

Working Australia, 2015: wages, families and poverty

Brian Lawrence, editor
June 2015

Revised edition

This edition of *Working Australia, 2015: wages, families and poverty* includes a new chapter written after the publication on 2 June 2015 of the Fair Work Commission's decision in the Annual Wage Review 2014-15.

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Preface

This book is the product of a number of submissions made to national minimum wage reviews over the past decade or so by the Australian Catholic Council for Employment Relations (ACCER). Minimum wage setting is one of the most important areas of Australian public policy. Decisions made in the annual reviews have an immediate impact on the lives of the lowest paid workers and their families and a wider impact on Australian society. Despite this, the issues and evidence considered in wage reviews are little-known in the broader community. To help promote wider knowledge of these matters ACCER decided to change the format and presentation of the 2014 submission and to publish a free of charge ebook incorporating the submission. This is the 2015 contribution to what we hope will be a continuing series. We are looking to publish this kind of book in the future so that it will continue to be a useful resource for submissions and, through the incorporation of the successive wage review submissions and decisions, keep readers familiar with the continuing and emerging issues in wage setting.

Our main message is that the wages safety net is failing to keep workers and their families out of poverty and provide them with a standard of living that is appropriate by contemporary Australian living standards. We believe that there is widespread support for the principle that full time work should be sufficient to keep families out of poverty, at the least, in the ordinary cases in which working families find themselves. The real debate in wage setting is not about whether workers should be protected against poverty (they should), but how we identify and use the relevant evidence; and how we close the gap. That is why we have given close attention to the definitions and measurement of poverty and to comparative living standards.

Our objective is to increase the National Minimum Wage (NMW), currently at \$640.90 per week, to the same rate as the base wage rate for cleaners, which is currently \$42.40 per week more than the NMW. We propose that it be done over time, starting with \$10.00 per week in 2015. We also explain how the cleaner's rate is insufficient for families, after taking into account taxes and family transfers; but the review of that rate is several years away. We expect that some more targeted research will become available by that time.

We also describe how the position of low paid workers and their families relative to Australian society in general and to some particular sectors of it has deteriorated over the past 14 years. There is no doubt about this. The important issue is why it has been allowed to happen over more than a decade of enormous national economic growth, despite the Global Financial Crisis.

The foregoing is largely what was written in the 2014 edition. In the 2014 decision of the Fair Wage Commission (FWC) we had a ruling that we did not expect. In its decision in the Annual Wage Review 2013-14 the 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]. No notice was given that the FWC was considering this criterion, which we call the single person benchmark.

This book has nine chapters and appendices. Chapter 9 is ACCER's submission to the Annual Wage Review 2014-15. The first eight chapters and the appendices were attached to ACCER's submission. The book has been written in a way that requires no special familiarity with wage setting, with the chapters being designed to build on each other. Subject to that, the chapters are largely self-contained so that they may be read separately. Acronyms are introduced afresh in each chapter. Consistent with the format of the submission, we have numbered the paragraphs, consecutively across the chapters.

A number of people have contributed to the development of this book through their involvement in a wide range of discussions over more than a decade. Some should receive specific mention. In the earlier years John Ryan, the then Executive Officer of ACCER, steered us to submissions that were more focussed on low paid workers and their families, which our barristers, Frank Costigan QC and Paul O'Grady, sharpened through their advocacy in the Australian Industrial Relations Commission. Frank died in 2009 after a magnificent contribution to Australian public life (including his chairmanship of the Australian Bar Association and, in the 1980s, as the Royal Commissioner of what was generally

known as the Costigan Commission into Organised Crime), which he made while never losing his contact with services to the poor and marginalised, as he demonstrated through his board work in organisations such as Jesuit Social Services. I also thank Terry Wilson, an ACCER councillor from the Archdiocese of Perth, for his contributions to the submissions over the years, and Jane Bashiruddin of the Office for Employment Relations of the Australian Catholic Bishops Conference (ACBC) for her valuable work in the presentation of the submissions and this book. The work of Bob Dixon and Stephen Reid at the Pastoral Research Office of the ACBC on the analysis of aspects of the 2011 Census should also be acknowledged. Finally, I thank my wife, Elizabeth Proust, for her support and advice over many years: we first worked together in 1969 when we were employed by the Australian bishops as youth workers with the Young Christian Students movement.

Brian Lawrence
31 March 2015

About the editor

Brian Lawrence holds Bachelor of Laws and Master of Economics degrees. He practised as a barrister at the Victorian Bar from 1971 to 2009, save for 1987 to 1993 when he was a Deputy President of the Industrial Relations Commission of Victoria, and specialised in industrial and employment law from 1977. He was appointed honorary Chairman of the Australian Catholic Council for Employment Relations (ACCER) in May 2007. Since his initial appointment to ACCER in 2002 he has been the primary drafter of its annual wage review submissions and has been its advocate in most of the reviews since 2005.

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List of Abbreviations

ABS	Australian Bureau of Statistics
ACCER	Australian Catholic Council for Employment Relations
ACCI	Australian Chamber of Commerce and Industry
ACOSS	Australian Council of Social Services
ACTU	Australian Council of Trade Unions
AFPC	Australian Fair Pay Commission
AIRC	Australian Industrial Relations Commission
AWOTE	Average Weekly Ordinary Time Earnings
CPI	Consumer Price Index
FMW	Federal Minimum Wage
FTB A	Family Tax Benefit Part A
FTB B	Family Tax Benefit Part B
FWA	Fair Work Australia
FWC	Fair Work Commission
GDP	Gross Domestic Product
GST	Goods and Services Tax
HDI	Household Disposable Income
HPL	Henderson Poverty Line
MEDHI	Median Equivalised Disposable Household Income
MTAWE	Male Total Average Weekly Earnings
NATSEM	National Centre for Social and Economic Modelling
NMW	National Minimum Wage
OECD	Organisation for Economic Co-operation and Development
PEO	Principal Executive Offices
RNNDI	Real Net National Disposable Income
SES	Senior Executive Service
SPRC	Social Policy Research Centre
TMPPP	Total Maximum Periodic Pension-related Payments
WPI	Wage Price Index

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WORKING AUSTRALIA, JANUARY 2001 TO JANUARY 2015

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CHAPTER 1

WORKING AUSTRALIA, JANUARY 2001 TO JANUARY 2015

A. INTRODUCTION

1. 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 more than a 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.
2. This is the second of what we hope will be an annual series of ebooks that contain the resource material for use in annual wage reviews. The first was published in March 2014 as *Working Australia, 2014: wages families and poverty*. We intend that the books 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. We have written the chapters as "stand-alone" pieces, with, for example, acronyms reintroduced in each chapter.
3. 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.
4. We do not suggest that some golden age for workers and their families had been reached at the turn of the century. As we will show, more recent trends about which we complain had been under way prior to the end of the century. Although our comparisons and commentary concentrate on the period 1 January 2001 to 1 January 2015, from time to time we present data within this period and from earlier periods.
5. 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. The national legislation under which each of these tribunals was established and operated has been contentious in some respects; 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.

6. Our main concern is for those low paid workers, and their families, who are unable to bargain for higher wage rates than the safety net rates set by the National Minimum Wage (NMW), now at \$640.90 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 wage rates are very influential in the agreements struck; but some sectors operate independently of safety net wage rates and deliver wage outcomes considerably higher than them.

The single person benchmark adopted in 2014

7. Our advocacy for low paid workers and their families received a major setback in 2014.
8. In its June 2014 Annual Wage Review decision the FWC decided that the "appropriate reference household for the purposes of setting minimum wages is the single person household"; *Annual Wage Review 2013-14*, [2014] FWC 3500, at paragraphs [38], [365] and [373].
9. 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 workers with family responsibilities.
10. The FWC gave no indication to the parties that it was contemplating making a decision to adopt the single worker criteria and gave no reason for the change. It will be apparent from what follows in this and the following chapters that this was very unfair to workers and their families.
11. In Chapter 2 we set our arguments in support of the contentions that the decision was contrary to law and was inconsistent with established human rights and Australian wage setting precedents.
12. Despite the lack of reasons for the decision to adopt the single person benchmark, it is apparent that the FWC was not acting on a belief that wages *must* be set by reference to the single person household, but because it had made a policy decision to adopt that criterion. The clear intended consequence of the decision is to transfer to the Commonwealth the total responsibility for the support of the dependants of low paid workers.
13. Although substantial, family transfers are insufficient to support the worker's dependants. They are not intended to remove the need for the wage packet to provide substantial family support. The wages and tax transfer systems share the support of families between the wage packet and the public purse. Furthermore, the current and prospective circumstances of the Commonwealth's fiscal position will not permit it to fully undertake this responsibility. The Commonwealth Government also takes the view that the transfers are for the partial support of families. Just three weeks before the single person decision 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)

14. Under the last two Budgets various measures have been proposed to reduce the amount of transfers to low and middle income families. For example, the Schoolkids Bonus will cease at the end of 2016. In the case of a family with a child at primary school and another at secondary school, the loss will be \$23.57 per week. The still unresolved proposal in the Budget to effectively remove Family Tax Benefit Part B from sole breadwinner families with school age children, but none of pre-school age, would reduce family payments for low income couple parent families by more than \$50.00 per week. It is likely that, over the next few years, family transfers will comprise a smaller proportion of the disposable incomes of many Australian families.

B. 2001-2015: INCREASING AFFLUENCE AND INCREASING POVERTY

15. The last 14 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 was the increase in average wages: over the 14 years Average Weekly Ordinary Time Earnings (AWOTE), for example, increased by 84.8% (see Table 10 in Chapter 5), while the rate of inflation measured by the Consumer Price Index (CPI) increased by only 45.8% (see Table 1 in Chapter 3) .
16. 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.
17. Compared to the rest of the workforce, *all* safety net workers are *relatively* worse off in 2015 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.
18. As measured by the 60% relative poverty line, the changes were dramatic. Over the 11 years from January 2004, the NMW-dependent family of four (including two children) fell further below the poverty line: from 3.3% below to 8.7% below; and in January 2015 they had a poverty gap of \$91.91 per week (see Chapter 8B, especially Figure 4). 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 1.2% below the poverty line in January 2015. The deterioration would have been worse but for increased family payments. Over the same period the single NMW-dependent worker's margin over poverty fell from 25.9% to 15.8% and at the C10 level the single person's margin fell from 48.2% to 31.3%; see Tables 27, 28 and 30.

19. 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.

The FWC's failure to address poverty in working families

20. 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)

21. This assessment 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.)

22. This was very welcome; but what did it mean in practice? One 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]).

23. Yet nothing changed for the most needy. The wage increases were the same for high paid and low paid classifications: a 2.6% increase was awarded to all minimum wage rates. 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.

24. A similar passage to that in paragraph [33] of the June 2013 decision appeared in the June 2014 decision:

"In assessing the needs of the low paid, we accept that if the low paid are forced to live in poverty then their needs are not being met. *We also accept that 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 2013-14*, paragraph [323], emphasis added)

25. The June 2014 formulation is inconsistent with the decision to adopt the single person benchmark unless we interpolate "single person" into the passage. As in 2013, it was a passage that appeared in a decision that recognised poverty among low income working families; for example:

"Single-earner families that receive the NMW or a low award rate have had declines in their equivalent real disposable income, to the point where today a couple with two children would be in poverty as conventionally measured. Households that rely on earnings as their principal source of income comprise about one-third of all families below a 60 per cent median poverty line." (*Annual Wage Review 2013-14*, paragraph [399])

26. The finding of poverty in these households, compounded by the single person benchmark, denies the reasonable expectation of a standard of living that exceeds poverty as articulated by the FWC in 2013 and 2014.

ACCER's claims for an extra \$10.00 increase in the NMW

27. In 2012, 2013 and 2014 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 has foreshadowed further "bottom up" claims working towards, at least, the base rate for cleaners, which in early 2015 is \$43.40 per week above the NMW. ACCER's argument was not limited to NMW-dependent families. It argued that safety net wages up to, at least, the base rate for cleaners 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. ACCER argued that progressively lifting the wages floor by modest steps is the most appropriate way of targeting poverty.
28. In 2012 and 2013 the claim for an extra \$10.00 per week was rejected without any reason being given and the NMW has been increased by the same amount as award increases. Conclusions were stated, but reasons were not given. 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.)

29. We will return to the relationships between the NMW and award rates of pay in section D of this chapter and argue that, contrary to the legislation, the NMW has been treated as an adjunct to the award classification system. It is apparent that the FWC has not been prepared to increase the NMW at a greater rate than award rates because it would impact on the level and relativities of award rates of pay. Our review of the legislation demonstrates that the NMW has to be set independently of the award rates, and that award rates are set on the basis of that

independently determined NMW. The passages from the 2012 and 2013 decisions, which were not supported by any evident reasoning, show a contrary approach by the FWC. It should be noted that the rejections in 2012 and 2013 were made in the face of substantial evidence on the extent of poverty among low income working families.

30. There was a similar situation in 2014. Apart from the mention of this further NMW claim (at paragraph [113]) there is no formal rejection of it. Evidence once again established high rates of poverty among low paid working families, with a full time job being insufficient to lift families out of poverty. The FWC acknowledged this evidence in its June 2014 decision, but said, in effect, that it was not its responsibility because, it said, that "the appropriate reference household for the purposes of setting minimum wages is the single person household". Because the figures show that the single person is not living in poverty, the decision avoids the basis for the claimed further increase in the NMW.

Growing inequality and social exclusion

31. The figures show that we have increasing poverty because we have not had 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.
32. 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. We return to this aspect in Chapter 5E

Just wages, market wages and globalisation

33. The level of Australian wages has been the subject of 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 by international standards. 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 workers and their families are kept out of poverty. As we show in Chapter 7G, Australian poverty rates are unacceptable.
34. If any wages are too high and moderation is called for, surely attention must be directed to some of the wages that have delivered most of the 84.8% (AWOTE) average wage increase over the past 14 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 higher 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. The wages agreed to in the bargaining processes are not subject to central control.

35. There is a risk that safety net rates might be managed 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)

36. Looking back over the past decade and more, the use of safety net rates to affect macroeconomic circumstances, including international trading capacities, through holding down Australian wage rates, appears to have been a substantial, but unexpressed, factor in the decisions of wage tribunals to disconnect safety net wages from community wage movements and, most recently, to abandon the interests of workers with family responsibilities when setting minimum wages. If so, it is misconceived and inconsistent with a transparent process for wage setting. Section 577 of the *Fair Work Act* states that the FWC "must perform its functions and exercise its powers in a manner that...is fair and just..and...is open and transparent...". Those provisions mean that we should be told of any such reasons and have an opportunity to contest them.

37. In a speech in 2014, the Secretary to the Treasury, Martin Parkinson, refuted this kind of thinking:

“Contrary to how it is sometimes portrayed in the media, competing on the global stage does not mean driving down wages or trading off our standard of living. Far from it.” (*Fiscal sustainability & living standards - the decade ahead*, speech to The Sydney Institute, 2 April 2014.)

38. Mr Parkinson then addressed the changes that are needed to, and can, improve Australia's productivity performance. His analysis rejected a low-wage strategy.

Inequality matters

39. Inequality 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.

40. 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.)

41. Appendix B, *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.
42. 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..."
43. A precondition for social inclusion is a decent wage and a wage that takes into account the needs of workers with family responsibilities. It needs to be a living wage, after taking into account taxes and transfers. 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. Furthermore, the current and prospective circumstances of the Federal Government's finances will not permit it to undertake this responsibility.
44. The NMW and other low wage rates have become poverty wages for low income working families, and the cause of social exclusion. The surest way out of poverty is a job that pays a living wage.

Poverty matters and wage decisions affect child poverty

45. 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)

46. 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.
47. 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. The labour market will reflect inequalities, not cure them. 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.

No child need live in poverty

48. 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*.
49. Continuing the practice 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.

50. We made the points in the previous two paragraphs in March 2014 not knowing that they would be rendered irrelevant by the single person decision. However, on the basis that the FWC has chosen to adopt the single person test, and not been compelled to do so by the legislation, there are questions for that need to be addressed by the FWC. On what basis has it found fit to exercise its statutory powers in a way that will leave in poverty the children of low paid workers? On what basis does it wish to do nothing about this area of child poverty that falls within its jurisdiction? On what basis, if any, does it believe that the Commonwealth has the capacity and willingness to address the issue of child poverty in low income families where there is a full time breadwinner?

C. THE LEGISLATIVE FRAMEWORK

A short history

51. Before describing and analysing the operation of the current 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.
52. 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 mostly prescribed by awards made by independent statutory tribunals.
53. 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). *Harvester* concerned legislation that imposed excise duties on specified manufactured goods, with the proviso that the duties "would not apply to goods manufactured in Australia under conditions as to the remuneration of labour which are declared by the President of the Court to be fair and reasonable" (page 2). The question before the President of the Court of Conciliation and Arbitration (Justice Higgins) was whether the conditions of remuneration at the business in question were fair and reasonable.
54. *Harvester* determined the course of wage decisions in the Commonwealth's new industrial court as well as decisions of State tribunals. The *Harvester* living wage decision (as it was often called, although the term was not used in the judgment) 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. *Harvester* 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. We return to *Harvester* and the living wage history in Chapter 2A.
55. 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 with the effect that awards had a range of wage rates reflecting relative work values and other relevant matters. The continued presence of margins for skill and other related factors through these award classifications distinguish Australian wage setting from other national systems.

56. For the first century or so after Federation, the Commonwealth's jurisdiction in regard to employment matters 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.
57. 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 transferred 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.
58. 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.

Work Choices

59. The *Work Choices* legislation was amending legislation, entitled *Workplace Relations Amendment (Work Choices) Act 2005*, which amended the *Workplace Relations Act 1996*. The *Work Choices* amendments transferred the wage setting functions of the AIRC to the AFPC, but left the AIRC with a wide range of other functions. The AFPC heard and determined minimum wage cases in each year from 2006 to 2009.
60. 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 the 2007 Federal election. 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. The FWA was, in effect, the AIRC by a new name, with a substantially changed jurisdiction. In 2013 the FWA's name was changed to the FWC.

The Fair Work Reforms

61. A major part of the debate about *Work Choices* and its wage setting provisions concerned 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)

62. *Work Choices*, therefore, removed the obligation to set a safety net of fair minimum wages having regard to, among other matters, living standards generally prevailing in Australia and the needs of the low paid.

63. 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..."

64. The Australian Catholic Bishops issued a Statement in November 2005 on these matters, which is now reproduced as Appendix C, 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."

65. 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.)

