

By email.



2 April 2015

Mr D Oliver
Secretary
Australian Council of Trade Unions
6/365 Queen St
Melbourne, Vic. 3000

Dear Mr Oliver

Re: Submission by the ACTU to the Annual Wage Review 2014-15

I am writing to express the concern of my council, the Australian Catholic Council for Employment Relations (ACCER), about an aspect of the recent submission lodged by the Australian Council of Trade Unions (ACTU) for the Annual Wage Review 2014-15.

In its decision in the Annual Wage Review 2013-14 the Fair Work Commission (FWC) decided that the "appropriate reference household for the purposes of setting minimum wages is the single person household"; *Annual Wage Review 2013-14*, at paragraphs [38], [365] and [373]. ACCER has filed a submission with the FWC which contends that this single person household criterion (the single person benchmark) is contrary to law because it does not take into account the position and circumstances of workers with family responsibilities; see ACCER submission, March 2015, paragraphs 39 to 53.

The ACTU's submission includes the following:

"172. We accept that the Panel has formed the view that single person households are the appropriate reference household for the purposes of the Annual Wage Review....

175. While we accept the Panel's decision to focus on single person households, we strongly submit that the Panel should be consistent in its application of this principle. If cuts to transfer payments affecting families are not to be taken into account, then neither should the benefit that some low-paid workers receive from living in households with others. To take into account the financial benefit received by some low-paid workers from living with others, but to ignore the effect of reduced transfers on such low-paid workers' living standards, is inconsistent and in our view unacceptable.

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176. The Panel adopted a 'single person' test in its 2014 decision. It follows that the weight to be put on the following should be strictly limited:
- a. The fact that some minimum wage workers live in households with higher paid workers.
 - b. The high effective marginal tax rates faced by some family types (generally associated with the withdrawal of family benefits). Most single person households that are in work do not receive transfers and most will therefore retain the vast majority of any increase granted by the Panel after taxes and transfers are taken into account.
 - c. Any future changes to taxes and transfers that boost the living standards of families with children. If the Panel is to apply the 'single person test' when family benefits are to be cut, we submit it should apply the same test if and when they are increased. "

At paragraphs 137 and 138 of the Attachment to ACCER's submission is the following commentary about the unprecedented nature of the FWC's decision to adopt the single person benchmark:

"This was the first time in more than a century of minimum wage setting in Australia that an industrial tribunal has decided that minimum wages should be set on that basis, thereby excluding considerations of the needs of the low paid with family responsibilities. For more than a century Australian minimum wage decisions have taken into account and sought to provide a decent life for a worker with family responsibilities, even though economic circumstances have sometimes frustrated the fulfilment of that objective.

Minimum wages have continued to have a component that recognises the position of workers with family responsibilities and assists them to meet those responsibilities. The increase in family payments of various kinds over the past century, particularly since the 1970s, has reduced this need, but has not eliminated it. Indeed, the current fiscal position of the Commonwealth may see a reversal of that trend."

The *Fair Work Act 2009* does not require the single person benchmark. The decision to adopt it was a policy decision by the FWC, for which no notice was given and no reasons were provided.

The National Minimum Wage (NMW) is not a living wage

The NMW is not a living wage. Nor are many award wage rates covering low paid workers. This is clearly demonstrated from the figures referred to later.

ACCER is most concerned that the ACTU has accepted the single person benchmark and is not supporting what has been a fundamental principle of wage setting for more than a century, i.e. minimum wages should take into account the living standards and needs of workers with family responsibilities. It is a fundamental feature of the living wage principle; see Chapter 2A of the Attachment to ACCER's submission.

The living wage principle has been, in our view, the driving force of the trade union movement's representation of working Australians. Its industrial advocacy of decent wages for workers and their families has been central to its industrial campaigns, such as the *Your Rights at Work* campaign in 2007.

Part of that 2007 campaign was the support of the *Forward with Fairness* policy of the then Opposition, which included fair wages for families:

"Decent minimum wages are central to Labor's safety net.

Under Labor, Fair Work Australia will review minimum wages in an open and transparent process conducted once each year....

