER does not agree with this amendment, it is not clear that this would cause the AIRC to ignore the other needs of the low paid altogether or to relegate these to a lesser level of consideration.
 - The Bill will not necessarily encourage enterprise bargaining, as neither the amendment nor the current Act directs or requires the employer or employees to bargain.
 - The award safety net is necessary also to provide a fair and just system of minimum wages and conditions of employment for those workers who are not able to engage in enterprise bargaining.
6. ACCER recognises that the taxation and welfare systems can impact upon the real value of wages and that these should be considered as part of the proposed inquiry.
 7. The ACCER views the proposed amendments of the Government as further support for an inquiry into the impact of the Safety Net Review Case decisions on the needs of the low paid.
 8. In any circumstance, the Federal Minimum Wage should not be set beneath the poverty line in order to provide for employment opportunities:

“The provision of more work opportunities does not ... by itself justify reducing below a just level, the wages of those already in jobs.”¹

¹ Bishops’ Committee for Industrial Affairs, *Industrial Relations - The Guiding Principles*, August 1993, page 2.

Catholic Social Teaching

9. Since the publication of the Papal Encyclical **Rerum Novarum** in 1891 the Catholic Church has consistently affirmed the dignity of labour and the right of the employee to earn a just wage. The payment of a just wage is not only important in maintaining the dignity of the individual person, but also in maintaining a just socio-economic system. Pope John Paul II, in **Laborem Exercens** stated:

“It should also be noted that the justice of a socio-economic system and, in each case, its just functioning, deserve in the final analysis to be evaluated in the way in which man’s work is properly remunerated in the system In every system, ... wages, that is to say remuneration for work, are still a practical means whereby the vast majority of people can have access to those goods which are intended for common use.... Hence, in every case, a just wage is the concrete means of verifying the justice of the whole socio-economic system and, in any case, of checking that it is functioning justly.” (Paragraph 19)

10. In 1993 the Australian Catholic Bishops’ Committee for Industrial Affairs published **Industrial Relations – The Guiding Principles**. It said the following on the nature of work:

“Work is a principal means by which human kind seek their personal fulfilment and make their contribution to the common good. Thus there is a natural priority of labour over capital. Simply expressed, work exists for the person, not the person for the work. It follows that human work cannot be treated as a resource or as a commodity to be traded in like any other commodity.... Every family has the right to sufficient income through work. Workers have the right to just minimum wages and to just and safe working conditions.”²

11. The Catholic Church’s concern for low paid employees manifests itself in a variety of economic situations. The plight of the working poor in advanced western economies confronts the Church and those who wish to address the human condition. The Labor Day Statement of September 3, 2001, published on behalf of the United States

² Op.cit. page 2.

Conference of Catholic Bishops, addressed these issues in a way that has relevance to Australia. Entitled **The Dignity of Work and Workers: The Message of *Laborem Exercens***, it states:

“Across the United States, many low wage workers seeking meaningful employment and trying to achieve self-sufficiency find it difficult to meet their needs and those of their families. Some struggle to find decent and affordable housing, health care, or safe childcare. The restructuring of the welfare system to focus on work - bolstered by a strong economy and tight labor markets - has reduced the welfare rolls significantly. But enthusiasm for falling welfare numbers should be tempered by the reality of persistent poverty and wages too meager to provide for a family’s needs. Many may be leaving welfare; too few have left poverty....

In our own tradition, work is not a burden or punishment, but an expression of our dignity and creativity. Those who can work should work and by their labor meet their basic needs and those of their families. As a nation we must ensure that everyone who works full-time can earn enough to raise a family. The ongoing effort to raise the minimum wage, such as the bill currently in Congress, is a modest step toward that goal, but still insufficient. Even with this increase, a head of household who works full-time, year round at minimum wage would still live in poverty. As Americans, we can do better than this; raising the minimum wage is just a beginning, but it is the least we should do.”

The full text of the document is to be found at: www.nccbuscc.org/sdwp/laborday2001.htm.