66. The reformed system that Professor Harper described did not come as a surprise. There was a

lot of community debate before the legislation was enacted.

67. 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.)

68. This was very welcome and the legislation that was enacted was consistent with the position taken by the bishops in 2005. As we explain in Chapter 2A, the passage claims too much for *Harvester* and, in doing so, fails to take into account the universality of the living wage principle. The living wage principle had been advocated in Australia and elsewhere for some years before *Harvester*. *Harvester* did not establish the principle of the living wage. *Harvester* was, in effect, though not in its terms, the first application of it in wage setting decisions. Nevertheless, the words used correctly highlight ingrained values both in the current legislation and across the Australian community.

The reformed wage setting system

69. There are two overarching features of the wage setting system introduced by the *Fair Work Act 2009*: a fair safety net and the social inclusion objective.

A fair safety net

70. First, the legislation saw the return to the pre-*Work Choices* objective of setting a safety net of fair minimum wages. This is evident in the terms of section 3 of the *Fair Work Act*, which sets out the object of the new system and various means by which the object is to be pursued. Section 3 includes the following provisions:

"The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:

- (a) providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity and take into account Australia's international labour obligations; and
- (b) ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders; and
- (c) ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and
- (d) assisting employees to balance their work and family responsibilities by providing for flexible working arrangements;
- (e) enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and

effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and"

71. Most relevant to the setting of minimum wages are the terms of section 284(1), which provides that the "FWC must establish and maintain a safety net of fair minimum wages, taking into account [among others] relative living standards and the needs of the low paid..". We set out the full text later in the context of the discussion of the relationship between the NMW and award wages.
72. The term "safety net", which appears in various sections of the Act is not defined. Nor was it defined in the earlier-quoted provisions in the *Workplace Relations Act 1996*.
73. ACCER has argued that the term must be given its ordinary meaning. Its purpose is to protect workers in the ordinary and expected situations in which workers find themselves. The safety net does not have to cover exceptional cases, but it must cover ordinary and expected circumstances. These situations will cover single persons, workers who are sole parents and workers with a partner and children. In the contemporary Australian context, having two children is within the scope of the ordinary and expected circumstances. A safety net wage must, therefore, 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. A safety net designed for single workers cannot be a safety net for workers with family responsibilities.
74. Another aspect of the fair safety net is that it is to be determined on the basis of a range of social and economic factors that take into account the individual circumstances and the broader community interests. Leaving aside the FWC's decision in 2014 to adopt the single person criterion, the safety net wage provisions give effect to Australia's international obligations. The International Labour Organisation's *Minimum Wage Fixing Convention, 1970*, which has been ratified by Australia, 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." (Article 3)
75. Section 3(a) of the *Fair Work Act* sets out a number of particular objectives of the legislation, including that it takes into account "Australia's international labour obligations". This is very relevant to the single person decision: the single person criterion is inconsistent with the terms of this convention. We return to these issues in Chapter 2.

Social inclusion

76. The second overarching feature of the *Fair Work Act* is the social inclusion objective. Section 3 provides:

"The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians."

77. The object of social inclusion calls attention to the requirement to consider the ability of workers and their families to live in dignity and participate in society. The legislation is beneficial legislation. The social inclusion objective is both advanced and limited in the requirement on the FWC when setting wages to take into account "promoting social inclusion through increased workforce participation" (section 284 (1)(b)). Not surprisingly, unions emphasise the general in section 3 and employers emphasise the specific in section 284(1)(b). In dealing with submissions made on this issue the FWC has reconciled the two competing approaches:

"[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*)

Modern awards

78. 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 now 122 awards covering defined industries and/or occupations. The legislation refers to them as "modern awards". These awards came into operation in 2010 following a lengthy and exacting process in the AIRC, operating under transitional provisions, to replace hundreds of State and Federal awards which contained many inconsistent provisions. Some of the most contentious were the varying wage rates. The general 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.
79. The awards prescribe various kinds of work classifications and set wage rates for them. Generally, awards contain a limited number of "broad-banded" classifications, in contrast to the 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.

80. 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*.

Safety nets and bargaining

81. Another important aspect of the current legislation is the connection between safety net conditions and collective bargaining. Section 134, which sets out matters relevant to the making of awards, requires that the FWC take into account "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 be one in which workers and their employers 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.
82. 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.
83. 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". see http://www.australianunions.org.au/why_join

The bargaining system and economic flexibility

84. 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.

D. THE NMW: THE FOUNDATION OF THE WAGE SETTING SYSTEM

85. This book gives particular attention to changes in the 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.
86. The FMW was first set in 1997 by a decision in the AIRC's *Safety Net Review - April 1997* 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" ((1997) 71 IR 1, 189). It was decided 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.
87. 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 the C14 rate. The C14 rate was the lowest rate in that award and operated over the first three months of employment, after which workers moved to the C13 wage rate. Over the past 17 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.
88. The *Fair Work Act* provides a very different process for the setting of the NMW. 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, it follows, 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.
89. 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.
90. Section 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."

91. 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."

92. 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;"

93. 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". 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.

94. 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.

95. This new scheme in which centrality is given to the setting of the NMW is very relevant to the setting of award wage rates and to the consequences of setting a fairer NMW. In some awards there are classifications and wage rates sitting close to the NMW, so that, if the NMW is to be increased by a further amount (such as the extra \$10.00 per week claimed by ACCER), changes will have to be made to some award classifications and the rates prescribed by 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 current legislation, properly applied, cut that knot.

Fair safety nets

96. One of the stated objects of the *Fair Work Act* is “ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders”; see section 3(b).
97. There are two specific objectives in the legislation regarding the setting of wages and award provisions. 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)

98. 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).
99. 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, 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)

100. 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.

E. CONTENTION ABOUT RELATIVE LIVING STANDARDS AND THE NEEDS OF THE LOW PAID

101. We conclude this chapter with a reference to two issues that have arisen over the scope of "relative living standards and the needs of the low paid" in section 284(1)(c) of the *Fair Work Act*.

ACCER complains

102. By a letter dated 18 June 2014 ACCER's solicitors, Minter Ellison, wrote to the FWC advising that ACCER was concerned to ensure that its submissions in the *Annual Wage Review 2013-14* were accurately stated on the public record. The letter was addressed to the Associate to the President and requested that it be brought to the attention of the President and members of the FWC's Expert Panel.
103. The letter attached a lengthy submission setting out matters concerning the FWC's response to two aspects of ACCER's submissions in the wage review: ACCER's claim that the June 2013 decision had contained an error of law; and ACCER's contention that pensions and the living standards of pensioners are relevant to the consideration of relative living standards under section 284(1) of the *Fair Work Act*.
104. The letter advised that ACCER sought a correction to the record by the issuing of a revised decision or a supplementary decision. The letter asked that it be placed on the Annual Wage Review website, which was done. The letter and the attachment can be viewed at the *Annual Wage Review 2013-14* website. The attached submission concludes:

"It has been necessary to set out a very detailed description of the matters that have resulted in the comments made by the FWC at paragraphs [75] to [88] of the Decision. Those paragraphs contain matters that, as a matter of fairness, should have been raised with ACCER in the consultations on 20 May 2014, but were not. They also contain substantial errors, omissions and misdescriptions. That is a matter of great concern in itself. Furthermore, the effect of these paragraphs is to disparage the submissions of ACCER. ACCER requests the correction of these matters by the issuing of a revised decision or the issuing of a supplementary decision." (Paragraph 63)

105. We now turn to the matters raised in the correspondence: issues regarding the assessment of the needs of the low paid and the relevance of pensions and the living standards of pensioners in the assessment of relative living standards.

The needs of the low paid

106. 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, emphasis added.)

107. 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)

108. The 2011 submissions made by ACCER were successful. Although the decision in the *Annual Wage Review 2010-11* decision did not refer to ACCER's submissions, it provided a new formulation of the purpose of section 284(1) and related provisions in a way which met ACCER's concerns; i.e. recognising that all specified factors have to be taken into account.
109. 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 the 2010 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 which stated the need to look at the range of factors. Those passages did not raise any concerns.
110. ACCER raised this issue in the 2013-14 review as a preliminary matter and it was one of the matters considered in the preliminary consultations in early March 2014. Consistent with its earlier position, ACCER argued that the adoption of the earlier formulation "constituted an error of law". It made no criticism of the other passages in the June 2013 decision that referred to the need to look at the range of factors. The argument was put in written submissions dated 25 February 2014. ACCER relied on the submission made in 2011 and quoted above. The written submission about the June 2013 decision did not go beyond arguing that the formulation of the first sentence in paragraph [244] of the 2010 decision.
111. No issue was raised by the FWC about these matters in the consultations with ACCER on 20 May 2014 when the drafting of the decision would have been well-advanced for its handing down on 4 June 2014. However, the following passages appeared in the June 2014 decision:

[75] As part of submissions to this year's Review, the Australian Catholic Council for Employment Relations (ACCER) submitted that in the 2012–13 Review decision the Panel made an "error of law" in its construction of s.284(1) and failed to give proper effect to the intended operation of the provision and to paragraph 284(1)(c) in particular. Section 284(1)(c) directs the Panel's attention to "relative living standards and the needs of the low paid".

"[77] In the preliminary consultations to this Review, ACCER submitted that the above extract from the 2012–13 Review decision contained an error of law. Two propositions were advanced in this regard. The first is that in considering s.284(1), and in particular paragraph 284(1)(c), "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 second proposition was that the *Annual Wage Review 2009–10* decision (2009–10 Review decision)—and therefore the 2012–13 decision which adopted parts of the 2009–10 Review decision—did not give adequate consideration to the needs of the low paid. ACCER's complaint is directed at the extract from the 2012–13 Review decision, which is set out above at paragraph [76]". (Footnotes omitted)

112. These passages claim that ACCER made two claims and advanced two propositions. It is followed by some robust criticism of ACCER's position, claiming that the submissions were "misconceived", "clearly wrong" and "devoid of merit" (see paragraphs [78] to [80]) These comments turn on the claimed second proposition and are not pertinent to the one matter that ACCER argued and which the FWC treated as the first proposition. ACCER argued only one matter, which is referred to by the FWC as the first proposition.
113. The second proposition as it is described by the FWC, indicates that ACCER was attacking the merits of the June 2013 in the course of those submissions and seeking something in the nature of a review of the 2013 decision. In paragraph [87] the FWC said: "It is not the function of review proceedings to embark on some sort of judicial review of past [FWC] Panel decisions."
114. ACCER complained that these paragraphs in decision contained errors, omissions and misdescriptions and that the effect of the paragraphs was to disparage ACCER's submissions. A reader of the decision would be unaware of all of the relevant facts, which are set out in the attachment to the Minter Ellison letter. It is sufficient for present purposes to refer to the transcript of the preliminary consultation on 4 March 2014, when the following exchange took place:

"PN 83

JUSTICE ROSS: ... Mr Laurence (sic), is there anything you wish to add to your written submission?

PN84

MR LAURENCE: No, there's not, your Honour.

PN85

JUSTICE ROSS: Well, this might be very short. Can I raise two issues with you then, Mr Laurence? The first is - in relation to the first part of your submission, dealing with what you've characterised as an issue of law, it seems to be put on the basis that - now this is at paragraph 7, that there was an aspect of last year's decision that constituted an error of law. Leave aside for a moment the merits of whether that's right or not, what do you want us to do about it (indistinct) judicial review of last year's decision?

PN86

MR LAURENCE: No, no - - -

PN87

JUSTICE ROSS: Is it something you want to take into account in this year's, is that - - -

PN88

MR LAURENCE: Yes, it's really - it's the formulation that's in that paragraph that we have a problem with, and we say, for the reasons that are in the attachment to the outline, it's the wrong way to describe the section.

PN89

JUSTICE ROSS: Yes. But you don't want to - the short version is you don't want us to do that again.

PN90

MR LAURENCE: That's right. I could go over it again, but I can't add anything to what was there, we've said - - -

PN91

JUSTICE ROSS: Oh no, I'm just trying to understand how it was put, that's all. But I follow that."

115. The FWC's 2014 decision does not repeat or adopt the passage in the 2010 decision, with the result that ACCER got what it sought. The formulation adopted by the FWC was in contrast to the 2010 formulation and met ACCER's concerns:

[70] Sections 284, 134 and 578 all direct the Commission to "take into account" certain specified considerations in reviewing modern award minimum wages and the national minimum wage order. To take a matter into account means to evaluate it and give it due weight, having regard to all other relevant factors. A matter which the Commission is directed to "take into account" is a "relevant consideration" in the *Peko-Wallsend* sense of matters which the decision maker is bound to take into account." (*Annual Wage Review 2013-14, decision*, paragraph [70], footnote omitted.)

116. What ACCER was seeking and what it was not seeking, are clearly evident in the transcript. There was no second proposition, as the decision claimed, and the recitation of events is erroneous. The use of the terms "misconceived", "clearly wrong" and "devoid of merit" were unfair and misleading about the matters before the FWC and had the effect of disparaging the matter that were raised by ACCER.

Relative living standards and the living standards of pensioners

117. Since 2010 ACCER has been arguing that the living standards of pensioners should be taken into account in the determination of relative living standards and arguing that low paid families reliant on safety net wages have lower living standards than pensioners on the social safety net. However, those submissions have not been addressed in any of the decisions since that time.
118. In its March 2014 submission ACCER sought a ruling from the FWC that "the living standards of pensioners are relevant to the determination of living standards under section 284(1)(c) of the *Fair Work Act 2009*"; ACCER March 2014 submission, paragraph 2(b).
119. This matter had been raised in ACCER's written research proposals of 22 August 2013. ACCER asked that the position of pensioner households be included in the FWC's calculations of living standards that are shown in the poverty line tables in the FWC's *Statistical Report*. The written submissions included:

"We note that in the 2013 AWR Decision, at paragraph [375], the Commission said:

"In assessing relative living standards, the comparison we focus on is other employed workers, especially non-managerial workers."

At paragraph [385] it said:

"...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."

The Commission has referred to its "focus" being on other workers. We submit that any focus on those workers should not exclude the living standards of pensioners and that there is no reason in the terms of the legislation for such an exclusion. We ask that the relevant data concerning single and couple pensioner households (whether in receipt of aged pensions or disability pensions) be included in the poverty lines table." (Paragraphs 22-23)

120. Consultations were held on 12 September 2013, with ACCER being invited to provide further submissions on several matters, including pensioner living standards. A submission by ACCER dated 17 September 2013 stated:

"At paragraphs 21 to 23 of ACCER's submission on research a claim is made for Table 8.2 of the Commission's *Statistical Report* to be extended to cover pensioner households. A question arose at the consultation about the basis upon which this was made. In substance, ACCER's submission is that the obligation on the Commission to take into account "relative living standards" when establishing and maintaining a "safety net of fair minimum wages", and doing so in the context of the social inclusion object of the Act, necessarily means that living standards across the community have to be taken into account. We submit that the living standards of more than 3.5 million people who rely on the pension safety net are properly part of that consideration and that the limiting of the consideration of living standards to those who are in employment is impermissible." (Paragraph 20.)

121. The FWC's decision on research matters was delivered on 3 October 2013. ACCER's request for pensioner households to be covered in the Statistical Report was rejected:

"Finally, 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 re research program [2013] FWCFB 7720 paragraph [8], emphasis added)

122. We stress that the FWC said that it was "not presently persuaded" that pensioner households and pensions are "a relevant comparator" for the ascertainment of safety net wages.

123. It was on this basis that ACCER's March 2014 submission sought (at paragraph 2(b)) a ruling that the living standards of pensioners are relevant to the determination of living standards under section 284(1)(c) of the *Fair Work Act*. The reasons in support were contained in Chapter 2D of the Attachment to the submission.

124. At Chapter 2D of the Attachment ACCER submitted that the *Annual Wage Review 2012-13* decision had failed to take into account evidence regarding pensions, reproduced the above-quoted passage from the FWC's October 2013 decision, stated reasons why, as a matter of statutory interpretation, pensions and pensioner households should be included in the determination of relative living standards and concluded with:

"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." (ACCER's March 2014 submission, Attachment, paragraph 313.)

125. The FWC's response to the pensions submission is at paragraphs [83] to [88] under the heading "Relative living standards". The opening paragraph refers to ACCER's submissions. Paragraph [84] commences:

"ACCER's submission proceeds on a false premise. Contrary to ACCER's contention, the Panel has not proceeded on the basis that payments received by pensioners are excluded from its consideration of relative living standards."

126. The premise upon which ACCER had proceeded was the FWC's statement that it was "not presently persuaded that it is a relevant comparator"; [2013] FWCFB 7720 paragraph [8]. The passages in the decisions October 2013 and June 2014 cannot be reconciled. After referring in paragraph [84] to two passages in the June 2013 decision concerning the focus for consideration being other employed workers, the FWC stated:

"[85] The Panel's assessment of relative living standards *focuses* on the comparison between award-reliant workers and other employed workers, especially non-managerial workers. Given the context and the nature of the review proceedings such a focus is appropriate—no party contended otherwise. Indeed, ACCER submitted that "primary emphasis needs to be given to the wages of other workers across a broad range of incomes"[footnote]. The fact that the Panel focuses on the comparison with other employed workers *does not exclude a consideration of the comparative living standards of award-reliant workers and other groups, including pensioners. It is a matter of the weight to be given to such comparisons.*" (Second emphasis added.)

127. The footnote in paragraph [85] is to paragraph 313 of ACCER's submissions, quoted above. The concluding words of paragraph [85] mean that the FWC accepts that pensions can be taken into account and given appropriate weight. They are consistent with ACCER's submission; and ACCER's submission in paragraph 313.
128. The position taken by the FWC in paragraph [85] is inconsistent with the position the FWC adopted on 3 October 2013. The FWC's position at that earlier time should not have been overlooked when the June 2014 decision was being drafted because the relevant passage from the Statement of 3 October 2013 was reproduced in ACCER's March 2014 submissions at paragraph 309, as part of the argument leading to paragraph 313, which the FWC partly quoted. The FWC's claim that "ACCER's submission proceeds on a false premise" is wrong. ACCER made submissions on the basis of the FWC's Statement of 3 October 2013.
129. The recitation of the pension issue is misleading because it fails to say what the FWC had said about the matter on 3 October 2013 and that ACCER was responding to that position; ie it was providing reasons for pensioner living standards being a relevant comparator. This part of the June 2014 decision erroneous and would mislead those who read it without having knowledge of these matters. It disparages the matter raised by ACCER.
130. These are matters for concern about the pensions aspect of the decision. However, the decision also goes further into a related matter that adds to the misdescription of ACCER's submissions and adds to the unfairness of this part of the decision. It is unnecessary to set them out here, but they are set out in detail at paragraphs 54 to 62 of ACCER's submissions attached to the Minter Ellison letter of 18 June 2014
131. The substance of this further matter concerns how ACCER was seeking to make use of the pensions data. At paragraph [86] the FWC referred to a submission made by an employer association before the preliminary consultations on 4 March 2014, in which it was claimed that the "aim of the proposition advanced by the ACCER appears to be introducing an equivalent mechanism in the minimum wage which installs the pension's link to the higher of price/living

cost indexes and the wages benchmark of male total average weekly earnings ...". That matter was not before the FWC at the preliminary consultations and it was not until the end of March 2014 that ACCER's position was put. After referring to what can only be regarded as speculation by the employer association the FWC said:

"[87] To the extent that ACCER's submission sought the application of the mechanism for adjusting pension payments to the adjustment of minimum wages, we reject that proposition. As we observed earlier, the range of considerations we are required to take into account calls for the exercise of broad judgment, rather than a mechanistic or decision rule approach to minimum wage fixation."