Fair Work Australia will consider all the evidence available to it and make a decision which is fair to Australian *working families*, promotes employment growth, productivity, low inflation and downward pressure on interest rates" (*Forward with Fairness*, April 2007, page 11, emphasis added.)

As Chapter 2A of the Attachment to ACCER's submission points out, the substance of the living wage principle has been enshrined in human rights instruments; for example, the *Universal Declaration of Human Rights* states that everyone who works has "the right to just and favourable remuneration ensuring for himself and his family an existence worth of human dignity, and supplemented, if necessary, by other means of social protection" (Article 23(3)).

The living wage principle is also enshrined in Australia's international labour obligations; see the *International Covenant on Economic, Social and Cultural Rights* (Article 7(a)) and the International Labour Organisation's *Minimum Wage Fixing Convention, 1970* (Article 3). Both have been ratified by Australia. One of the stated objects of the *Fair Work Act* is to establish a "balanced framework for...workplace relations that....take[s] into account Australia's international labour obligations"; see section 3(a).

The single person benchmark is, therefore, contrary to the recognised human rights

The recognition of a worker's responsibility to care and provide for his or her dependants is an integral part of the International Labor Organisation's *Decent Work Agenda*, which has been adopted by the ACTU. The single person benchmark is inconsistent with the *Decent Work Agenda*.

There are provisions in the *Fair Work Act* which reflect the intention of Parliament to prevent discrimination against (among others) workers with family responsibilities: sections: 153, 195, 351 and 578. The setting of wages upon the basis that workers are living in a single person household without family responsibilities would discriminate against workers who have family responsibilities.

The object of the *Fair Work Act* is "to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for *all* Australians" (section 3, emphasis added). The legislation seeks to do this

through, among other means, a safety net of fair minimum wages, that takes into account, among other factors, relative living standards and the needs of the low paid. Excluding the consideration of the circumstances of workers with family responsibilities is contrary to the purpose of a safety net, to the objective of fairness in minimum wages and to the legislation's intention to have the FWC take into account the needs of the low paid. The single person benchmark will entrench disadvantage and social exclusion for the most vulnerable workers and will not promote social inclusion for *all* Australians, as the legislation intends.

The single person benchmark is also inconsistent with wage setting precedents; see Chapter 2C of the Attachment to ACCER's submission. For example, the Australian Fair Pay Commission, operating under the *Work Choices* legislation disavowed the single person benchmark; see Chapter 2C at paragraphs 233 to 238.

The Australian Unions website states that the ACTU "is the peak body for 46 affiliated unions who represent about 2 million Australian workers and their families". The position adopted by the ACTU on the single person benchmark is not consistent with the representation of the interests of families.

I expect that no other national association of trade unions has accepted the single person benchmark and has accepted the proposition that the support of a worker's dependants should be left entirely to the social security system and to the budgetary decisions of the government of the day. I am unaware of these positions being adopted by any individual Australian union.

Lessons form 2004

The single person benchmark is inconsistent with decisions in the Australian Industrial Relations Commission (AIRC) and the way in which the ACTU argued its claims in that tribunal. This is illustrated in the argument that the ACTU put to in the Safety Net Review Case 2004. The ACTU based a large part of its case on commissioned research from the Social Policy Research Centre at the University of New South Wales regarding the living costs of single person and family households. The ACTU's concern for workers with family responsibilities was evident and substantial.

ACCER, which was represented by Frank Costigan QC, supported the ACTU's case because ACCER had been arguing that "the present level of the Federal Minimum Wage [FMW] is manifestly inadequate and that it must be reviewed as a matter of urgency"; ACCER submission, 25 February 2003. In 2003 Mr Costigan said:

“We say in order to satisfy its statutory obligation to have regard to the needs of the low paid the Commission must ensure that the minimum rates it sets, most particular the Federal minimum wage, do not fall below the poverty line. 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 involved in it. There is a question of determining, 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?" (Transcript, 1 April 2003, PN694.)

In 2004 ACCER identified the living wage question as central:

"The central issue for the Commission is whether the Federal Minimum Wage is a fair minimum standard in the context of living standards generally prevailing in the Australian community. Is it a living wage?" (ACCER submission, 18 February 2004.)