The Safety Net Review Process and the Legislation

12. ACCER's primary focus in this submission is to address the following issues, as requested by the Senate Committee:
 - Whether the current living wage processes are adequate in the Safety Net Review.
 - The probable effect of this legislation on the AIRC's consideration of the Safety Net Review.³
13. In responding to the Senate Committee on these matters, this submission will examine the setting of the Federal Minimum Wage.
14. The Federal Minimum Wage was introduced into Federal awards by the AIRC in 1997; see **Safety Net Review-Wages, April 1997** (1997) 71 IR 1, 59-60 ("the **SNR Case 1997**"). The amount of the Federal Minimum Wage was derived from the lowest classification rate in the **Metal Industry Award**, i.e. the C14 classification. Although the Federal Minimum Wage has been adjusted by successive decisions of the AIRC, the AIRC has not yet been persuaded to conduct an investigation and review in order to determine whether it is fixed at an appropriate level. Nor was the C14 rate derived from such an exercise. At the present time the Federal Minimum Wage is \$431.40 per week or \$11.35 per hour. If granted, the ACTU claim would increase the Federal Minimum Wage to \$456.00 per week or \$12.00 per hour.
15. In the Second Reading Speech, the Minister stated that the "Bill is part of the Government's continuing effort to protect the employment prospects of the low paid and to reduce the prospect of unemployment for vulnerable low-skilled workers".⁴
16. The intention of the Bill appears to be that the AIRC will have greater regard to the impact of its decisions on the level of employment of low paid employees. It seems to imply that higher wages will reduce the employment prospects of the low paid and the unemployed.

³ Employment, Workplace Relations and Education Senate Committee, Correspondence to ACCER dated 27 March 2003.

⁴ *Workplace Relations Amendment (Protecting The Low Paid) Bill 2003*, Second reading Speech.

17. The **SNR Case 1997** contains an extensive review of the operation of a number of provisions of the **Workplace Relations Act 1996** (“the Act”). These provisions were introduced into the Act in 1996 for the purpose of establishing fair “safety net” terms and conditions of employment and for encouraging bargaining between employers and employees.
18. In particular, section 3(d)(ii) provides that it is an object of the Act “to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment.” Other relevant objects are also found in section 3 and are set out in section 88A. Requirements for the performance of the AIRC’s award-making functions are set out in section 88B. The AIRC is required to have regard to “the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community”, a range of economic factors, including levels of productivity, inflation and the “desirability of attaining a high level of employment”, and “the needs of the low paid”.
19. Under section 90 of the Act, the AIRC is required to take account of the public interest when dealing with matters before it. The AIRC shall have regard to the objects of the Act, the state of the national economy and the effects on it that any award made may have (particularly any effects on inflation and the desirability of attaining a high level of employment).
20. In the context of the existing direct and explicit requirement for the AIRC to have regard to “the level of employment”, it is not clear as to whether the Bill, if enacted, will have any *additional* effect on the considerations of the AIRC in the Safety Net Review Case. Each of the matters contemplated by the Bill appear to be already contained within its objects and the sections governing the conduct of its powers.
21. In the decisions of the previous Safety Net Review Cases, the AIRC has inevitably concerned itself with an analysis of the economic impact on inflation, employment and labour cost. In its 1999 Safety Net Review Case decision, the AIRC stated:

“Central to the adjustment of the safety net consistent with s.88B(2) is a consideration of the economic factors, the desirability of attaining a high level of employment and the needs of the low paid. ...we are required by

ss.88B(2)(b) and 90(b) to take the level of employment into account and we have done so.” (Paragraph [81]).

22. In the Second Reading Speech, the Minister stated that the other intent of the Bill was to ensure that the AIRC maintained a focus on agreement making as the primary determinant of wages and conditions of employment.⁵
23. One of the functions of the AIRC in fixing award rates of pay and other terms and conditions is to provide a safety net above which employers and employees are free to bargain.
24. However, some employees do not have the ability to engage in this process. Workers with little or no bargaining power within the labour market are more likely to be paid a low level of wages. Such people might not have the industrial position, ability or skills to bargain for higher wages directly with their employers, and they will rely on the award system to determine their rate of pay. On the other hand, some employers do not seek to engage in bargaining.
25. With respect to the concern of the Minister about “the extension of the safety net adjustments to middle and high wage earners”⁶, in the **Safety Net Review – Wages May 2001** the AIRC observed:

“Although it would be open to the Commission to award an increase only to those persons employed on the federal minimum wage or only to those employed at or below the level of the C10 classification in the Metal Industry Award we are convinced it would be unfair to limit the increase in that way because of the effect on employees at the higher levels.” (Paragraph [140]).
26. Problematically, a definition of who constitutes the *low paid*, or *middle* or *high* wage earners, has not been clarified in the Safety Net Review cases.
27. Furthermore, there has been no identification of the *needs* of the low paid in the Safety Net Review cases.