132. The attachment to the letter from Minter Ellison explains ACCER's position on the relevance of pensions to wage setting. ACCER did not, to any extent, seek "the application of the mechanism for adjusting pension payments to the adjustment of minimum wages". This was clear from a variety of sources, including paragraph 313 of ACCER's March 2014 submission, referred to earlier: 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, but that does not exclude taking pensions into account.
133. This part of the decision shows that the FWC had sought out and made use of some early speculation about what ACCER might say on the relevance of pensions and then used it in a way that would give a misleading and erroneous impression of what ACCER had put on the matter. The effect was to incorrectly and unfairly characterise ACCER's submissions.

The FWC's response

134. The letter of response by the President of the FWC, which is available on the Annual Wage Review 2013-14 website, states:

"I have considered ACCER's submission and consulted with the other Members of the Expert Panel on its content. I am of the view that the submission does not assert error in the Decision of a nature that could and should be corrected by further decision of the Expert Panel. It is of course open to ACCER to seek judicial review, if it considers that the Decision is affected by reviewable error."

135. Judicial review is only available in respect of jurisdictional error. ACCER's complaints about the errors, omissions and misdescriptions do not concern jurisdictional error. The matters about which ACCER complained were not matters that can be litigated in the Federal Court. If they were, there would be the prospect of substantial costs being awarded against ACCER for commencing the application without reasonable cause. As ACCER said in the attachment to the Minter Ellison letter of 18 June 2014 the effect of the identified paragraphs in the June 2014 decision is to disparage the submissions advanced by ACCER. A fair-minded reader of these matters might think that, at the least, the FWC should have responded with a letter that included a passage to the effect that no disparagement of ACCER's submissions was intended. ACCER remains greatly concerned about the matters raised by the FWC in paragraphs [75] to [88] of its June 2014 decision.

2

AFTER A CENTURY THE MINIMUM WAGE SYSTEM ABANDONS FAMILIES

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**Working Australia, 2015:
wages, families and poverty**

CHAPTER 2

AFTER A CENTURY THE MINIMUM WAGE SYSTEM ABANDONS FAMILIES

A. INTRODUCTION

136. In its June 2014 Annual Wage Review decision 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*, [2014] FWCFB 3500, at paragraphs [38], [365] and [373].
137. 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.
138. 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 living wage, Harvester and the right to decent wages

139. The judgment of Justice Higgins in the *Harvester* case of 1907 (*Ex parte McKay* (1907) 2 CAR 1) is sometimes said to be the origin of the living wage principle and that the living wage principle was a uniquely Australian contribution to employment protection. Too much can be claimed for *Harvester*; but what is true is that *Harvester* made a major contribution to the *application* of the living wage principle which was being articulated and propounded in Australia and other industrialising societies at that time.
140. It is important to understand *Harvester* in its context and to see it as a manifestation of a desire by working people for a fair wage that would enable them to live in dignity. To think of it only as a formula (a wage for a workman, his wife and three children), as some do, is to misunderstand history and the real basis for Australian wage setting.
141. *Harvester* was not a minimum wage case, as such, but a case concerning exemptions from excise duties. Employers were able to gain exemptions if they paid fair and reasonable wages to their employees. Justice Higgins addressed that issue and determined an appropriate amount. In the following year the *Harvester* ruling was adopted by the Australian Court of Conciliation and Arbitration in settlement of an industrial dispute.
142. The term "living wage" was not used in the *Harvester* judgment, but the wage that was found to be the fair and reasonable minimum wage was applied in subsequent wage setting cases and came to be known through subsequent usage as the living wage, or the basic wage. The living wage was debated, applied and increased over the following years. The early history of the spread of the living wage through wage setting decisions is found in Justice Higgins' article A

New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration, published in the *Harvard Law Review*, in November 1915 (at vol. 29, pages 13-39). The setting of minimum wages in Australia has been underpinned by the living wage principle.

The historical context

143. The living wage principle has a long history in public discourse and public policy as well as in wage setting decisions. The living wage was pursued in Australia and other nations in the late nineteenth century in response to widespread "sweating" and social deprivation. At this time sweating by low pay and long hours was a serious social problem and a major political issue in industrialising nations. The living wage was both a guiding principle and a goal to be achieved through legislation. The living wage principle propounded a right to laws that would enable the worker and the worker's family to live in dignity.
144. On 26 August 1882 *The Sydney Morning Herald* (at page 5) carried a report about the "great freight handlers' strike" in the United States and the workers' grievance that they were not being paid a "living wage". On 9 December 1893 *The Sydney Morning Herald* (at page 5) reported that a "conference of representative Christians is shortly to be held in London to discuss the living wage and the actions which should be taken by the various sections of the Christian church, with a view to putting an end to, or at least diminishing the evils of the present system of industrial warfare. Among those who have consented to take part in the conference are Cardinal Vaughan, the Bishop of Ripon, Archdeacon Farrar, and several of the Presidents of the Nonconformist Unions". *The Catholic Press* of 14 November 1896 advised that the St James' Glebe Point debating society had accepted a challenge from the Paddington Society for a debate at St Francis' Hall in Oxford St. on the question "That the condition of the people would be improved by the adoption of the minimum or 'living' wage principle".
145. In 1909 Winston Churchill introduced into the House of Commons legislation to establish wages councils with the statement "It is a serious national evil that any class of His Majesty's subjects should receive less than a living wage in return for their utmost exertions" (*Hansard*, House of Commons, 28 April 1909). The legislation was based on a report about the operation of minimum wage setting arrangements which were already in operation in Australia and New Zealand at the time of *Harvester*.
146. In the United States *A Living Wage* was published in 1906. It was a substantial work by Fr. John A Ryan, a Catholic priest who later, as Monsignor Ryan, played a significant role in the formulation of New Deal employment policies. In the Preface to the book, which was subtitled *its ethical and economic aspects*, Fr Ryan wrote:

"This work does not profess to present a complete theory of justice concerning wages. It lays down no minute rules to determine the full measure of compensation that any class of laborers ought to receive. The principles of ethics have not yet been applied to the conditions of modern industry with sufficient intelligence, or confidence, or thoroughness, to provide a safe basis for such an undertaking....

Upon one principle of partial justice unprejudiced men are, however, in substantial agreement. They hold that wages should be sufficiently high to enable the laborer to live in a manner consistent with the dignity of a human being.....

While insisting that every laborer has a right to at least a Living Wage, the author does not commit himself to the view that this quantity of remuneration is full and adequate

justice in the case of any class of laborers. His concern is solely with the ethical minimum."

147. The purpose of this eclectic collection of historical events is to illustrate that the living wage principle pre-dated *Harvester* and was not, as some might think, a uniquely Australian aspiration born of *Harvester*. This is not to limit the contribution that *Harvester* made to the framing of workplace rights. The point about the living wage principle is that it is universal, it is concerned with decent standard of living and it seeks the support of families through a wage that recognises the obligations of workers with family responsibilities.
148. The living wage promotes the common good because it recognises a worker's obligation in the nurturing of children, enables social participation and social inclusion of workers and their families and promotes social cohesion.
149. The living wage is not a term of another era, but one that still has wide resonance around the world in countries as diverse as the United States and Bangladesh. It will be invoked and campaigned for wherever there is no minimum wage protection or where a legal minimum wage fails to meet the ordinary needs and modest expectations of workers and their families. It is the guiding principle for advocacy and action in advanced and developing economies.

Human rights

150. The living wage principle came to be enshrined in the *Universal Declaration of Human Rights*, which recognises that everyone who works has "the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection" (Article 23(3)). The United Nations' *International Covenant on Economic, Social and Cultural Rights*, recognises a universal right "...to the enjoyment of just and favourable conditions of work which ensure, in particular: ... Remuneration which provides all workers, as a minimum, with ... Fair wages and... A decent living for themselves and their families" (Article 7(a)). The covenant is one of the two major conventions giving effect to the rights identified in the *Universal Declaration of Human Rights* and has been ratified by Australia.
151. The recognition of these rights necessarily involves the recognition of the needs of workers to support their families. When the *Universal Declaration of Human Rights* declares the right of workers to an existence worthy of human existence, it is recognising a right of those who depend on workers to share in that fundamental right. In 1945, when close attention was being given to the nature and articulation of human rights, the International Labour Organisation conference adopted a resolution concerning the protection of children and young persons. The resolution provided that:

" [all necessary measure should be taken] to assure the material well-being of children and young persons by...the provision of a living wage for all employed persons sufficient to maintain the family at an adequate standard of living" (*Resolution concerning the Protection of children and young workers*, 4 November 1945, paragraph 5(b)).
152. The living wage identified in that resolution was a wage that would maintain the family at an adequate standard of living.

153. The living wage principle, like the terms of *the Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights*, does not provide a fixed formula that will apply to all economies and societies. When, as it happens, a fair trade advocacy group advocates for workers in developing countries to be paid a living wage for producing goods that are exported to Australia, they are advocating for a wage that will enable the workers and their families to live in dignity within their society.
154. Any policy deliberation about the minimum wage should take full account of the human rights dimension. That dimension has been increasingly recognised over the decades. One manifestation of this is the acceptance that people have a right to participate in their societies. 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....*
- 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.)
155. This passage speaks about what we now call social inclusion. Social inclusion is a fundamental objective of the *Fair Work Act*. Section 3 provides:
- "The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians...."
156. The object of social inclusion calls attention to the requirement to promote the ability of workers and their families to live in dignity and participate in society. The provisions in the *Fair Work Act* dealing with the setting of the National Minimum Wage (NMW) should be treated as beneficial legislation and should not be construed or applied narrowly.

Giving effect to human rights

157. The practical application of these human rights and the living wage principle requires the proper consideration of a range of factors, personal and community, social and economic. The International Labour Organisation's *Minimum Wage Fixing Convention*, 1970, also ratified by Australia, brings together a range of factors that need to be considered:
- "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."
158. The international obligations require that full account be taken of the position of workers with family responsibilities so as to provide workers and their families with a decent standard of

living having regard to a range of social and economic factors. The worker with family responsibilities is protected by the minimum wage system even though some workers do not have family responsibilities. There is recognition that the *common good* requires this kind of support.

159. The need for the worker to support his or her family is recognised in each of these human rights instruments. The single person benchmark for the setting of wages is inconsistent with recognised human rights.
160. Until 2014, the only occasion when a single person benchmark was suggested as a basis for the setting of minimum wages setting in Australia was in the dissent by Ross VP in the *Safety Net Review—Wages-April 1997* ((1997) 70 IR 1) in the Australian Industrial Relations Commission (AIRC). However, it was heavily qualified by a proviso to protect families against poverty. Vice President Ross (as he then was) concluded:

“The objective of the award safety net should be to primarily provide a decent standard of living, significantly above poverty levels, for a single adult with no children. At the same time, along with the social security safety net, the award system should ensure that low wage earning families with children are at least lifted out of poverty” ((1997) 71 IR, 1, 147)
161. This view has not been adopted in any decision since that time. The single person benchmark is qualified by the requirement that families not be left in poverty. The single person benchmark articulated in this dissent does not provide a ceiling on the minimum wage because it may require, and typically would require, the setting of a wage-rate that is above the minimum necessary for the single person to achieve a decent standard of living. However, this view is inconsistent with the living wage principle, and the human rights test, because it leaves the family short of a decent standard of living and, perhaps, on the poverty line or merely out of poverty.
162. The circumstances of this dissent and the decisions in subsequent national wage reviews are reviewed in Chapter 2C. We show there how the dissent essentially adopted submissions made on behalf of the Australian Council of Social Services (ACOSS). Since 1997 ACOSS has continued to advocate a similar position. ACCER has argued against this submission because it believes that the objective should be providing families with a decent standard of living and that it is inconsistent with recognised human rights.
163. It should be noted that, whether the standard is the protection of families from poverty or is the provision of a decent standard of living, it is necessary to identify the range of families who are to be recognised and protected. That aspect is not covered in the 1997 dissent; nor has it been addressed by ACOSS.
164. The kind of rights recognised in the minimum wage instruments do not require that domestic law provide for the unusual or extreme cases. Nor, would we expect that the position advanced in the dissent and by ACOSS would be advanced to cover such cases. But domestic laws must be designed to cover workers in the ordinary and expected situations. There is no expectation that, for example, minimum wage legislation or statutory decisions must be predicated on families with six children in a society such as Australia.

165. The ordinary and expected cases in contemporary Australia should extend to families with two children, whether they are sole parent or couple parent families. Single workers would also be in the ordinary and expected scope of a right that provides workers with a decent standard of living, but given their more limited needs than workers with family responsibilities and the absence of a social security system that fully provides for dependants, the single worker's needs will have no practical effect on the setting of minimum wage rates.
166. In Chapter 2C we set out a review of wage decisions by the Australian Industrial Relations Commission (AIRC) and, subsequently, the Australian Fair Pay Commission (AFPC) from 1997 to 2009. The scheme under which the AFPC operated was criticised in a number of respects. In 2005 the Australian Catholic Bishops, among others, had called for a change to the proposed provisions for the setting of minimum wages. The bishops said:
- "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." (Statement, 25 November 2005)
167. The 2007 Federal election was characterised in large part by the "Your Rights at Work" campaign. The *Forward with Fairness* policy of April 2007 made it clear that families would be protected under the proposed laws.
- "Working families in modern Australia face the daily challenge of balancing the pressures of work with the demands of family life, paying their mortgage and participating in the community....
- Labor believes in supporting Australian working families. Labor also believes in a fair day's pay for a fair day's work....
- A Rudd Labor Government will guarantee a safety net of decent, relevant and enforceable minimum wages and conditions for working Australians.
-
- 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. In adjusting minimum wages Fair Work Australia will be required to consider a range of economic and social factors.
- Submissions from all Australians will be invited and encouraged. Fair Work Australia may also commission and publish research on the effect of minimum wage variations on matters such as equity, employment and inflation.
- 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." (pages 7 and 11)
168. The Catholic Bishops returned to their concerns of November 2005 in a Statement in May 2011 to mark the 120th anniversary of *Rerum Novarum*:
- "Sunday 15 May 2011 will mark the 120th anniversary of Pope Leo XIII's Encyclical *Rerum Novarum*, which was the genesis of Catholic teaching on the spiritual, economic and social aspects of modern industrial societies. The Encyclical was very much a product of its time, and even in Australia it had its influence on our evolving industrial relations system.
- In many places, events connected with the Industrial Revolution profoundly changed centuries-old societal structures, raising serious problems of justice and posing the first great social question - the labour question - prompted by the conflict between capital and labour. The Church felt the need to become involved and intervene in a new way: the *res*

novae ("new things") brought about by these events represented a challenge to Church teaching and stirred special concern for millions of working people. A new discernment of the situation was needed, a discernment capable of finding appropriate solutions to unfamiliar and unexplored problems.

....

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."

169. The bishops, like ACCER, had good reason to believe that the *Fair Work Act 2009* would address the needs of low paid workers with family responsibilities. As we have documented throughout these chapters, the FWC did not respond as expected and, in 2014, responded in a way that was unexpected.

The June 2014 decision

170. The single person benchmark is referred to in three passages in the FWC's decision of 4 June 2014: at paragraphs [38], [365] and [373]. The first states:

"[38] We note that a number of the proposed changes to tax-transfer payments announced in the 2014–15 Budget will particularly impact on families, rather than individuals. The appropriate reference household for the purposes of setting minimum wages is the single person household, rather than the couple household with children. For this reason, it should not be assumed that the tax-transfer payments announced in the Budget will automatically be taken into account in determining the level of the increase in next year's Review."

171. This passage was reproduced at paragraph [365] in the context of a discussion of taxes and transfers and the proposed changes in the 2014 Budget. In the third passage concerning the single person benchmark, the FWC referred to the written submission of the Australian Council of Social Services (ACOSS):

"[373] We note also that ACOSS adopted the position that the appropriate reference household for the purposes of setting minimum wages is the single person household [footnote] rather than couple households with children. This is also our view."

172. The footnote in this passage is "ACOSS submission at p. 6". However, the ACOSS position was not as it was described by the FWC. The relevant passages are:

"Decisions on the level of minimum wages should be *informed* by 'benchmark' estimates of the cost of attaining a 'decent basic living standard' for a single adult according to contemporary Australian standards.

The combined effect of the minimum wage and family payments on the extent of poverty among families should also be taken into account in setting minimum wages." (ACOSS submission page 6, emphasis added.)

173. The ACOSS position is very similar to the suggested approach in the dissent in the *Safety Net Review – Wages - April 1997* case, referred to earlier.
174. The FWC did not give any notice that it was considering adopting the single person benchmark, or any other benchmark; nor did it give reasons for its decision to do so.
175. For the reasons set out in the next section, we submit that the single person benchmark is contrary to the terms of the legislation and, more generally, inconsistent with the human rights

recognised and protected through Australia's human rights obligations. In section C of this chapter we demonstrate that the decision to adopt the single person benchmark in 2014 was a fundamental departure from national wage setting precedents.