ACCER supported the ACTU because the ACTU's evidence demonstrated that the FMW was manifestly inadequate and was not a living wage.

In its decision in the Safety Net Review Case 2004 the AIRC stated:

"[275] One of ACCI's criticisms of the SPRC budget standards relates to the allegedly unrepresentative nature of the "household types" utilised by the ACTU for the purpose of comparison with the SPRC budget standards. In particular, ACCI noted that less than a quarter of couple families have a single wage earner *"the only scenario the ACTU brings forward to the Commission"*. It submitted that *"this selective approach renders [the ACTU's] material unrepresentative"*. We do not accept the premise implicit in that submission, namely, that only dual income couples are relevant in connection with any consideration of budget standards. Whilst a significant proportion of Australian families continue to rely upon a single wage as their sole source of income, the needs of single income families will continue to be relevant in connection with a consideration of the needs of the low paid." (*Safety Net Review Case, 2004, PR002004, italics in original*)

The concluding sentence of this paragraph is significant. Not only did it reinforce the position that the needs of families would be taken into account when setting wages, but it showed that the AIRC would take into account the position of single breadwinner families.

Through the advancement in data collection and analysis by the Australian Bureau of Statistics, we are now able to track what has happened to the FMW/NMW over the following decade. (The FMW became the NMW in 2010.)

In 2014 the FWC had evidence that the single breadwinner family of a couple and two children had gone from 3.3% below the poverty line in January 2004 to 10.0% below the poverty line in January 2014; see *Annual Wage Review 2013-14, decision*, paragraph [372]. It also had evidence that the position for single NMW-dependent worker fell from 25.9% to only 14.7% above the poverty line over the same period; ACCER submission, March 2014, Tables 27 and 28. The measure of poverty used here is the 60% of median poverty line, which the FWC has referred to as the conventional measure of poverty: see *Annual Wage Review 2013-14, decision* paragraph [399].

These figures take into account changes in taxes and transfers over the decade 2004 to 2014. They provide an objective measure as to how wage decisions and changes in transfer payments have impacted on low paid workers and their families.

So a minimum wage that was *manifestly inadequate* as a living wage in 2004 became *grossly inadequate* in 2014, when the single person benchmark was adopted; so much so that it could be treated by the FWC as a single person's wage.

If a full time wage is not a living wage there is pressure on the single breadwinner in couple parent families to work extra hours and/or get a second job; and there is pressure on the second parent to take up paid employment. This extra work should not be needed in order for the family to be free from poverty and to achieve a basic acceptable standard of living. In sole parent families a living wage requires that the working parent earns enough to be able to pay for high quality and appropriate child care, after taking into account government payments. Many low income sole parents and their families are driven into, or near to, poverty by the costs of child care. The single person benchmark will entrench and exacerbate the disadvantage already suffered by low income couple parent and sole parent families.

The changes in the relative value of minimum wage rates

The ACTU submission of 27 March 2015 identifies some important measures of the detrimental changes that have taken place over the past decade and more.

The ACTU's submission places great reliance on changes in the minimum wage "bite". The ACTU correctly identifies a major change in this measure:

"Minimum wages have fallen sharply as a proportion of average full-time earnings in the past few decades. The C14 rate, equivalent to the NMW, was 56.1% of the average weekly ordinary time earnings (AWOTE) of full-time adults in 1990. This fell to 50.2% by 2000, then 47.8% in 2005, the last year in which the AIRC had responsibility for adjusting minimum wages. By 2009, the last year of the AFPC, the minimum wage bite had fallen to 44.3%. The 1990s and 2000s saw a substantial decline in the relative living standards of low-paid workers." (Paragraph 94.)

We need to see this kind of change in a broader context, especially having regard to the change in the economic position of workers with family responsibilities.

In August 1973 family transfers were limited. A single breadwinner couple with two children, where the breadwinner was on the lowest wage rate, had a disposable income of \$58.50 per week of which only 7.7% came from transfer payments; see ACCER submission, March 2015, Table 11. While the wage could not be called a sufficient living wage by the standards of the time, the major part of the wage packet was for the support of dependants. From the late 1970s there were substantial increases in family transfers. By January 2001 transfers accounted for 37.5% of the disposable income of the NMW-dependent family's income (assuming the children were 8 and 12 years old and that the family was entitled to maximum rental assistance); and by January 2015 transfer payments accounted for 39.6% of the family's disposable income; ACCER submission, March 2015, Table 28. The increase in family transfers has not removed the need for the wage packet to provide some support for dependants.