⁵ *Workplace relations Amendment (Protecting The Low Paid) Bill 2003*, Second reading Speech.

⁶ *Workplace Relations Amendment (Protecting The Low Paid) Bill 2003*, Explanatory Memorandum, page 2.

28. Given that it is now six years since the **1997 Safety Net Review Decision**, ACCER contends that the AIRC should conduct an inquiry or review, separate to the annual Safety Net Review Case, to ensure that it is identifying and addressing the needs of the low paid. At the very least, and as a methodological tool, it is timely for the AIRC to conduct a review of the efficacy of the Safety Net Review cases over this time in assisting the low paid.
29. ACCER suggests that the work of the Low Pay Commission in the United Kingdom provides guidance on such a task. The Low Pay Commission was established by the **National Minimum Wage Act 1998** to advise the Government about the National Minimum Wage. It is found at www.lowpay.gov.uk.
30. The AIRC has not ruled out a reconsideration of this matter. The following passage from the **Safety Net Review – April 1998** (1998) 79 IR 37, 76 demonstrates a preparedness to do so:

“In deciding in this case to continue to relate the level of the federal minimum wage to that of the C14 classification rate, the Commission is not precluded from taking into account different considerations, unrelated to the C14 rate, in deciding the level of the federal minimum wage in the future.”

The Minimum Wage, Taxation and Welfare Benefits

31. In the **SNR Case 1997** the AIRC referred to the approach adopted by itself and its predecessors in considering the needs of the low paid in the context of prevailing living standards when fixing rates of pay in federal awards. In referring to the decision of Higgins J in **Ex parte HV McKay** (1907) 2 CAR 1 (“the **Harvester decision**”), the AIRC said:

“The first attempt at establishing a wage based upon needs, below which no worker should be expected to live, occurred when Higgins J, President of the Commonwealth Court of Conciliation and Arbitration, in 1907 said in the **Harvester decision** that a “fair and reasonable” wage for an unskilled labourer would be based on “the normal needs of the average employee, regarded as a human being living in a civilised community” [at p 3]. The rate determined was based on the households of unskilled labourers, after taking into account the household expenditure costs covering the “modest requirements of the workers’ household”. The wages required by a worker to live in a civilised community were described by Higgins J in a later decision as the “living wage” which ultimately became known as the “basic wage”.” (71 IR at page 41)

32. It should be added that Higgins J thought that the amount fixed as a reasonable weekly rate represented the necessary expenditure for “a labourer’s home of about five persons”.
33. The AIRC commented also in the **SNR Case 1997** on the impact of the taxation system and welfare benefits on low-income earners and their families. The AIRC concluded that wages could only meet part of the needs of the employee. The majority stated:

“...the needs of the low paid award wage-earners, however, cannot be met solely by the Commission’s establishing and maintaining a safety net of fair minimum wages and conditions. There are many factors apart from wages that determine the living standards of such employees. They include private circumstances, the level of assistance provided by income support programmes, the taxation system and other government social initiatives.” (71 IR at page 56)