B. ISSUE OF LAW: THE SINGLE PERSON BENCHMARK

176. Section 285 (1) of the *Fair Work Act 2009* (the Act) requires that the FWC conduct and complete an annual wage review in each financial year by reviewing modern award minimum wages and the national minimum wage order. In the annual wage review the FWC must also make a national minimum wage order to set the National Minimum Wage (NMW) for the year and thereby maintain a safety net of fair minimum wages; Part 2-6, in particular, sections 284(1), 285(2) and 294(1)(a).
177. Section 284(1) prescribes the minimum wages objective. The subsection requires that the FWC establish and maintain a safety net of fair minimum wages by taking into account the matters that comprise the minimum wages objective.
178. The terms of section 284 (1) are to be given their ordinary meaning, taking into account the minimum wages objective and the general objects of the Act. In particular, the term "safety net", which is not defined, must be given its ordinary meaning, informed by the minimum wages objective and the general objects of the Act.
179. The terms of section 284(1), so understood, require a broad consideration of the employment and personal circumstances of a wide range of employees, including those with family responsibilities. In particular, section 284(1)(c) requires the consideration of the relative living standards and the needs of the low paid with family responsibilities. Each specified matter in the minimum wages objective must be taken into account; see *Minister for Aboriginal Affairs v Peko-Wallsend Limited* (1986) 162 CLR 24.
180. ACCER submits that:
 - (a) the establishing and maintaining of a safety net minimum wage under section 284(1) of the Act requires the FWC to take into account the living standards and needs of the low paid with family responsibilities; and
 - (b) the establishing and maintaining of a safety net minimum wage under section 284(1) of the Act without taking into account the living standards and the needs of the low paid with family responsibilities would be contrary to law.
181. Section 3 of the Act, which sets out the object of the Act, includes the following:

"The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes *national economic prosperity and social inclusion for all* Australians by:

 - (a) providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity and take into account *Australia's international labour obligations*; and
 - (b) *ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders*; and"(emphasis added.)

182. In order to promote "social inclusion for all Australians", when establishing and maintaining a safety net of fair minimum wages the FWC must take into account the circumstances of the low paid with family responsibilities, in particular:

- (a) their relative living standards; and
- (b) their needs.

183. The right of an employee to remuneration that provides for the employee's family responsibilities is recognised under Australia's international labour obligations which s 3 of the Act requires be taken into account.

(a) The United Nations' *International Covenant on Economic, Social and Cultural Rights*, recognises a universal right "... to the enjoyment of just and favourable conditions of work which ensure, in particular: ... Remuneration which provides all workers, as a minimum, with ... Fair wages and ... A decent living for themselves and their families" (Article 7(a)).

(b) The International Labour Organisation's *Minimum Wage Fixing Convention, 1970* provides in article 3:

"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"

184. Australia has ratified the *International Covenant on Economic, Social and Cultural Rights* and the *Minimum Wage Fixing Convention, 1970*, and these are within the scope of the reference to "Australia's international labour obligations" in section 3(a) of the Act.

185. The *Universal Declaration of Human Rights* also recognises 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)). A minimum wages set without taking into account the relative living standards and needs of the low paid with family is not only inconsistent with recognised human rights but would be contrary to law.

186. The object of social inclusion calls attention to the requirement to promote the ability of workers and their families to live in dignity and participate in society. The provisions in the Act regarding the setting of the NMW should be treated as beneficial legislation and should not be construed or applied narrowly.

187. The construction of the minimum wages objective is assisted by the inclusion in the Explanatory Memorandum to the *Fair Work Bill* of a reference to the fulfilling the election commitments made by the Government:

"As the means for fulfilling the election commitments made by the Government in *Forward with Fairness*, released April 2007, and *Forward with Fairness – Policy*

Implementation Plan, released August 2007, this Bill provides a much needed opportunity to reconceptualise the legislation from first principles and..." (*Explanatory Memorandum, Fair Work Bill 2008*, page iv)

Forward with Fairness, released in April 2007, provided:

"Working families in modern Australia face the daily challenge of balancing the pressures of work with the demands of family life, pay their mortgage and participating in the community....

Labor believes in support Australian working families. Labor also believes in a fair day's pay for a fair day's work....

A Rudd Labor Government will guarantee a safety net of decent, relevant and enforceable minimum wages and conditions for working Australians.

....

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" (Pages 7 and 11)

188. Further, by section 578 of the Act the FWC must, in performing functions or exercising powers under the Act (such as making a minimum wage order), take into account the need to respect and value the diversity of the work force by helping to prevent and eliminate discrimination on the basis of family responsibilities. Similar provisions are found in sections 153, 195 and 351 of the Act. These provisions reflect the intention of Parliament to prevent discrimination against (among others) employees with family responsibilities. The setting of wages upon the basis that employees are from a single household and do not have family responsibilities would be discriminatory. Thus the living standards and needs of the low paid with family responsibilities must be taken into account by the FWC when establishing and maintaining safety net wages.
189. The relative living standards and needs of the low paid with family responsibilities are affected by their family responsibilities. Family responsibilities have been consistently recognised and accepted by national wage fixing tribunals in relation to the fixing of minimum wages; see, for example, section C of this chapter. In the absence of anything in the terms of the Act or in the extrinsic materials to suggest that, in setting minimum wages, the Act would permit a departure from past practice, it must be presumed that Parliament did not intend to change the basis upon which wages had been set for more than a century.
190. The setting of award wage rates is covered by Part 2-3 of the Act, in particular, sections 134(1) (which prescribes the "modern awards objective") and 139. Section 284(2) provides that the minimum wages objective applies to the "setting, varying or revoking [of] modern award wages". For the reasons set out in the foregoing paragraphs, ACCER further submits that:
 - (a) the setting and varying of award safety net wages under Part 6-2 of the Act requires the FWC to take into account the living standards and needs of the low paid with family responsibilities; and
 - (b) the setting and varying of award safety net wages under Part 6-2 of the Act without taking into account the living standards and the needs of the low paid with family responsibilities would be contrary to law.

C. THE SINGLE PERSON BENCHMARK IS CONTRARY TO PRECEDENT

C.1. The Safety Net Review case, 1997

191. The Australian system of wage setting during the twentieth century was essentially based on the conciliation and arbitration power in the *Australian Constitution*, under which the national tribunal was obliged to prevent and settle industrial disputes by conciliation and arbitration. Successive tribunals established principles and precedents for wage setting within that jurisdictional framework.
192. It is important that we outline at the outset of this discussion the changes that had taken place in family support over the two decades or so prior to the 1997 case. The following figures are taken from Table 11 in Chapter 5. In August 1973 a single worker on the lowest minimum wage had a disposable income of \$54.00 per week and the family of a couple and two children, where the sole breadwinner was on the lowest minimum rate, had a disposable income of \$58.50 per week. This meant that 7.7% of the family's disposable income came from the public purse, either through the tax system or by direct payments. By January 2001 the single person on the lowest award wage rate, the Federal Minimum Wage (FMW), had a disposable income of \$346.38 per week and the FMW-dependent family of four had a disposable income of \$503.37 per week. In January 2001, 31.2% of the family's disposable income came from the public purse.
193. This very large increase in family payments started during the late 1970s. It was sometimes referred to as part of "the social wage" or the "social security safety net" (per Ross VP in the passage quoted earlier in the Safety Net Review case of 1997). It had the effect of limiting the work that the wage packet had to do in order to support workers with family responsibilities. However, by 2001, and thereafter, the transfers were inadequate to fully support the worker's dependants and a substantial component of the wage packet was required for that support. The minimum wage had a large family support component.
194. In 1996 there was a significant change in the regulation of the minimum wage setting process, although in a way that was broadly consistent with custom and practice. The 1996 amendments to the *Workplace Relations Act 1996* (previously known as the *Industrial Relations Act 1988*) contained provisions that established detailed collective and individual bargaining provisions. The bargaining system operated on a "safety net" of award provisions.
195. The 1996 wage setting provisions were similar to those now in the *Fair Work Act 2009*. The central provision was section 88B(2), which provided that the AIRC:
 - "...must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following:
 - (c) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
 - (d) economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;
 - (e) when adjusting the safety net, the needs of the low paid."
196. The first wage review and decision under this new system was in early 1997: the *Safety Net*

Review-Wages-April 1997 ((1997) 70 IR 1). The decision introduced the FMW, although it was not required by, or even mentioned in, the legislation.

The majority decision in 1997

197. In its consideration of the meaning and scope of “the needs of the low paid”, the majority referred to the “formidable problems” in estimating needs in the diversity of circumstances in which low paid workers live. This led them to the conclusion that a benchmark approach was impracticable. They thought it was undesirable “to identify any family unit as appropriate for a benchmark” and did not accept the single person test (page 52). The majority held that “the needs of the low paid” was not a reference to the living costs of low paid workers. They took the view that “needs” should be “construed simply as an adjunct to ‘low paid’ without any further attempt to specify or quantify them” (see pages 51-3). This meant, in effect, that the legislation’s reference to the needs of the low paid was regarded as the need to protect the relative position of low paid workers in the new wages system. Significantly, this view was not repeated in subsequent decisions, where “needs” were treated as relating to the costs of living.

Ross VP’s dissent in 1997

198. There was substantial discussion in the majority and dissenting decisions regarding the submissions on behalf of the ACOSS, which proposed an “integrated approach” to the protection of the relative living standards of the low paid. It submitted:

“...[I]t would be inappropriate to use a family with children as the *primary* benchmark for a ‘living wage’ in the 1990s. Rather, the above evidence suggests that it should be *primarily* designed to provide an adequate standard of living for a single adult without children. However, consideration should also be given to the impact of the ‘living wage’ claim, in conjunction with income support payments and tax concessions, on low income families with children.” (Quoted at page 46, emphasis in the original)

199. Ross VP’s dissent included a lengthy consideration of the ACOSS submissions. For present purposes the consideration falls into two parts.
200. The first concerns the standard of living to be attained through the minimum wage. ACOSS argued that the single adult living alone should be “able to attain a standard of living that would be generally regarded as ‘decent’ by the Australian community and can participate fully in the life of the community” (Ross VP, page 126). The Henderson Poverty Line (HPL) was rejected “as the primary benchmark for setting minimum wage rates, as the community expects full-time wages, together with income support payments, where appropriate, to provide a standard of living significantly above ‘poverty’ levels”; Ross VP, page 128. Ross VP went on to say:

“However I agree with the submission by ACOSS that as the proportion of wage earning families with children that is actually living in poverty has increased in recent years there is a role for the HPL or similar poverty benchmark in checking whether minimum wages, together with income support payments, are at least sufficient to prevent poverty in these households.” (Page 128)

201. Ross VP rejected the HPL as the reference point for the level of income appropriate for a single person, adopting instead the “consensual poverty line” based on research undertaken by the Social Policy Research Centre (SPRC) at the University of New South

Wales in 1989 and published in 1992. Applying that research he concluded that “persons employed at or below the rate prescribed for classification level C7 in the Metal Industry Award 1984 – Part I (i.e. \$503.80 per week) are below the *consensual poverty line*” (page 131, italics in original). Later the Vice President stated:

“In my view the minimum safety net wage should, over time, and consistent with prevailing economic conditions, be increased to the level of the *consensual poverty line* with consequent adjustments through the award structure to retain existing relativities.” (Page 177, italics in original)

202. The proposal for implementation over time, with consequential changes in award rates is significant. If the NMW, like the FMW in 1997, is now to be adjusted to alleviate poverty, either some award classifications will be overtaken by the NMW and become redundant, or all classifications would be pushed up, as proposed by Ross VP. It might be noted that the consensual poverty line at this time was well above the rate adopted by the majority for the FMW: \$530.80 per week compared to \$359.40 per week. Ross VP proposed that this very substantial gap, \$171.40 per week in 1997, be closed over time.

203. The second relevant aspect of Ross VP’s decision concerns the protection to be afforded to families. In further reference to the ACOSS submissions, and its “integrated approach”, Ross VP noted that:

“[Under the ACOSS] approach, wage regulation would be based on more explicit objectives and targets, which are designed:

- *primarily*, to provide a decent standard of living, significantly above poverty levels, for a single adult with no children;
- at the same time, *along with the income support system*, to ensure that low wage earning families with children are at least lifted out of poverty;....

In my opinion the *integrated approach* proposed by ACOSS is an appropriate way of conceptualising the relationship between the award safety net and the broader social safety net.” (Page 143, italics in original)

204. Ross VP added the observation that “one consequence of the relationship between these two concepts is that adjustments in the social safety net may have a bearing on the determination of the level of the award safety net” (page 143). Changes in the social safety net included changes in family transfers and taxation rates. This meant that a budgetary change might increase or reduce the work to be done by the wage packet in the support of families. It is to the contrary of the 2014 decision, which disconnects the wage setting system from changes in the social safety net insofar as they affect families; see *Annual Wage Review 2013-14, Decision*, at [38] and [365].

205. The Vice President’s summary of his conclusions on the social safety net includes the following:

“The objective of the award safety net should be to primarily provide a decent standard of living, significantly above poverty levels, for a single adult with no children. At the same time, along with the social security safety net, the award system should ensure that low wage earning families with children are *at least lifted out of poverty*.” (Page 147, emphasis added)

206. The second sentence of this formulation was critical to the integrated approach to wage setting and demonstrated that a single person rate would not be set in a way that would have families in poverty. The position of low income families and their protection was a

major concern of Ross VP, which was evident in the following passages:

“Low income can lead to a substantial reduction in equality of opportunity for large numbers of people. There is strong evidence that both health status and educational attainment is influenced by socio-economic status, with children in low income families more likely to have lower educational outcomes, and with people on lower incomes more likely to experience serious health problems. Given the importance of both health status and educational attainment in influencing a person’s economic future, the impact of growing up in a low income family can be a substantial compounding of disadvantage in the longer term.” (Pages 140-1)

“I agree [with Bishop Challen of the Brotherhood of St Laurence] that wage fixation in Australia has reached a ‘fork in the road’. We can allow the living standards of low paid workers and their families to drift further below community standards, or we can set clear objectives for maintain and improving them.” (Page 187)

“If we are to begin to address the problems confronting low paid employees and the widening gap between award and market wages we must do more than simply maintain the real wages of the low paid. Such a response simply preserves the status quo. A status quo in which income inequality is increasing and many low paid workers and their families have to go without food or clothing, is neither fair nor acceptable.” (Page 188)

- 207. These paragraphs show that it was intended that the modified single person test would not permit the setting of a minimum wage that would leave out of consideration the needs of the low paid with family responsibilities.
- 208. The June 2014 decision is inconsistent with the decision of Ross VP in 1997 because the June 2014 decision does not protect families against poverty.

C.2. AIRC cases 1998 to 2005

- 209. The dissent of Ross VP in 1997 was the last dissent in national wage setting decisions. In the period between 1997 and 2005 (after which the AIRC lost its capacity to set minimum wages) the AIRC’s Safety Net Review decisions were unanimous decisions. Subsequent decisions by the AFPC and the FWC have also been unanimous.
- 210. The *Safety Net Review Case 1998* (Print Q1998, (1998) 79 IR 37), presided over by a new President, Justice Giudice, noted that in the previous year the tribunal had “decided not to establish a federal minimum wage by reference to a defined benchmark of needs and not to undertake an inquiry to develop a benchmark of wage adequacy” (at Chapter 9.3) and refused to depart from that approach. However, the AIRC implicitly rejected the majority view in 1997 regarding the meaning of the term “the needs of the low paid”. This is apparent from the recitation of submissions and the AIRC’s conclusions in Chapter 7, entitled “Needs and the low paid”. The living costs of the low paid were treated as needs of the low paid.
- 211. It should be noted that the term “benchmarks” was used in two ways: as a defined benchmark of needs, such as a single person or family of four benchmark, and as a benchmark of wage adequacy, such as the poverty line.
- 212. The financial position of families was part of the AIRC’s considerations from 1998. Over the period to 2005 the impact of the tax-transfer system was part of the safety net review process and changes in the impact of the social wage on families were taken into account by

the AIRC. Safety net increases were seen as providing for the needs of low paid workers and their families, along with the social wage. For example, in May 2002 the AIRC said:

[144] It appears to us that there is general agreement amongst the major parties that minimum award wages and the social wage are complementary and inter-related mechanisms for addressing the needs of the low paid.

[145] Inevitably the wages system interacts with both the social security and taxation systems. Safety net adjustments will be, to a certain extent, offset by higher taxes and/or lower social security payments. . . .

[147] We agree with the proposition that the tax-transfer system can provide more targeted assistance." (*Safety Net Review Case, 2002*, Print PR002002)

213. In the 2003 and 2004 Safety Net Review cases ACCER's written and oral submissions argued for an inquiry into the needs of the low paid and opposed the single person approach.

214. In 2003 ACCER's written submission referred to suggestions that a single person test be adopted. It said:

"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.*" (AC CER submission, 25 February 2003, paragraph 28, emphasis added.)

215. The claim that there was an observed principle that the minimum wage should take into account the needs of dependants was well-founded. The fact that the AIRC had not adopted a benchmark or benchmarks of needs did not contradict or qualify that fact.

216. The AIRC did not specifically address the single person test in the 2003 decision. However, the position of families was again discussed in the context of submissions on the relevance of the social wage. The AIRC said:

[224] The role of the tax-transfer system (generally referred to as the social wage) in reducing inequality and assisting the low paid was also a feature of a number of the submissions in these proceedings, as was the case in last year's proceedings. In this context the social wage encompasses the system of cash transfer payments, the taxation system and the provisions of indirect benefits such as Medicare and the education system." (*Safety Net Review Case, 2003*, Print PR002003)

217. The AIRC then referred to its view on this aspect in the 2002 decision and said:

[226] Nothing in the material presented on this occasion leads us to alter the views expressed in last year's decision. We acknowledge that safety net increases are an imperfect and partial mechanism for addressing the needs of the low paid."

218. ACOSS, like ACCER, asked the 2003 wage bench to establish an inquiry into the needs of the low paid. The requests were not supported by any party to the proceedings. Under the legal framework at the time, ACOSS and ACCER were interveners in various industrial disputes between employers and unions about minimum wages and the wage review was an arbitration of those disputes. The AIRC rejected the claims for an inquiry:

"[221] We have given consideration to the proposals by ACCER and ACOSS that the Commission conduct an inquiry into the needs of the low paid in order to ascertain an appropriate benchmark for the adequacy of the federal minimum wage, but we have decided not to take this course. We note that the call for an inquiry of the type proposed by ACCER and ACOSS was not supported by any party in the proceedings.