There has been a clear long term trend that has been to the detriment of minimum wage workers, whether single or with family responsibilities. This is demonstrated by reference to the Melbourne Institute's calculations of household disposable income per head, seasonally adjusted, (HDI) over the period September 2000 to September 2014, when HDI increased by 88.5%; see *Poverty Lines, Australia, September Quarter 2014*, Table 2. Over a similar period, January 2001 to January 2015, the NMW-dependent family had an increase in its disposable income of 73.7% and the increase for the single NMW-dependent worker was 67.8%; ACCER submission, Table 28. The difference between the two outcomes was the increase in family transfers over this period.

Another way of looking at these changes is to consider the changes in disposable income for a NMW-dependent single worker over the period since the NMW was established. The FMW was introduced in April 1997 and set at \$359.40 per week, which was \$302.83 per week after tax. In July 2014 when the NMW was increased to \$640.90 per week, the after tax figure increased to \$581.11 per week. This is a 91.9% increase in after tax income over the 17 years. By comparison, over the period June 1997 to June 2014, HDI increased by 123.6%. The NMW has lost contemporary relevance.

Part of the ACTU's current submission concerns international comparisons:

"The minimum wage bite (as a proportion of the mean) in Australia fell 5.8 percentage points between 2003 and 2013, from 49.8% to 44%. This was the largest decline in the minimum wage bite of any OECD country. Most OECD countries experienced an increase in their minimum wage bites over this decade." (Paragraph 114)

There is no reason to doubt these figures when we see how badly minimum wages have lagged average wages in Australia.

Sooner or later a party in the Annual Wage Review will point out that if we are transitioning from a wage with a family support component (even if inadequate) to a single person benchmark, then we have to expect that the minimum wage bite will decrease. Furthermore, the ACTU argument that Australia should restore and maintain the earlier relative position of the NMW to minimum wages in other countries is weakened by a transition to the single person benchmark. It prompts doubts about the validity of such comparisons: what other country has adopted a single person benchmark? Is Australia in a class of its own?

The single person benchmark undermines the ACTU's reliance on the declining minimum wage bite, whether its point is made about changes within Australia over the medium term or by reference to international comparisons over the short term. The minimum wage bite argument should be based on the relative changes in a NMW that recognises the living standards and needs of workers with family responsibilities. The wage bite arguments would have real force if the ACTU were to return to the wage setting principles of, for example, the Safety Net Review Case 2004, discussed earlier.

The respective contributions of wages and transfers to family incomes

You will be well aware that some commentators have argued that minimum wages should not take into account the needs of families and that any poverty within families is a welfare matter to be considered and remedied by the government. This is not the way most people view the respective obligations of the public purse and the wage packet. It is not the way low paid workers and their families want their wages to be determined. It is not the way in which unions have viewed the matter.

This is not an either/or situation in which we have to choose between full public support and no public support for the dependants of workers. The social security safety net has a role to play in the support of in-work families.

Striking the proper balance between the wage packet and the public purse is an important public policy issue that is not limited to Australia. It is a matter which affects low paid and low skilled workers in all countries in an increasingly globalised world. It is a matter on which views vary. For example, in the U.S. one of the major complaints about the low wages that Walmart pays to its workers is that they force workers to rely on government aid to help support themselves and their families, thereby moving living costs from its own budget to government budgets. If the single person benchmark is applied in the future it will have a major impact on the Commonwealth Budget.

The single person benchmark would move all of the costs of dependants in low income families from employers to the Commonwealth, assuming families are adequately compensated for the costs of dependants. If the cost-shifting is inadequate low paid workers and their families would suffer; and that is the inevitable outcome.