34. There has been a substantial amount of material put before the AIRC concerning the needs of low paid employees. In particular, that material can be found in the **SNR Case 1997** decision even though it did not have any impact on the level of the Federal Minimum Wage adopted at that time. Pertinently, the AIRC and a number of parties were attracted to the “single person” test for the determination of wages. This is evident in both the majority decision in 1997 (71 IR at page 52) and in the minority decision (71 IR at page 135). In the former, the majority expressed the opinion that “it is not desirable for the Commission to identify any family unit as appropriate for a benchmark” (71 IR at page 52).
35. The adoption of the single person test would involve a significant departure from the principle established in the **Harvester decision**, a decision that underpinned decades of Federal wage adjustments. However, it is apparent that for many years there has been a drift away from the family-based test established in that case.
36. If the AIRC were to formally adopt the single person criteria for the establishment of the Federal Minimum Wage it should only do so if it is satisfied that there are adequate mechanisms in place, by way of the taxation and welfare systems, that would guarantee the proper financial needs of the wage earner’s dependants. Moreover, unless and until governments make commitments to the continuation and further implementation of policies for the support of dependants, the AIRC should not abandon the principle that a minimum wage should take into account the needs of dependants.
37. Given the position of the Catholic Church on the need for wages to be sufficient to support the wage earner and his or her dependents, any support by the ACCER for the single person test for the purposes of wage fixation would only be conditional upon governments recognising that wage rates must be fixed on that basis and that they have an obligation to provide for the needs of dependent family members through the taxation and welfare systems.

ACCER's Proposals: Current and Future

38. ACCER believes that the material put before the AIRC in recent years demonstrates that, notwithstanding the emphasis given by the AIRC to low paid employees, there appears to be a considerable gap between the current Federal Minimum Wage and the necessary and appropriate amount for the Federal Minimum Wage. While the majority in the **SNR Case 1997** found that the adoption of a benchmark approach was not practical at that time (71 IR at pages 52-3), Vice-President Ross, however, was prepared to accept material presented about the “consensual poverty line” and that employees in receipt of less than that rate were low paid. The consensual poverty line in 1997 was \$530 per week (71 IR at pages 135-6). The current Federal Minimum Wage is still beneath this 1997 rate.
39. In the present Safety Net Review Case, and as an interim measure, ACCER supported an increase in the Federal Minimum Wage of \$24.60 per week or 65 cents per hour. This increase would mean that the Federal Minimum Wage would move to \$456.00 or \$12.00 per hour.
40. ACCER made also the following submissions for the inquiry into the Federal Minimum Wage and to address related issues:
 - a. The AIRC should conduct a hearing for the purpose of inquiring into the appropriate level of the Federal Minimum Wage, with a view to the implementation of its findings in 2004. For example, this could be facilitated through the AIRC appointment of a member of the Commission to oversee the inquiry process under section 107 of the Act.
 - b. On the completion of the hearing into the Federal Minimum Wage, the AIRC should conduct a hearing into the relativities between the Federal Minimum Wage and the rates of pay in award classifications, including classifications overtaken by the adjustment in the Federal Minimum Wage, with a view to the implementation of its findings in or from 2005.
41. In a general sense, the Inquiry into Junior Rates of Pay undertaken by the AIRC in 1999 might provide a model for the conduct of such an inquiry.

Conclusion

42. ACCER believes that there should be informed debate in Australia about minimum wages. It recognises that the AIRC is in a unique position to adjudicate in such a debate because of its statutory powers and obligations.
43. The AIRC should take a lead role because of its historical role in the resolution of industrial conflict and the resolution of competing claims for justice and equity in employment matters. ACCER sees no other institution better able to provide a forum for the ventilation and resolution of the employment issues that confront this nation. Although its powers are circumscribed by legislation, the exercise of those powers must take place in the context of the deliberations and decisions of others, especially governments.
44. Until a proper analysis is undertaken of the impact of the Safety Net Review Case decisions upon the low paid, the true extent of the efficacy of these cases will not be known. That is, the Safety Net Review Case may not be tackling the real needs of low paid workers. It may be that direct monetary adjustments alone do not assist in breaking the cycle of low wages and that more comprehensive non-wage measures – including meaningful access to skills enhancement and career opportunities – are needed to redress the apparent nexus of low skills and low wages.
45. The proposed inquiry would need to also examine the interaction with the current taxation and welfare structures and systems. However, it is recognised that the control of the taxation and welfare systems are in the hands of government. In this process, ACCER would expect that the respective governments would address the impact that these systems have on wages, employment, economic growth and to identify appropriate policy responses.
46. A “whole of government” set of responses is required to address the pressing issues of unemployment and the position of low paid employees and to enhance the social and economic fabric of society. The Bill should be seen as symptomatic of the pressing requirement for a review of the *total needs* of the low paid rather than as a solution to the need of the low paid for employment.