[222] Our rejection of the proposals for an inquiry should not be taken as a rejection of the utility of empirically determined "benchmarks" such as the poverty line. Indeed, it seems to us that the use of such measures is relevant to an assessment of the needs of the low paid. In this context we also note that in their oral submissions ACCER argued that the Commission must ensure the minimum rates it sets (and in particular the federal minimum wage) do not fall below the poverty line. It was put that this task involved determining questions such as *"what are needs, who are the low paid, what is the poverty line, what is living in poverty and how does the federal minimum wage compare to the poverty line?"* We acknowledge the relevance of the questions posed by ACCER and would be assisted by submissions and material directed to them. As we have already noted empirical studies dealing with these matters would be of more assistance to the Commission in addressing the specific matters mentioned in the Act than the type of illustrative evidence adduced by the ACTU in these proceedings. There is no impediment to ACOSS and ACCER, or any other party, bringing forward such material in any future safety net review. It is not, however, desirable for the Commission to establish a separate inquiry for that purpose particularly in view of the absence of any support for the proposal from any other party or intervener." (*Safety Net Review Case, 2003*, Print PR002003)

219. The questions noted in this passage had been posed by Mr Costigan QC, counsel for ACCER, who had 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.)

220. In 2004 ACCER returned to the same kind of issues raised in 2003. The 2004 submissions had a more specific focus on needs because the ACTU had commissioned substantial Budget Standards research from the SPRC regarding the living costs of low paid workers and their families. (The SPRC was the body referred to earlier in regard to the consensual poverty line.) The SPRC data on the living costs of families included single breadwinner couple families with two children. The relevance of this material was contested by the Australian Chamber of Commerce and Industry (ACCI), which pointed to the number of dual income families. 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)

221. 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 that the AIRC would take into account the position of single breadwinner families.
222. It might be noted in this context that in the *Annual Wage Review 2013-14*, ACCER produced data from the national Census of August 2011 which showed the employment profile of low income couple parent families with two children. The data included families with a reported disposable income that would have been below the 60% relative poverty line. Within this group the percentage of single breadwinner families was greater than the number of families with two breadwinners by a margin of almost two to one; see Table 32 in Chapter 8. ACCER has also argued that, as a matter of principle, safety net wages should not be reduced by the fact that economic pressures force some families to have a second breadwinner. It has argued that the decline in minimum wages has placed economic pressure on families for the second parent to obtain employment and that a second parent should not be placed in a position where employment is needed just to avoid poverty. Similarly, the breadwinner should not have to work overtime or in a second job in order to keep the family out of poverty.
223. The connection between poverty lines and the needs of the low paid were addressed in the 2004 decision in the following terms:
- "[287] The Act makes no reference to a "poverty line" but rather focuses on the issue of the needs of the low paid. To the extent that the poverty line is a relevant consideration, ACCI noted that the concept remains "highly contested" and submitted that this precludes it as a measure to guide the Commission's action. The evidence before the Commission in the present application is inconclusive. However, we do not accept that the Commission could not rely upon a poverty line as a tool to assist it in determining the needs of the low paid if it had probative evidence by which a poverty line could be accurately identified." ((*Safety Net Review Case, 2004*, PR002004)
224. In the *Safety Net Review Case 2005*, there was a continuation of the consideration of families, again without any benchmark family or families:
- [353] We also acknowledge that some of the changes to the income tax and tax transfer system identified by AiG [the Australian Industry Group] have had a beneficial impact on the disposable income of some low-paid employees. We have taken these changes into account in deciding the amount of the safety net adjustment....Consistent with AiG's submission we have not taken a mechanistic approach to this issue. Rather, *the social safety net changes have formed part of the broad exercise of judgment we have undertaken to determine the quantum of the safety net adjustment....*" ((*Safety Net Review Case, 2005*, PR002005, emphasis added)

C.3. Work Choices and the AFPC, 2006-2009

225. The *Work Choices* amendments of late 2005 introduced a different statutory basis for setting wages. The AFPC was not obliged to take into account relative living standards and the needs of the low paid, but it was required to "have regard to...providing a safety net for the low paid" (section 23(c)).
226. In its 2006 decision the AFPC concluded:

“The income support and family assistance safety net, and its continued improvement over recent years, allows people with family responsibilities to rely solely on a single wage to support their families.” (*Wage setting Decision No. 2/2006*, page 96.)

227. That conclusion was partly based on a calculation that the single breadwinner family of four, estimated at July 2006, was 31% above the Henderson Poverty Line (HPL) for that kind of family (Table 5.2). Significantly, the margin that the single worker had over his or her HPL was also 31%. The AFPC returned to the position of working families in the following year’s decision:

“Continued improvements over many years in the extent and coverage of income transfers for working families have resulted in families now having disposable incomes well in excess of relevant HPLs.” (*Wage setting Decision No. 3/2007*, page 70.)

228. The AFPC took into account the position and needs of workers with family responsibilities. However, the 2006 conclusion that the family of four could live on a single wage was based on an erroneous inclusion in estimated family income.

229. The AFPC’s assessment of the disposable income of the single breadwinner family of two adults and two children was based on the inclusion of the unemployment benefit, the Newstart allowance, that was payable to the second parent only if that parent sought paid employment. A parent who chooses to stay at home to care for the children was not entitled to that benefit, i.e. the second parent would have to seek a job to achieve the standard of living described by the AFPC.

230. Following ACCER’s submissions in 2007 and 2008 regarding the inclusion of the Newstart allowance, a separate calculation in respect of this family, as at December 2007, was made in Table 4.4 of the 2008 decision: *Wage setting Decision and Reasons for Decision, July 2008*. The difference between the two calculations, i.e. with and without the Newstart allowance, was substantial. In a FMW-dependent household the difference was \$98.96 per week. Rather than this family being 22% above the HPL (which was calculated on the basis of the unemployment benefit) the family with the stay at home parent was only 8% above the HPL. The substantial decline from July 2006, from 31% to 22%, was unremarked.

231. The optimistic assessments in 2006 and 2007 were not only undermined by the proper exclusion of the Newstart allowance, but also by the decline of minimum wages relative to the rising HPLs. In its final decision in 2009 the AFPC recorded that, by December 2008, the family of four in receipt of Newstart had fallen to a margin of only 15% above the poverty line; *Wage setting Decision and Reasons for Decision, July 2009*, Table 6. This contrasted with the 31% assessment for July 2006. Excluding Newstart, the family was only 2% above the HPL at December 2008, according to the 2009 decision.

232. In 2008 the AFPC calculated the 60% relative poverty lines for the same families, as at December 2007. They showed that the family of four with Newstart was 5% above the poverty line, but without Newstart the family was 7% below the poverty line (Table 4.5). In the 2009 decision, the calculations for December 2008 showed 2% above and 10% below,

respectively (Table 5). This substantial decline was not commented on in the 2009 decision.

The single person benchmark rejected by the AFPC

233. In the context of these declining fortunes for all households, the AFPC made the following comments in its July 2008 decision about the position of the single person household:

“Of the household types whose disposable incomes the Commission has modelled, a single person without children is the only one whose disposable income does not depend on income transfers. These wage-earners have disposable income that is 25 per cent above the relevant HPL and 21 per cent above a poverty line based on 60 per cent of median equivalised disposable income. In the Commission’s view, *this is a reasonable margin above poverty for a person earning the lowest adult full time wage in the regulated labour market.*” (*Wage setting Decision and Reasons for Decision, July 2008*, page 68, emphasis added.)

234. The AFPC found that the FMW produced a reasonable margin above poverty for a single person without children. The AFPC’s assessment of the single person having a reasonable margin above poverty was based on those two measures (the HPL and the relative poverty line), and not on any other empirical research.
235. This quoted passage from the AFPC’s 2008 decision regarding the reasonableness of the single person’s living standard suggested a single person test for wage setting.
236. ACCER raised its concerns about the single person issue in its submissions to the AFPC in the 2009 wage review. The submissions included the claim that the single person test was contrary to the terms of the *Minimum Wage Fixing Convention 1970*. Under the heading “Providing a safety net for the low paid” in its July 2009 decision, the AFPC’s opening paragraph addressed that claim:

“The Commission maintains its view that the income safety net is provided by the combination of minimum wages and the tax/transfer system, with the Australian Government responsible for the latter. This is consistent with Article 3 of the International Labour Organisation (ILO) C131 *Minimum Wage Fixing Convention, 1970* (ratified by Australia in 1973), which lists social security benefits in the range of factors to be considered in determining minimum wage levels.” (*Wage setting Decision and Reasons for Decision, July 2009*, page 50)

237. This passage shows that the AFPC was not intending to adopt the single person test. This was reinforced in the following paragraphs where the AFPC discussed the submissions put to it and the need for it to set wages having regard to the impact of changes in the tax/transfer system. It stated that “information on recent trends in the disposable incomes of households reliant on minimum wages, either solely or in combination with income transfers, is relevant to its deliberations” (page 52).
238. These passages in the 2009 decision reinforced the position that the AFPC had first taken in 2006: family responsibilities were relevant to the setting of wage rates and the wages safety net, in conjunction with family payments, played a role in supporting the living standards of low paid workers and their families.

3

SAFETY NET WORKERS HAVE SUFFERED REAL WAGE CUTS

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**Working Australia, 2015:
wages, families and poverty**

CHAPTER 3

SAFETY NET WORKERS HAVE SUFFERED REAL WAGE CUTS

A. REAL WAGE CHANGES 1997 - 2015

239. The first step in evaluating the impact of minimum wage decisions on workers 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 and compares them with a total CPI increase of 45.8%. The wage rates include the Federal Minimum Wage (FMW), which became the National Minimum Wage (NMW) in 2010, and the C10 award classification, which applies to trade-qualified workers. Unless we refer specifically to a period prior to 2010 the term NMW will include the FMW.

Table 1

**Changes in various national safety net wage rates
January 2001- January 2015**
(\$ 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
2015	640.90	696.40	746.20	754.80	811.00	863.90	914.10	968.20	106.6
\$ Increase	240.50	246.40	254.00	254.80	261.00	263.90	264.10	268.20	-
% Increase	60.1%	54.8%	51.6%	51.0%	47.5%	44.0%	40.6%	38.3%	45.8%

The figures are at 1 January of each year, save that the CPI figures for each January are those for the immediately preceding quarter. The CPI figures are taken from *Consumer Price Index, Australia, December 2014*, cat. no. 6401.0, Table 1. In January 2001 the FMW, now the NMW, was \$400.40 and the base trade-qualified 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 \$896.40 in January 2015. 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 to 2015 figures for the other columns are also rounded to the nearest 10 cents, consistent with award practice.

240. The increases awarded by successive tribunals were either money or percentage increases. Money increases, rather than percentage increases, were awarded in each wage decision from January 2001 to 2010. Since then percentage increases have been 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 classifications in 2008 and, as a result of a wage freeze, nothing at all in 2009. The five decisions under the *Fair Work Act 2009* from 2010 have awarded \$26.00 per week, 3.4%, 2.9%, 2.6% and 3.0%, respectively. The continuing effect of the pre-2011 decisions 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.
241. The increases in Table 1 have been within a narrow band: from \$240.50 to \$268.20 per week, which 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, but it stopped in 2011 with the awarding of percentage increases.
242. There have been real increases in the NMW and in some low paid classifications. Higher paid classifications have suffered a real wage cut; for example, the classification originally paying \$600.00 per week, and now paying the modest wage of \$863.90 per week, has had a real wage cut of \$10.90 per week since 2001.
243. From January 2001 to January 2015 real wages were reduced for safety net rates that are now paying \$842.00 or more per week.
244. We have limited this 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, i.e. 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 7.

The Federal/National Minimum Wage 1997-2014

245. 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 followed the enactment of new wage setting provisions in the *Workplace Relations Act 1996*, which 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)).
246. The AIRC introduced the FMW in its first wage review after the enactment of the 1996 amendments. That review is covered in some detail in Chapter 2C. 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*. The award classification structure has remained the same, as have the relativities between the NMW and other low paid wage rates.
247. In Tables 2 to 5 we show how wage increases have varied, relative to the CPI, over the period 1997 to 2014 and periods within that range. The tables show the increases in the FMW/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 2014. We have used July in these and other years to explain better the changes that have taken place. As the July 2014 rates include the most recent increases awarded in June 2014, they are also the rates that applied in January 2015.
248. 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 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 2014
(\$ per week, unless otherwise indicated)

	July 1997	July 2014	Increase
Federal/National Minimum Wage	359.40	640.90	78.3%
C10 classification	451.20	746.20	65.4%
C4 classification	597.20	896.40	50.1%
Consumer Price Index	67.10	105.40	57.1%

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 2014 decision was for the March Quarter 2014. The CPI numbers are those in *Consumer Price Index, Australia, December 2014*, cat. no. 6401.0, Table 1.

Table 3
Increases in safety net wages and the CPI
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	67.10	82.10	22.4%

See the notes to Table 2. The CPI figure for 2005 is for the March quarter, the most recently published figure prior to the AIRC decision in June 2005.

249. Table 3 shows the decisions by the AIRC in the pre-*Work Choices* period of 1997 to 2005 resulted in a very substantial real increase in the FMW and a real wage cut of 1.5 percentage points at the C4 rate.

Work Choices: fairness foregone

250. The four years during which the AFPC set wages present a marked contrast to the preceding eight years. This 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	82.10	92.50	12.7%

The CPI numbers are for March 2005 and March 2009; see *Consumer Price Index, Australia, December 2014*, cat. no. 6401.0, Table 1.

251. 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, which was the latest date for which the AFPC had published data on price changes prior to its 2008 decision.

252. 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 FMW 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 in 2005, i.e. the March 2005 quarter figure. 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.
253. The AFPC's claim that the increase at the FMW level was greater than the 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.
254. We should be careful, however, not to limit our evaluation to the changes in the FMW. 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.
255. Evaluating the decisions of the AFPC in terms of the maintenance of real wage rates also has to take into account the decision in July 2009 not to award a wage increase. Even the lowest paid safety net-dependent worker had 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 October 2006, which provided an operative date in December 2006, 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 for the two pay increases being 1 October 2007 and 1 October 2008.)
256. 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 May 2010 Average Weekly Ordinary Time Earnings (AWOTE) for full time employees increased by 5.6%; see *Average Weekly Earnings, May 2010*, cat. 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 (mentioned earlier) 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

257. How well has the *Fair Work Act* operated and how should we evaluate the decisions of the Fair Work Commission (FWC)? (The name of the new tribunal was changed from Fair Work Australia to the FWC in 2013.) 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.
258. 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.
259. Table 5 summarises the changes under the reformed wage setting system and compares recent wage increases with two sets of CPI increases. It shows that the FWC has been confronted with CPI increases of 16.7% for the period March 2008 (the most recently published CPI prior to the last wage increase by the AFPC) to March 2014 (the most recent before the FWC's 2014 decision). The figure from March 2009, 13.9%, presents a different picture and illustrates the importance of the starting date. The repairing of the wage freeze decision requires the recognition of the appropriate CPI figure. In our view, the relevant CPI figure is that from March 2008.
260. Table 5 shows that the decisions in 2010 to 2014 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.
261. An important aspect of this period is that there was a one-off spike in prices 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 reading these figures and evaluating the FWC's decisions by reference to the CPI.

Table 5
Increases in safety net wages and the CPI
Post-Work Choices
June 2010 – July 2014
(\$ per week, unless otherwise indicated)

	June 2010	July 2014	Increase
National Minimum Wage	543.78	640.90	17.9%
C10 classification	637.48	746.20	17.1%
C4 classification	771.40	896.40	16.2%
Consumer Price Index			
From March 2008	90.3	105.4	16.7%
From March 2009	92.5	105.4	13.9%

See notes to Table 2

Uniform percentage increases introduced

262. The percentage increases awarded in the last four wage decisions have departed from the broad practice since 1997. The characteristic of the longer period has been to maintain or improve the real wages of the low paid at the expense of the real wages of higher paid safety net workers. The distribution of the compensation for price increases left many modestly paid workers with real wage cuts. As Table 2 shows, the C4 classification increased by only 50.1% from July 1997 to July 2014, during which time the CPI increased by 57.1%. This is a real wage cut of \$41.80 per week.
263. 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 at and above the C10 rate and a money amount equal to the value of that percentage at the C10 level for lower paid classifications. ACCER has supported this approach; but has also argued for a further \$10.00 per week increase in the NMW.
264. 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 2014 (\$640.90) was 17.9%. 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 2014 (which is the most relevant recorded period) AWOTE increased from \$1,132.20 to \$1,455.00 per week, a 28.5% increase; see *Average Weekly Earnings, Australia, November 2014*, cat. no. 6302.0, Table 1, A2810223V. This

increase over a period that covered the Global Financial Crisis delivered a community-wide real increase far in advance of the real wages of many safety net workers whose real wages have barely moved or fallen over the same period.

B. WINNERS, LOSERS AND THE AVERAGE OUTCOME

265. 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?
266. 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 weighted mean average. There is also a broader question about the impact that these decisions may have on the bargaining sector; i.e. on the extent to which minimum wage decisions and safety net rates influence collective and individual wage agreements across the broader workforce.
267. These questions have not been the subject of close analysis over the years. The objectives of this section are limited: to provide some broad estimate of the overall impact of the real wage increases and decreases of the last 14 years and to find a wage level that is a better measure of the impact of changes than is the NMW.

ACCI's Effective Minimum Wage

268. 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.
269. 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

270. Table 6 sets out a cross section of entry level rates of pay in January 2014
271. The figures in Table 6 bear out the substance of 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 also 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.

Table 6
Lowest classification rates in various awards, January 2015
(\$ per week)

Award	Introductory Rate	Lowest Classification Rate
Miscellaneous	\$640.90	\$684.70
Clerks Private Sector		\$681.40
Car Parking		\$675.10
General Retail Industry		\$703.90
Cleaning Services Industry		\$684.50
Hair and Beauty Industry		\$703.90
Restaurant Industry	\$640.90	\$659.40
Hospitality Industry (General) Award	\$640.90	\$659.40
Fast Food Industry Award		\$703.90
Aged Care		\$681.40
Higher Education Industry-General Staff Award		\$686.20
Waste Management		\$678.70
Local Government Industry		\$685.20
Manufacturing and Associated Industries and Occupations	\$640.90	\$659.40
Storage Services and Wholesale	\$684.70	\$693.30
Rail Industry- Operations		\$640.90

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.

272. 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 \$703.90 per week (the minimum wage for a shop assistant) has been increased by \$247.20 per week, or 54.1%, since January 2001. A wage at the cleaner's base rate, now \$684.50 per week, has increased by \$245.50, or 55.9%, over that time. These increases for two significant groups of low paid workers are substantially less than the 60.1% 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 NMW is a misleading guide to the changes in minimum wage rates over this period. This conclusion is reinforced in the data that we cover later in Figure 1 and Table 7.