Family transfers by the Commonwealth do not provide for all of the needs of a worker's dependants. They are not intended to do so. We saw confirmation of this just three weeks before the single person benchmark was announced. The Treasurer, Mr Hockey, said in his Budget Speech on 13 May 2014:

"Unlike pensions, which are an income replacement payment, family payments are an income supplement to help with *some* of the costs of raising a family."
(Emphasis added)

While the Budget was controversial in a number of respects, Mr Hockey's view in this passage reflects a position adopted by both sides of Parliament. Neither side has committed to provide for all of the needs of a worker's family. Under the last two Budgets (introduced by successive Governments) various measures have been introduced to reduce the amount of transfers to low and middle income families. Given the Commonwealth's budgetary outlook, there will be reductions in family transfers; for example, the Schoolkids Bonus will be abolished at the end of 2016. The wage packet will become increasingly important in the family budget.

Leaving low paid workers with only a cap in hand process of seeking budgetary support for their families cannot achieve the outcomes that can, and should, be achieved with an

independent statutory tribunal which carefully weighs the relative living standards and needs of low paid workers and their families, along with all other relevant factors.

This is not the time for the trade union movement to abandon its traditional and principled support for a wages system that recognises and seeks to provide for workers with family responsibilities. This is the wrong time to abandon the well-established principle that the wage packet has to include a component for family support.

The Productivity Commission inquiry

The appropriate mix of wages and transfers in the support of families is a matter of great importance to the framing of future wage setting and budgetary policies. ACCER has raised this matter in its submissions to the Productivity Commission's inquiry into the Workplace Relations Framework, with the following proposals:

"ACCER submits that any policy proposal in regard to minimum wages has to be tested and considered by reference to its impact on the common good and the protection of workers and their families against poverty and social exclusion. The best way out of poverty is a job that pays a living wage.

This task cannot be undertaken unless and until an assessment is made of the needs of workers and their families and an assessment is made of the actual and minimally acceptable relative living standards of those workers and their families who depend on the lowest minimum wage rates. They are entitled to be treated fairly and to live in dignity.

The kind of objectives in the previous paragraph cannot be supplied by wages alone in a developed and globalised economy. There are two realities that must be addressed in the formulation of a fair and sustainable wages policy: first, wages have to be supplemented by transfer payments and, second, governments need to promote employment by carefully scrutinising the non-wage costs of businesses. The first of these tasks requires the consideration of the balance between the public purse and the wage packet in the support of families. It is clear that, at least in the foreseeable future, the public purse cannot provide for all of the needs of the dependants of low paid workers with family responsibilities and that their wages must have a component for the support of dependants. The second, like the first, requires an acceptance that the costs of job creation and the maintenance of employment is a task of government, based on a fair tax system where burdens and benefits are shared according capacities and needs. To reduce wages to unacceptable levels in the hope of creating and maintaining jobs is morally unacceptable because there are other ways in which employment can be promoted and protected." (ACCER submission, 13 March 2015, paragraphs 89-91.)

These issues go beyond the scope of the FWC's jurisdiction, but the FWC could have a role in addressing some of them if it were not for its adoption of a single person benchmark.

Since before 2004 the Australian Council of Social Services and ACCER have asked the successive wage setting tribunals to undertake an inquiry into the needs of low paid

workers for the purpose of providing better evidence-based wage setting. On no occasion has the ACTU supported those proposals and they have not been taken up by the tribunals. This year ACCER has once again asked for an inquiry; see ACCER submission March 2015, paragraph 9. The purpose of the inquiry would be to obtain evidence regarding the needs and relative living standards of low paid workers and their families. The inquiry would have no utility unless the decision to adopt the single person benchmark is reversed. ACCER seeks the ACTU's support for the inquiry in the event that the FWC abandons the single person benchmark.

For the reasons set out in this letter, ACCER requests that the ACTU re-consider its position on the single person benchmark and affirms its traditional support for the setting of minimum wages that include recognition of the needs of workers with family responsibilities. Replies are due to be filed by Friday 17 April 2015. ACCER looks forward to a response from the ACTU that is consistent with principle and precedent.

Yours faithfully

A handwritten signature in cursive script that reads "Brian Lawrence".

Brian Lawrence

Chairman,

Australian Catholic Council for Employment Relations

cc: Ms G. Kearney, President, ACTU