The distribution of safety net workers across wage classifications

273. Data about the distribution of workers across the range of work classifications enables 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.
274. Information on these matters can be drawn from material considered by the FWC in its 2013 decision; *Annual Wage Review 2012–13*. The ACTU had produced some previously unpublished data from the survey material gathered by the ABS for *Employee Earnings and Hours, Australia, May 2012*, cat. 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 Australian 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, even if it was adjusted as a result of award increases.
275. 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]). This chart was based on previously unpublished ABS data which 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%, 2.6% and 3.0 %.)
276. 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.
277. 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 award. 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 wage rate of \$965.96 per week for those in the highest paid category. The FWC commented:

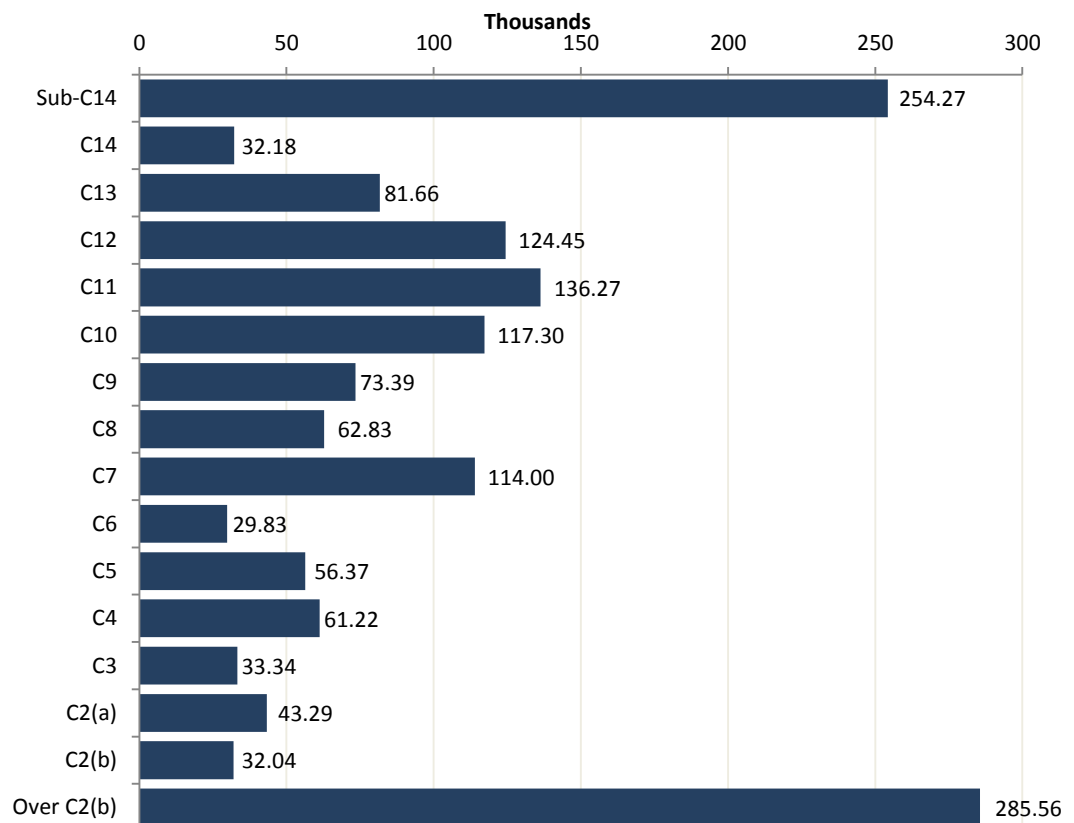
"[372] The ACTU analysis of award reliance by occupation shows that there were 163 800 managers and professionals employed at award rates in 2012 (10.6 per cent of all award-reliant employees) and of these, 40 per cent were health professionals. These health professionals are likely to account for a 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.)

Figure 1

**Non-managerial award-only workers by classification level, imputed using hourly earnings
May 2012**



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."

278. An income of \$25.42 per hour, or \$965.96 per week, was not high by community standards, given that at the same time AWOTE was \$1,353.30 per week; see *Average Weekly Earnings, Australia, November 2014*, cat. no. 6302.0, Table 1, A2810223V. With minimum wage increases of 2.9%, 2.6% and 3.0% since May 2012, this group would now be on an award rate of not less than \$1,050.40.
279. On the basis that the same distribution across the classifications holds true today we can draw some conclusions about the outcomes of wage setting decisions on award only workers. Figure 1 shows that the median is between the C8 and C9 rates, i.e. between the current weekly rates of \$769.70 (C9) and \$793.00 (C8). As we saw earlier in this chapter, a wage classification that now pays \$842.00 or more per week has had a real wage cut since 2001.

We can conclude that the *median* worker has had a real wage increase, as have *some* in the higher paid half of the award only. The median wage falls within the C7 range in Figure 1, which covers 7.4% of the total number of award only workers. The 35.2% of workers on a higher wage rate had a real wage cut, while the 57.4% of workers on a lower wage rate had a real wage increase. The number of workers classified with a wage rate less than the C7 rate, 882,450, include 254,270 who were paid less than the adult C14/NMW rate. If we were to treat them as juniors and re-calculate the percentages for adult workers, 42.2% would have had a real wage cut and 51.1% a real wage increase, with the position of remaining 6.7%, at the C7 level, being unclear.

Bringing the data together

280. We now turn to the *average* outcomes for award only workers. Table 7 is based on the figures accepted by the FWC in 2013 and calculates the weekly real gains and losses for award only employees, by reference to manufacturing award classifications, over the period January 2001 to January 2015. 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. To assist our analysis, we assume, at first, that all workers were employed full time.
281. Table 7 applies the CPI increase of 45.8% 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 2015 rates. It then uses the data in Figure 1 to calculate the impact on all award only workers, calculating the weekly margin above or below real wages for each wage level. On the initial assumption that all of the workers are full time Table 7 shows that the real wage increases total \$36,320,016 per week and the real wage decreases total \$30,850,573 per week. This is a combined real wage gain of \$5,469,443 per week for the estimated 1,538,100 award only workers in Figure 1 and Table 7. Averaged out, it is a real wage increase of \$3.56 per week, based on full time employment. It is a very small figure given the wage rates concerned.
282. The initial assumption of full time employment must yield to the finding in the ABS survey that only 39.1% of award only workers are full time. The data does not show the distribution of full time workers across the work classifications, nor the distribution of part time and casual workers. We expect, however, that the beneficiaries of the real wage increases are more likely to work fewer hours, as part time employees or as casuals, and that workers who have had real wage cuts 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 \$19,115,799 per week and reduce the total real cuts to \$16,237,144 per week, producing a weekly net gain of \$2,878,655, an average real wage increase of \$1.87 per week.

Table 7
Estimated Changes in Average Real Wages
January 2001 - January 2015
(\$ per week unless otherwise stated)

Wage group	January 2001	January 2001 x CPI	January 2015	Difference	Number of employees	Total
Sub-C14	360.40	525.46	576.80	51.34	254,270	13,054,222
Level C14	400.40	583.78	640.90	57.12	32,180	1,838,122
Level C13	417.10	608.13	659.40	51.27	81,660	4,186,708
Level C12	439.60	640.94	684.70	43.76	124,450	5,445,932
Level C11	460.50	671.41	708.20	36.79	136,270	5,013,373
Level C10	492.20	717.63	746.20	28.57	117,300	3,351,261
Level C9	513.10	748.10	769.60	21.50	73,390	1,577,885
Level C8	533.90	778.43	793.00	14.57	62,830	915,433
Level C7	552.80	805.98	814.20	8.22	114,000	937,080
Level C6	592.50	863.87	855.50	-8.37	29,830	-249,677
Level C5	613.40	894.34	873.00	-21.33	56,370	-1,202,372
Level C4	634.20	924.66	896.40	-28.26	61,220	-1,730,077
Level C3	675.90	985.46	943.30	-42.16	33,340	-1,405,614
Level C2(a)	696.80	1015.93	966.80	-49.13	43,290	-2,126,838
Level C2(b)	736.50	1073.82	1009.10	-64.72	32,040	-2,073,629
Over C2(b)	773.50	1127.76	1050.80	-77.26	285,560	-22,062,366

The 2001 wage rates are taken from the *Metal, Engineering and Associated Industries Award 1998* and the 2015 rates are taken from the *Manufacturing and Associated Industries and Occupations Award 2010*. The "above C2(b)" figures, however, are derived from the weekly sum of \$966.30 at the time of the May 2012 survey (see above). The 2015 figure is calculated by increasing \$966.30 by the percentage increases granted in 2012, 2013 and 2014. The 2001 is calculated from the May 2012 figure by deducting the 3.4% increase in award rates in 2011 and deducting a further \$161.00 for increases over the period January 2001 to January 2011 (see the "\$700.00" column in Table 1).

283. These calculations assume that the workers on wage rates less than the C14 rate are on junior wage rates equal to 90% of the C13 rate. In fact, the majority will be on lower junior wage rates, with the effect that the estimated total gain for this group is substantially less than the estimate of \$13,054,222 per week in Table 7. If the average of the junior rates is less than 70% of the C13 rate there would be no average real wage increase across the wage rates in Table 7.
284. These figures involve a degree of informed guess work because of the absence of relevant data. However, it is clear that, on the assumption that the current dispersion of award only workers across the wage classifications is the same as that found in the ABS's 2012 survey, there would not have been a significant average real wage increase over the past 14 years.
285. 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 the six year period 2006 to 2012. Recently released material provides evidence of that trend continuing.

Employee Earnings and Hours, Australia, May 2014

286. In January 2015 the ABS released *Employee Earnings and Hours, Australia, May 2014*, cat. no. 6306.0, which updates the kind of data collected for May 2012. The document reported that that there were 1,860,700 award only employees, who comprised 18.8% of a national total of 9,898,900 employees.
287. The ABS survey found that 44.6% of award only workers were casual, 37.0% were permanent full time and 18.4% were permanent part time. Average ordinary time hours and average ordinary time cash earnings were calculated for each category.
288. Taking into account the average hours found to be worked by each category, we can calculate that full time permanent workers accounted for 53.2% of the hours worked by award only workers; part time permanent workers accounted for 15.4% and casuals accounted for 31.4%.
289. Ordinary time cash earnings are defined as the “award, standard or agreed hours of work”, and include allowances and penalty payments. The hourly average is not simply the ordinary time rate of pay, discussed earlier. The following calculations have to be taken with this qualification.
290. The average ordinary time cash earnings for permanent full-time employees paid by award only was estimated to be \$1,012.00 per week, with an hourly average of \$26.60. In May 2014 that was the wage rate received by full time workers in the second highest bracket in Table 7: wage group C2(b) was then at a minimum of \$979.70 per week. The ABS report found that the rate for permanent part time workers was \$25.50 per hour (equal to \$969.00 per week), which was then between the C2(a) and C2(b) rates. The hourly average for casuals was \$24.60. This rate would have included the casual loading. Discounting the casual loading, assumed to be 25%, the average casual payment was at the rate of \$747.84 per week, very close to the C9 level, which in May 2014 was \$747.20 per week. These figures show that in May 2014 award only workers were more likely to be found in the higher paid classifications.
291. The published data does not include estimates of median incomes, apart from one important statistic. Among full time non-managerial employees paid at the adult rate, average cash earnings were \$1,143.00 per week, with a median of \$1,001.00 per week; see 63060DO008_201405, Table 4. The total number of employees in this category was 639,200, or 34.4% of the total number of award only employees; see 63060DO008_201405, Table 3. In May 2014 the wage rate for the Level C2(b) rate was 979.70 per week. This means that more than one third of award only workers, and a higher proportion of total hours worked by award only workers, were in work that was covered by higher-paid award classifications. Of course, as we noted earlier, the May 2014 included payments in addition to the ordinary time wage rate for award classifications.

Doing the best we can with the latest data

292. We know how a safety net rate of \$1,012.00 per week paid to full time employees in May 2014 had been adjusted over the years from January 2001. Table 1 shows that, for higher award classifications the increases until January 2011 were \$161.00 per week, followed by percentage changes of 3.4%, 2.9 and 2.6%. Working back, the average in January 2001 for

the same composition of award rates would have been \$766.00 per week. Over the period January 2001 to January 2014, the award increases would have been 32.1%, compared to an increase of 43.4% in the CPI over the same period. This is a real wage cut of \$86.40 per week, or a 7.9% real wage cut.

293. Similar calculations can be made for permanent part time and casual safety net workers. For part time workers the 2001 equivalent was \$726.60 per week. The maintenance of real wages required a weekly rate of \$1041.90 in January 2014, \$72.90 more than they were found to be receiving in May 2014. This amounted to a real wage cut of 7.0%.
294. The position of casuals presents a contrast. In May 2014 the average of \$747.00 was within 20 cents of the C9 wage rate of \$747.20 per week. In January 2001 the C9 rate was \$513.10 (Table 7). The maintenance of that wage required a wage of \$735.80 per week, whereas the award rate was \$747.20 (see Table 7 figure, less 3.0%). This is a real increase of 1.5%.
295. The real wage changes in the classifications in which safety net workers are employed varies. In 53.2% of the hours worked (by full time workers) there was a real wage cut of 7.9% and in 15.4% of the hours worked (by part time workers) there had been a real wage cut of 7.0%. On the other hand, in 31.4% of the hours worked there was a real wage increase of 1.5%.
296. Taking all three components into account this was a 6.1% weighted average real wage cut from January 2001 to January 2014. These figures need to be qualified by the fact that in June 2014 award wages were increased by 3.0% while the CPI increased by 1.7% over the period January 2014 to January 2015. The effect of this would be to reduce the estimated average real wage cut over the period January 2001 to January 2015. However, the changes over the past year do not change the basic conclusion: on average, safety net workers have had a substantial real wage cut over the period January 2001 to January 2015.

C. CONCLUSION

297. 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 award only workers across those classifications and the number of hours worked by workers within each income level.
298. Our central concern in this section has been the estimation of the overall impact of wage decisions on real wage levels: have award only workers, as a whole, had real wage cuts since January 2001?
299. We know that the higher-paid award rates have had a real wage cut (Tables 1 and 7) and that classifications that now pay \$842.00 per week or more have had a real wage cut over the 14 years to January 2015. The higher the median and mean average wages paid to award only workers the more likely safety net workers, on average, are in work classifications that have had a real wage cut over that period.
300. The body of data does not permit the drawing of any precise measures of the net impact of real wage increases and real wage cuts across the award classifications in which award only workers are employed. However, the material does support the proposition that there has been, on average, a real wage cut in the classifications in which award only workers are

employed. Put another way, there is, at the least, no persuasive evidence that, on average, award only workers are employed in wage classifications that have had real wage increases since January 2001.

301. We are entitled to proceed on the basis that there has been no increase in average real wages over the period January 2001 to January 2015 for the wage classifications in which award only workers are employed.
302. The apparent failure to increase average real wages has been the product of decisions until 2010 to give preference to low income earners at the expense of higher income earners. In effect, the tribunals have re-allocated the compensation for price increases and made higher paid, but still modestly paid, workers subsidise lower paid workers. Although this approach is sometimes promoted as a significant initiative to help low paid workers, it has left workers who have no capacity to bargain for higher wages worse off overall. The compression of once carefully formulated award wage relativities is a matter of concern in itself, but the compression raises more fundamental issues about equity and fairness.
303. We will show in subsequent chapters that low paid workers received too little under this process, with the effect that they increasingly fell into poverty. Since 2010 poverty has not been targeted with a "one size fits all" approach to wage setting, i.e. by the awarding of uniform percentage increases. Uniform percentage increases will not target poverty among the lowest paid workers and their families. These recent decisions are inconsistent with the proper exercise of a jurisdiction that specifically requires the FWC to take into account the needs of the low paid.
304. The impact of the tribunal decisions is not limited to award only workers because award wage rates have a wider impact. They influence the setting of wages through informal over-award payments, individual agreements and collective agreements. In a report commissioned by the FWC, *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).
305. Assessments of the impact of wage decisions on safety net dependent workers and low paid workers in particular have often focused on the NMW. While workers on the NMW are in the greatest need, the concentration on the NMW presents a misleading picture of the impact of wage decisions on low paid workers. Figure 1 shows that only 2.1% of award only workers are paid the NMW. The varying outcomes across the range of safety net rates are hidden by the use of that single wage rate. A clearer picture is provided by the three rates in Tables 2 to 5, i.e. the NMW, C10 and C4 rates.
306. If we were to focus on only one wage rate, the trade-qualified C10 rate presents a more realistic picture of the impact of wage setting decisions on low paid workers and their families. As we show in Chapter 8, over the past 11 years the single worker on the C10 wage rate has seen his or her margin over poverty fall from 48.2% to 33.3%, a loss of just over one-third, while the C10-dependent single breadwinner family of a couple and two children fell from 7.6% above the poverty line to 1.2% below the poverty line.

307. 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 focused on this group. The concentration has to be on the much larger group of working families living in or near poverty so that the central question does not turn on the NMW and divert attention from the broader concern. The policy issue is not whether poverty exists among wage earners, because it does, but how poverty in the workforce is to be addressed over time.

4

SAFETY NET WORKERS HAVE NOT RECEIVED PRODUCTIVITY INCREASES

	Paragraph
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**Working Australia, 2015:
wages, families and poverty**

CHAPTER 4

SAFETY NET WORKERS HAVE NOT RECEIVED PRODUCTIVITY INCREASES

A. PRODUCTIVITY AND REAL WAGES

308. 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.
309. 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. We need to move beyond the initial analysis set out in Chapter 3. 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.
310. 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.
311. We concluded in Chapter 3 that safety net-dependent workers are employed in work classifications that have had, on average, real wage cuts since January 2001. We will see in this chapter that even in those cases where real safety net wages have been increased, the increases have not been a fair reward for productivity improvements.
312. Since 2001 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 fact that the terms of trade can change substantially even over the short term emphasises that the country's future economic prosperity depends on productivity improvements.
313. The substantial increases in productivity since 2001 are shown in Table 8 by way of movements in the ABS indexes of Gross Domestic Product (GDP) per hour worked and Gross value added (GVA) per hour worked in the market sector at December in each of each year, starting from December 2000. GDP per hour worked increased by 23.7% over the 14 year period December 2000 to December 2014, averaging over 1.5% per year. Gross value added per hour worked in the market sector increased by 31.1% over the same period, averaging over 2.0% per year. Table 8 covers these two measures of labour productivity.
314. 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, set out in 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...”.

Table 8
Labour productivity
December 2000 – December 2014

Index of GDP per hour worked

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
83.3	86.8	87.6	89.4	90.4	91.1	91.6	92.8	92.4	95.4	94.4	96.3	99.9	101.3	103.0

Index of GVA per hour worked - Market sector

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
77.8	81.8	83.3	85.3	85.9	87.6	88.3	89.5	89.8	93.1	92.7	96.1	99.8	101.7	102.0

Source: *Australian National Accounts: National Income, Expenditure and Product, Dec 2014*, cat. no. 5206.0, Table 1, A2304364W (GDP per hour worked, trend) and A3606050F (GVA per hour worked – market sector, trend).

315. Under *Work Choices* system of 2006 to 2009 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; see *Workplace Relations Act 1996*, section 88B(2).
316. 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. In Chapter 3A we saw 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 17.5% (*Australian National Accounts: National Income, Expenditure and Product, Dec 2014*, cat. no. 5206.0, Table 1, A2304364W). Clearly, a large part of the productivity increases were not distributed to safety net workers.
317. From 2006 the AFPC did not 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 Chapter 5) and living standards across the community over the four years of the AFPC’s operation were not reflected in the minimum wages that it set. This caused a substantial real wage deficit. All safety net workers were substantially worse off relative to the rest of the community at the end of those four years. Our analysis in Chapter 3

of the AFPC's decisions suggests that, but for those decisions, safety net workers, on average, would have had *some* benefit from productivity increases since 2001.

318. The FWC, which is, in substance, the AIRC with a new name, was confronted with a real wage deficit that it had no hand in. As we argued in Chapter 3, the FWC's record since 2010 must take into account the fact that it had to address the consequences of the AFPC's decisions and the AIRC's earlier limited recognition of productivity growth. It might wish to be judged on the decisions since 2010, but as the successor to the AIRC and the AFPC it has a legacy that must be addressed.
319. Taken in isolation, the last four decisions of the FWC have delivered real wage increases: against a CPI increase of 10.0% from December 2010 to December 2014 safety net wage rates increased by 12.5%; see Table 1 in Chapter 3. However, even within that period we have seen greater increases in Average Weekly Ordinary Time Earnings (AWOTE): from November 2010 to November 2014, that increase was 15.9%; see Table 10. The 2.5 percentage point is a small return on the productivity increases of 9.1% (GDP per hour worked) and 10.0% (GVA per hour worked, market sector) over the period December 2010 to December 2014; see Table 8, above. Although these percentage increases have been in the interests of higher paid workers and the structure of the award classification system, the FWC has failed to address, as it is required to do, the needs of the low paid and their relative living standards. The two are not mutually exclusive.
320. The FWC's approach to productivity has been shaped by the long experience that the AIRC had with the measurement and distribution of productivity gains. The consideration of the issues around this important topic in the 2014 decision ([2014] FWCFB 3500, paragraphs [148] to [173]), comprising five pages in total, has to be seen in that context. However, the 2014 decision does not address, as we argue it should have, the issues of the past failures to award labour productivity increases and how much of the increases in labour productivity should go to labour.
321. Two important matters covered in the latest decision are the product of that past experience in considering productivity issues: the preference for the distribution of productivity at the national level and the conclusion that such a distribution does not have an adverse effect on productivity growth through collective bargaining at the enterprise level. The relevant conclusions in the 2014 decision are:

“[153] Whilst both aggregate and sectoral productivity are relevant in considering Australia's recent economic performance, when considering the relative living standards of the award reliant, aggregate productivity performance is relevant in that it provides a measure of increasing community living standards.

[154] We disagree with the argument that productivity improvement is generated entirely at the enterprise level. It arises also from enterprises networking and sharing information and technology, transferring knowledge, improved infrastructure and human capital, and from structural reform overall in the economy. The distribution of productivity entirely at an enterprise or sectoral basis through wages outcomes would not necessarily help the flow of resources into more productive areas.”

“[173] Nothing in the limited submissions and evidence put to us in relation to the likely impact of our decision on productivity causes us to depart from the conclusion of the Panel in the 2012–13 Review that:

‘There is no evidence that minimum wage increases arising out of the annual wage review will have an adverse impact upon productivity, at an aggregate level or at the firm level. The limited evidence before us suggests that minimum wages increases are more likely to stimulate productivity measures by some employers directly affected by minimum wage increases.’” (Footnote omitted)

B. PRODUCTIVITY, THE TERMS OF TRADE AND WAGES

322. Over the past 14 years the AWOTE measure of average weekly earnings has increased by 84.8% (see Table 10), while prices, as measured by the CPI have increased by only 45.8% (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, 39 percentage points, shows a very large increase in real wages that is not explained by the substantial increase in labour productivity of 23.7%, as measured by GDP per hour worked.
323. Why it is that prices have remained stable when the gap between prices and productivity and wages is so large? The answer is to be found in the changing terms of trade, which have increased dramatically in Australia's favour over part of the past decade and have provided the capacity for Australian workers to receive, on average, substantially more than prices and productivity. While the terms of trade have moved against Australia in the last few years, the current position is still relatively favourable.
324. The impact of changing terms of trade over the past 14 years can be seen in Table 9. The index figures are at December of each of the years from 2000 to 2014. The steady improvement in the terms of trade over the first eight years has been followed by a substantial decline over the past three years. The turning points were in 2003 and 2012. The terms of trade were flat prior to 2000; for example in December 1996 the Terms of Trade index was 58.7, slightly higher than the December 2000 figure of 58.0. Although there has been a substantial decline in the index in recent years, the index remains considerably above the 2000 level.

Table 9
Terms of Trade
December 2000 – December 2014

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
58.0	58.8	59.8	63.4	69.2	77.6	83.7	86.2	100.3	86.8	110.0	114.0	99.9	97.4	88.1

Source: *Australian National Accounts: National Income, Expenditure and Product, Dec 2014*, cat. no. 5206.0, Table 1, A2304368F.

325. 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. These matters were discussed in the FWC’s decisions of June 2013 ([2013] FWCFB, [138] to [175]), with particular reference to changes in the terms of trade and the declining labour share of national income. The FWC

returned to these matters in its 2014 decision. 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])

326. The Australian Council of Trade Unions (ACTU) presented detailed research to the FWC in 2013 and 2014 on longer term trends in the distribution of income to capital and to labour. The ACTU has shown that, since 2000, labour's share of real hourly labour income has not kept pace with labour productivity. It has 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".

327. The FWC responded to these submissions in 2013. In summary, it said:

"... the recent relationship between wages and productivity is a complex story, given:

- the divergence between producer prices and consumer prices associated with the significant recent escalation in Australia's terms of trade;
- the implications of capital deepening and changes in the ratio of capital and labour inputs;
- the widespread incidence of declining labour shares of the national incomes in developed economies; and
- productivity, factor share and unit labour costs series, both in aggregate or by sector, are measured across the workforce as a whole rather than simply for award-reliant employees." (This summary is in the 2014 decision: [2014 FWCFCB 3500, [160])

328. In 2014 the FWC referred to a Productivity Commission research paper, *Labour's share of growth in income and prosperity*, written by Mr D Parham in late 2013, and a range of conclusions in it regarding the causes of the change in labour's share of income. The FWC summarised "the main points of Mr Parham's paper as:

- while the labour share of income fell by 4 or more percentage points in the 2000s, labour was made no worse off by this because labour income grew at a faster rate in the 2000s than in the 1990s through stronger growth in both real wages and employment;
- the labour income share only fell because capital income growth accelerated even more, with the large rise in Australia's terms of trade bringing strong growth in real income which provided scope for growth in both labour and capital income;
- the rise in the terms of trade meant that producer prices rose faster than consumer prices, so that the purchasing power value of each dollar earned rose for consumers, including but not confined to employees;
- the mining boom was overwhelmingly responsible for the fall in labour share in Australia, through the development of capacity which added to the economy's capital stock and resulted in more capital-intensive production overall;

- as the terms of trade decline, the labour income share will rise, but the share is unlikely to revert fully to previous levels given a more capital-intensive economy;
- action to restore the old labour income share or to recover 'lost' income share through wage rises would probably only have adverse consequences for employment and inflation and for industries already facing adjustment pressures; and
- with declining terms of trade, increasing productivity growth will be the way to sustain growth in real wages." ([2014] FWCFB 3500, [166])

329. We draw attention to Mr Parham's point that the labour share of income fell even though there was real wage growth. Real wage growth was a point made by several parties in the 2014 hearing, who "argued that the research found that although labour's share of income fell sharply over this period, labour was no worse off as the real income of labour had nonetheless grown" ([2014] FWCFB 3500, [163]). Mr Parham and these parties were concerned with *aggregate* real wage growth across the workforce.

330. The FWC did not express a conclusion about these and related issues, but said:

"It is generally accepted, and we accept, that the labour share of income has declined materially over the past two decades. There has been a redistribution of income from labour to capital. *It is true that real wages have grown over that time* but, as is apparent from Mr Parham's paper, capital income growth (including its capacity to purchase consumer goods) accelerated more rapidly. The benefits of the increase in Australia's income associated with the terms of trade increase over the past decade has benefited capital disproportionately to labour. ([2014]FWCFB 3500, [167], emphasis added.)

331. It is apparent from the following paragraphs in its decision that the FWC saw the issue concerning the disproportionate benefits as a passing one:

"[168] We note that the terms of trade, which have been an important cause of *the rise in the purchasing power of labour* and capital income *in the past decade*, has declined over the past two years, although it remains at historically high levels. At the same time, labour productivity, if not multi-factor productivity, has begun to rise. Both of these are indicators that the major shock to the economy caused by the very high prices of resources, and subsequent capital investment in mining, is beginning to pass. With it will pass, at least to a degree, the unusual impact on the labour and capital shares of national income, and the boost to employee purchasing power from a high exchange rate.

[169] It is our view that shorter-term volatility in the shares of labour and capital, caused by exceptional circumstances, do not provide a foundation for altering the NMW and award rates. We agree that changes in labour productivity that are sustained provide a firmer basis for any increase in real minimum rates. Longer-term trends in the labour share of national income should be kept in mind, as they can influence assessments of the fairness of, and relative standard of living provided by, minimum wages. ([2014] FWCFB 3500, emphasis added.)

332. The most obvious point omitted from these passages is that minimum wage workers have not had the real wage growth that is claimed to have accompanied the increasing terms of trade. In this discussion we have another illustration of the concentration on aggregate measures that hide serious countertrends. The overlooked trends are very detrimental to the low paid and safety net-dependent workers. The FWC's conclusion fails to address the position of the very people who depend on its decisions.

C. THE LOSS OF PRODUCTIVITY BENEFITS THROUGH WAGE DECISIONS

333. The very substantial loss by safety net workers of the benefits of productivity growth cannot be denied. On the basis of our calculations in Chapter 3, on average, safety net workers have had no benefit from the productivity gains since 2001. 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. Denying about one-sixth of the workforce wage increases based on the substantial productivity increases over the past 14 years must have had a substantial effect on the labour share of national income. Furthermore, this loss will be reflected in other workplaces where award rates of pay are used as a guide for agreement-making.
334. In the June 2013 decision (at [167]), the FWC accepted that there is a gap between increases in modern award wages and productivity growth, but desisted from drawing conclusions about that gap. 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) and an increase of 0.25% in compulsory superannuation contributions. This was 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)
335. The reason for the discounting of recorded 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." (*Annual Wage Review 2012-13*, paragraph [61])
336. The last sentence was repeated in paragraphs [323] and [428] of the decision. Paragraph [61] 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.
337. 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])

338. 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 per hour worked grew 1.1% and it increased by 0.8% over the next 12 months (see Table 8). The problem of short term variations and initial misreporting of changes could be addressed through the adoption of a moving average.
339. 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 final sentence of paragraph [61]? "*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). This passage, while holding out a prospect of improved living standards, gives little confidence that the situation will improve. The crucial point is that there have been substantial productivity improvements over the past 14 years, and more, yet safety net workers have not had the benefit of those improvements and have gone backwards compared to the labour force as a whole. The situation is unlikely to change without acknowledgment of these facts.
340. The small distribution of productivity in 2013 was repeated in 2014. In 2014 the FWC said that "Short-term measures of productivity should be interpreted with some caution as productivity is best measured over a business cycle." (at [149]). At [159] it said that "growth in labour productivity had been sustained, providing some support for a modest rise in the real value of minimum wages". This was in the context of a finding that "... trend labour productivity has risen over the past two years, though at a somewhat faster rate in 2012 (2.5 per cent) than in 2013 (1.7 per cent for all sectors and 1.8 per cent for the market sector)"; see paragraph [150]. The FWC appears to have accepted the ACTU submission that "whilst labour productivity grew by 12.3 per cent between 2002–03 and 2012–13, the real (CPI-adjusted) value of the NMW rose by only 3.4 per cent"; see paragraph [162].
341. In 2014 an increase of 3.0% was awarded in the context of CPI increases from March 2013 to March 2014 of 2.9% and an increase of 0.25% in compulsory superannuation contributions. It appears that the use of the words "some support" in paragraph [150] was not persuasive support. There is a lack of information in the decision about how the productivity improvements of the previous year or over the business cycle informed the decision. The 0.1% increase in real wages, even with recognition of the change in superannuation contributions, was an inadequate amount to help safety net workers "share in increasing community living standards".

Capital deepening

342. In 2013 and 2014 the FWC referred to the claims that capital deepening, i.e. the increase in capital inputs relative to labour inputs, needed to be taken into account. The FWC's 2013 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% and 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])

343. This is, clearly, an important issue in the measurement of changes in labour productivity and the fairness of decisions regarding the distribution of those gains. If this has been a factor in the FWC's decisions then it should be explained why and how the matter was taken into account.

Conclusion

344. The issues concerning the measurement and distribution of productivity increases and the impact of the terms of trade are matters of substantial importance to the FWC's decision-making process. However, the FWC is obliged to take into account relative living standards when setting safety net wage rates. Living standards grow and change because of changes in productivity and the terms of trade. If proper account were taken of changes in relative living standards, both the driver of long term growth, productivity, and the cause of shorter term changes in national income, the terms of trade, will be factored into minimum wage rates. These changes are manifested through changes in average weekly earnings and similar measures, which we will consider in Chapter 5.

345. 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. The FWC adverted to this kind of point 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." ([2013] FWCFB 4000, paragraph [144], footnote omitted)

346. A reference to the terms of trade could be added to this passage. But the fundamental problem for safety net-dependent workers is that their wages have not reflected community-wide average wage growth over the years, including the years in which the FWC has been setting wages under the *Fair Work Act 2009*. Safety net wages do not need to be in lockstep with average wages, but they should follow a similar path over time and have a reasonable connection with them. This means that, in order to correct the shortcomings of recent years, more often than not safety net rates will need to increase at a greater rate than average wage levels. In order to minimise uninformed controversy over such outcomes it will be necessary to acknowledge and explain the past shortcomings in the setting of safety net wages.

5

SAFETY NET WAGES HAVE FALLEN BEHIND GENERAL WAGE LEVELS

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**Working Australia, 2015:
wages, families and poverty**

CHAPTER 5

SAFETY NET WAGES HAVE FALLEN BEHIND GENERAL WAGE LEVELS

A. GENERAL INDICATORS OF INCREASING COMMUNITY INCOMES

347. 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. In this section we turn to a comparison between safety net wages and various measures of wages and incomes, based on the data in Table 10.

Table 10
Safety net rates compared to other wages and incomes
2001-2015
(\$ per week, unless otherwise indicated)

	Cumulative increases in FMW/ NMW	Cumulative increase in trade-qualified rate (C10)	Cumulative Increases in Wage Price Index	Average Weekly Ordinary Time Earnings (AWOTE)	Cumulative increases in AWOTE	Household Disposable Income per head	Cumulative increase in Household Disposable Income
2001				798.80		415.65	
2002	3.3%	3.0%	3.4%	843.10	5.5%	457.28	10.0%
2003	7.7%	6.7%	6.9%	882.20	10.4%	454.42	9.3%
2004	11.9%	10.2%	10.8%	929.60	16.4%	480.83	15.7%
2005	16.7%	14.0%	14.9%	964.90	20.8%	517.00	24.4%
2006	20.9%	17.5%	19.6%	1014.50	27.0%	536.83	29.2%
2007	27.8%	23.0%	24.5%	1045.40	30.9%	576.70	38.7%
2008	30.4%	25.1%	29.5%	1100.70	37.8%	628.11	51.1%
2009	35.8%	29.5%	35.0%	1158.50	45.0%	691.26	63.3%
2010	35.8%	29.5%	39.0%	1225.20	53.4%	687.81	66.5%
2011	42.3%	34.8%	44.3%	1274.10	59.5%	729.64	75.5%
2012	47.2%	39.4%	49.6%	1333.40	66.9%	763.60	83.7%
2013	51.4%	43.3%	54.7%	1392.80	74.4%	775.57	86.6%
2014	55.4%	47.2%	58.6%	1437.20	80.0%	797.56	91.9%
2015	60.1%	51.6%	62.7%	1476.30	84.8%	808.26	94.5%

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 2014*, cat. no. 6302.0 and earlier publications in this series. Wage Price Index figures are from *Wage Price Index, December 2014*, cat. no. 6345.0. Household Disposable Income figures are taken from the Melbourne Institute's *Poverty Lines: Australia September Quarter 2014* and are in respect of December of the preceding year, save for 2015, where the figure for September 2014 is used for January 2015.

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

Average Weekly Ordinary Time Earnings

349. 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.
350. The figures show that safety net wage rates have fallen substantially against AWOTE, which increased by 84.8% over the past 14 years. The NMW increase of 60.1% compares unfavourably with the increase in AWOTE. The NMW fell from 50.1% to 43.4% of AWOTE over the 14 years to January 2015. 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 38.3% over the same period. In 2001 it was 87.6% of AWOTE and in January 2015 it was 65.6%.
351. If the NMW had increased at the same rate as AWOTE, the NMW would now be \$739.90 per week, \$99.00 per week more than it is. Had the \$700.00 per week safety net rate maintained its 2001 relativity to AWOTE it would have risen to \$1,293.20. per week, an extra \$325.00 per week. These are startling comparisons.
352. 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.
353. AWOTE understates the increases received by non-safety net workers. 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 workers are safety net-dependent and have a wage increase of 30.0% over a 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%.

Wage Price Index

354. The Wage Price Index (WPI) increased by 62.7% over the 14 years to January 2015, rather less than AWOTE, but rather more than the 45.8% 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 2014*, cat. 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.

355. The WPI has been given some prominence in past decisions because of the claim that it represented “pure price changes” in the costs of labour. Changes in the WPI have been used by the Fair Work Commission (FWC) as a comparator for wage rate adjustments.
356. 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], emphasis added.)
357. In section D we deal in some detail with the claim in the last two sentences that rising inequality was caused by the workforce rising into higher paid jobs over time.
358. At this point we turn to the claim in the 2012 decision that “national minimum wage has risen over the past decade at about the same rate as the WPI”. In 2013 it was claimed that “...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*, at [392]). In its 2014 decision the FWC said, in reference to Chart 6.2 which compared the C14/NMW and C10 rates with general measures of wage increases:
- "It shows that the award rates have grown more slowly over the decade [to December 2013] than the measures of average pay, although growth in the C14 rate has remained close to that of the WPI. All rates above C10 have fallen further behind average pay increases than is displayed for the C10 rate, although this relative decline was arrested by the uniform percentage increases in the past three annual wage reviews." (Paragraph [340])
359. The relative decline referred concerns the decline of the C14 and C10 award rates relative to each other, and not to the general measures. The claim that the C14 rate has "remained close" to the WPI is contentious.
360. The position of the NMW and award rates compared to the WPI has improved over the year to January 2015. The WPI increased by 2.6% compared to a 3.0% increase in safety net wages. This meant that, absent the safety net-dependent workers, the WPI for the rest of the workforce was less than 2.6%. This reflects a broader problem with the use of the WPI as a guide to wage comparisons. Over the years the increases in the WPI have been reduced by the inclusion of safety net adjustments, which have lagged behind the wage movements in the other sectors of the labour market. We return to this aspect.
361. Table 10, which covers the period since January 2001, shows the actual position of the WPI relative to the NMW/C14 award rate and the C10 award rate.
362. In fact, the NMW had not kept pace with the WPI since January 2001. In making comparisons we need to keep in mind that the movements in the WPI and wage rates that we have used have not moved at the same time. At each January the WPI figure is the one that was published the previous month, but the wage rate is the one that was set earlier in the previous year. Since 2010 the wage

increases have been in July. Table 10 shows that until January 2009 the NMW had increased by more than the WPI and only fell below the WPI increase following the wage freeze decision of the Australian Fair pay Commission (AFPC) in July 2009. From January 2009 the NMW has lost a margin of 0.8 percentage points over the WPI increases and fallen to a deficit of 2.6 percentage points in January 2015. If one were to assess the changes over the past six years, for example, it could not be said that the NMW has "barely" kept pace with the WPI. Had the NMW followed the WPI over this time there would have been a significant increase for low paid workers. Of course, the NMW was the high point in any comparison with the WPI.

363. As we saw in Chapter 3, the C10 wage rate is a better indicator of the impact of wage increases on the low paid. Because of money and not percentage increases being awarded in 2010, the C10 rate lost substantial relativity to the WPI. By January 2015, the C10 rate had increased by 51.6% compared to an increase of 62.7% in the WPI. Had the C10 followed the WPI it would have been \$800.80 per week, \$54.60 per week higher than it was in January 2015. As Table 1 has shown, the increases for higher paid classifications were much less relative to the WPI. Had the C4 classification followed the WPI over the same period, it would have been \$1,031.80 per week, not \$896.40 per week (see Table 1, notes). This is a relative loss of \$135.40 per week.
364. These comparisons raise the question of whether any classification should get any less than the WPI. 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. We refer later to the Remuneration Tribunal, which sets rates of pay for Australia's most senior and highest paid public official. 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.
365. ACCER made these kinds of points in its March 2014 submissions. In referring to changes over the five years to December 2013, the FWC said:

"The evidence on the changes in the relative living standards of those on award rates of pay is consistent. Those on the lowest award rates, including the NMW, have fallen relative to rates of pay, as measured by the WPI. The higher award rates have fallen even further behind on this measure, although at the same rate over the past three years." (Paragraph [41])

366. The recognition by the FWC in 2014 of the gap in award wages relative to the CPI was welcome, but the major issue concerned the justification for that gap. The FWC's claimed justification is to be found in its broader comments about the WPI and other measures of increasing inequality which we will return to at Chapter 5E.

More on the nature of Wage Price Index

367. 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. Our argument is that the

WPI understates relevant changes and minimum wages across all levels should move by more than the WPI

368. We need to be clear about the differences between the award classifications and the matters measured by the WPI. 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; i.e. 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. Having a productivity component in safety net wages (which has been denied to safety net workers in recent years) will reflect these kinds of change across the economy.
369. 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 2014*:

"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)..."

370. 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*, cat. no. 6351.0.55.001, Chapter 9)

371. 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.
372. 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.
373. The WPI, properly used, should recognise the point that we made earlier in regard to the comparability of AWOTE. Extracting the 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. If we were to assume that the average is at the C10 rate, where the wage increase has been 51.6% and adjust the index, now at 62.7%, to reflect the proportion of safety net workers in the workforce (about one-sixth), the adjusted figure will be 65.0%. As we saw in Chapter 3, the average wage rate for safety net workers is in excess of the C10 rate, with the effect that this estimated adjustment to the WPI understates the true position.
374. As a measure of "pure price changes" the WPI is of limited use in wage setting and is certainly not a measure that should operate as a ceiling, as it has tended to be treated by the FWC. Rather it should be treated more as a floor, with a margin above it, in the setting of wage increases. The figures demonstrate that 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 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

375. Table 10 shows changes in seasonally adjusted household disposable income per head (HDI) over the period 2001 to 2015. 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* (cat. no. 5206.0), September

2014 and *Australian Demographic Statistics* (cat. no. 3101.0), June Quarter 2014 and are available for all quarters since September 1973. The next issue, in respect of the December quarter 2014, is due by April 2015.

376. The 94.5% increase in HDI since January 2001 exceeds other income measures in Table 10; it is substantially greater than, for example, the 84.8% 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.
377. In Table 11 we compare 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 2015. This enables a comparison of the kind of outcomes in the first 28 years and the last 14 years covered by the Melbourne Institute's research.
378. 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.

Table 11

Disposable incomes of safety net workers and families relative to Australian Household Disposable Income per head 1973- 2015
\$ 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 2015	581.11	886.73	808.26
Ratio 2001-1973	6.41:1	8.60:1	7.88:1
Ratio 2015-1973	10.76:1	15.16:1	15.23:1
Ratio 2015-2001	1.68:1	1.76:1	1.93:1

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 2014 in *Poverty Lines Australia September Quarter 2014*. That figure has been used for January 2015.

The disposable income figures for January 2001 and January 2015 are taken from Tables 15 and 19, below. Rental assistance, which was available in 2001 and 2014 for the family, is not included. Rental assistance was not paid in 1973.

379. 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 occurred prior 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 worker's "overcompensation" when wages are set by reference to the needs of workers with family responsibilities.

380. The changes between 1973 and 2001 are in sharp contrast to the changes between 2001 and 2015. 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 worker's position through to 2001 might be welcomed on the basis that family circumstances were more effectively targeted, the change in the position of the single worker from that date is a matter of great concern.

B. DIVERGING STATE AND FEDERAL WAGE SETTING DECISIONS

381. 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. 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.
382. 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.

383. 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 2015.

Table 12
Comparison of FMW/NMW and relevant State rates
January 2009-January 2015
(\$ per week)

	January 2009	January 2010	January 2011	January 2012	January 2013	January 2014	January 2015
F/NMW	543.78	543.78	569.90	589.30	606.40	622.20	640.90
NSW	552.70	568.20	569.90/592.30	-	-	-	-
Queensland	552.00	568.20	588.20	610.20	630.70	646.50	668.80
W. Australia	557.40	569.70	587.20	607.10	627.70	645.20	665.90
S. Australia	546.65	560.65	580.30	600.00	617.40	633.50	652.50
Tasmania	546.10	558.10	569.90	589.30	606.00	622.20	640.90

384. 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. 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 2015 the average of the three States which set their own rates was \$662.40, \$21.50 more than the NMW. The difference remains a considerable amount in the budget of low income families.

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

385. 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; e.g. 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. 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 in the range \$326,170 to \$598,400.

386. 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.

387. The Tribunal decided that there would be no general increase in 2014. In a Statement dated 12 May 2014, the Tribunal announced that it had decided not to increase rates of remuneration:

“In conducting its annual reviews, the Tribunal takes account of a range of economic factors in Australia, as well as movements in remuneration in the private and public sectors, including the Australian Public Service (APS). This has been the Tribunal’s approach for many years, as detailed in previous statements. It should be noted that remuneration for offices in the Tribunal’s jurisdiction is set in the context of a broader job market and economy and not in a vacuum – the remuneration outlook for other jobs in the public sector is one of the most influential factors the Tribunal takes into account.

The Tribunal has been briefed on the Government’s recently released Workplace Bargaining Policy for new enterprise agreements in the APS and federal public sector generally. This policy indicates that pay adjustments in that sector will be predicated on clearly defined improvements to productivity.

For some months, noting the Government’s policy, it has been evident that any wages movement in the APS and federal public sector would be restrained. Indeed, at its April meeting, the Tribunal’s preliminary conclusion was that it would determine no annual review increase for offices in its jurisdiction from 1 July 2014.

This conclusion has been supported by a submission from the Government to the Tribunal on its annual review, received last week in advance of today’s scheduled Tribunal meeting. The Government considers that parliamentarians and Commonwealth office holders should lead by example in these matters. The Government’s submission was that the Tribunal should not approve any increases in remuneration for any offices within the Tribunal’s jurisdiction for at least one year.

Decision

Taking into account these factors, especially the outlook for public sector remuneration, the Tribunal has decided to determine no annual adjustment to remuneration for offices in its jurisdiction from 1 July 2014.

This annual review decision will also apply to principal executive offices.”

388. 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. SES salaries are not set by the Tribunal, but by governmental processes. The SES figures for January of each year are the figures published for the previous year. The figures for 2014 are not yet available, which means that we are unable to insert figures for January 2015. The increase over January 2014 will depend on the effectiveness of the application of the Government’s policy which was noted in the Tribunal’s Statement of 12 May 2014.

389. 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"

Table 13
Remuneration of Commonwealth officers and public sector employees
2000-2015
(\$ 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	1488.00
2014	154399	351990	235706	294968	379486	1537.90
2015	154399	351990	-	-	-	1570.80
% increase	67.8%	67.7%	>78.2%	>83.3%	>95.3%	77.0%

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 2014*, cat. 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 2013, published in 2014. The numbers employed in each SES band were 1939, 565 and 119, respectively (see Table 1.1).

390. The Australian Public Service Commission Remuneration Reports of 2012 to 2014, in regard to 2011 to 2013 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.
391. 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.

392. 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 \$1,570.80 in November 2014, an increase of 77.0%. The increase in the public sector AWOTE over the year to November 2014 was 2.1%. This public sector increase over the period since January 2001 is 7.8 percentage points less than the combined public and private sector AWOTE that we use in Table 10.
393. 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, especially with the more skilled wage rates, set by the FWC and its predecessors.
394. 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 77.0% while, for example, the trade-qualified rate increased by 51.6% over the same period. The contrast is even starker in, for example, classifications that now pay a modest wage of \$968.20 per week. In those classifications the increase since 2001 was 38.3%, about half of the public sector increases.
395. 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.
396. 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. RISING INEQUALITY: ASSESSING ECONOMIC RESTRUCTURING

397. It has been apparent for some time that there has been growing inequality across the labour market and increasing disconnection between going rates in the labour market and the safety net rates prescribed by the NMW and awards. For some time the tribunals have not been obviously

concerned about these trends, apparently treating them as a generally benign development. In 2012 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)

398. The FWC was attributing the growing gap to the movement to higher paid jobs, with the implication that rising inequality was beyond its control. In its 2013 decision the FWC 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)

399. These paragraphs in the 2013 decision suggest that the growing proportion of higher skilled jobs was the cause of the growing separation of award wages and average wages across the workforce. It was consistent with the 2012 view, but this time the change was seen as possibly having implications for social cohesion in the future. 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.
400. In section E we consider the FWC’s discussion in the 2014 wage review decision of earnings inequality. In this section we concentrate on the view that rising inequality has been caused by economic restructuring and, in particular, the increasing skill levels of the labour force. This is not an either/or issue, but one which requires an assessment of the relative impact of labour force changes and minimum wage decisions on wage incomes.
401. What is the factual basis for the claim that the changing workforce composition has been 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 in its 2013 decision is the following:

“[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)

402. The last sentence is consistent with the claim in the 2012 decision that the changing structure of jobs had caused average earnings to rise faster than minimum wage rates.

403. The footnote in paragraph [391] of the 2013 decision 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. The submission 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)

404. 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.”

405. Leaving aside for the moment a table setting out the ABS findings in relation to skill level changes, covering 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)

406. 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*, (cat. no. 6291.0.55.003), February 2013, and "DEEWR trend data".
407. 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. However, there was 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.

Quantifying the increase in skill levels

408. 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.
409. 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.
410. 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 because of successive wage decisions, 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."

411. When the relativities were first established the 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%).
412. 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.

413. 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).
414. Table 14 demonstrates that increasing skill levels over the decade were not a substantial cause of growing inequality between safety net workers and the rest of the workforce. The change in skill levels cannot explain or justify the decrease in safety net wages for the higher-paid safety net classifications. Along with the good news of an increase in the skill mix of Australian workers we have the more skilled safety net-dependent workers at a greater disadvantage relative to community incomes.

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	2,492.7	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	1,549.7	16.4%	1,745.6	15.1%	2,132	1,963
4	115	2,534.3	26.8%	3,139.8	27.0%	3,082	3,105
5	100	1,883.6	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

415. The primary cause of growing inequality has not been compositional change in the work force, but the minimum wage decisions of successive tribunals.

Productivity and skill levels

416. 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 it does within award classifications. Over the 10 years from December 2002 to December 2012 labour productivity, as measured by GDP per hour worked, increased by 14.0% (see Table 8), compared to our 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 in the previous chapter.

E. RISING INEQUALITY: THE IMPACT OF MINIMUM WAGE DECISIONS

417. The review in the previous section the claim in the FWC's decision of 2012 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" and similar views in the 2013 decision. ACCER's March 2014 submission included most of what is now in the previous section, including Table 14. The material was not commented on.

418. In a significant development, the FWC acknowledged in its 2014 decision that wage review decisions had contributed to increasing wage earnings inequality. It accepted that there was "some direct contribution from annual wage review decisions to rising inequality of earnings", but claimed that the decisions "were made taking into account many factors other than their impact on the inequality of earnings". The relevant passages were introduced by data on growing earnings inequality:

"[343] No party disputed the fact that the distribution of earnings has become more unequal in Australia over recent decades. The Australian Government provided a table that showed that "between 2002 and 2012, earnings in the 10th and 25th percentile grew by 12.6 per cent and 14.8 per cent respectively, compared to growth rates of 22.3 per cent and 28.0 per cent for the 75th and 90th percentiles. These changes have resulted in an increase in earnings inequality over time." No data were available to consider any changes since 2012.

[344] A number of arguments were put to us about the reasons for the continuing rise in inequality of earnings. These included an increased premium on higher skills; the strong demand from, and high pay in, the resources sector; and a change in the structure of jobs towards the more highly paid. These are, in turn, driven, at least in part, by both technological change and the greater integration of the world economy. ... The number of adults who are employed at or near NMW rates is probably not large enough for there to be a strong and direct link between rises in the NMW and lower award rates that are below average and relatively slow growth in the earnings of the lower deciles of the earnings distribution. *But the concentration of award-reliant employees in the lower deciles of the earnings distribution, the relatively slow rate of increase in the value of awards, and the influence of award rate changes on nearby bargained rates all point towards some direct contribution from annual wage review decisions to rising inequality of earnings. This is not to imply that the annual wage review decisions were inappropriate, they were made taking into account many factors other than their impact on the inequality of earnings.*

[345] The Australian Government highlighted the impact of the trend towards higher-paid, higher-skilled jobs on earning inequality. If the economy has a changing structure of jobs towards the higher skilled, as the Australian economy has had, we would not expect minimum rates of pay to keep pace fully with average earnings. Nonetheless, the evidence is clear that even the lowest award rates have barely kept pace with growth in rates of pay 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. *We conclude 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.*" (Footnotes omitted, emphasis added.)

419. It should be noted that paragraph [345] of the 2014 decision is in similar terms to the paragraph [392] of the 2013 decision which we quoted in section D concerning the changing skills mix of the Australian workforce. Significantly, the last sentence has been modified. In 2013 it read:

“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”

In 2014 the last sentence read:

“We conclude 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.”

420. The identified cause in 2013 was not in the 2014 decision. This appears to be implicit acceptance of the analysis in the ACCER submissions on the skills mix issue. Those submissions established that the primary cause of growing inequality has not been compositional change in the work force, but the minimum wage decisions of successive tribunals. The evidence showed why we should reject the view that increases in skill levels are the major explanation of growing inequality.
421. The first sentence of paragraph [345] refers to the Australian Government's submission in 2014 about the trend towards higher skilled jobs. The Government's submission on this aspect is at pages 44-5 of its March 2014 submission and was by way of an update to what it had put in 2013 in relation to the skill mix of the workforce, to which we referred in the previous section. It provided material showing changes for the decade to February 2014, whereas the ACCER submissions of March 2014 were based on the data made available in the previous year, i.e. to the decade to February 2013. At paragraph 199 of its submission the Government noted that the workers in the highest skill group were 30.1% of the total and those in the lowest skill group were 17.5% of the total. In 2013 they were 29.3% and 17.3%, respectively (see Table 14). These and other figures in the 2014 data show a welcome increase in skill levels, but they would have only a minor impact on the calculations in Table 14 and the conclusion drawn from them. Furthermore, if we were to update Table 14 to cover the decade to February 2014 we would have to compare the new estimated increase in average skills against an even wider gap between award rates and the broader measures over the latest year. Against a 2.6% increase in award rates during that further 12 months we would have to factor in a 3.2% increase in AWOTE (see Table 10).

The extent of wage inequality

422. Increasing wage inequality is illustrated by Charts 8.1 and 8.2 in the FWC's *Statistical Report* of 27 February 2015, which are reproduced below as Figures 2 and 3, respectively:
423. Figure 2 compares increases in the NMW, the C10 wage rate, the WPI, AWOTE and the gross earnings measure of average weekly earnings. The graph shows the very substantial divergence between the general measures of community-wide wage movements and the safety net rates. However, the changes shown in Figure 2 do not reveal what has been happening across the range of income levels; such as how low income earners fared relative to high income earners. Figure 3 illustrates growing inequality across cohorts of wage earners, by comparing the changes in real weekly total earnings of five percentile levels (including the median) and mean average earnings

Figure 2
Growth in C14 and C10 relative to AWOTE, AWE and WPI,
cumulative percentage change

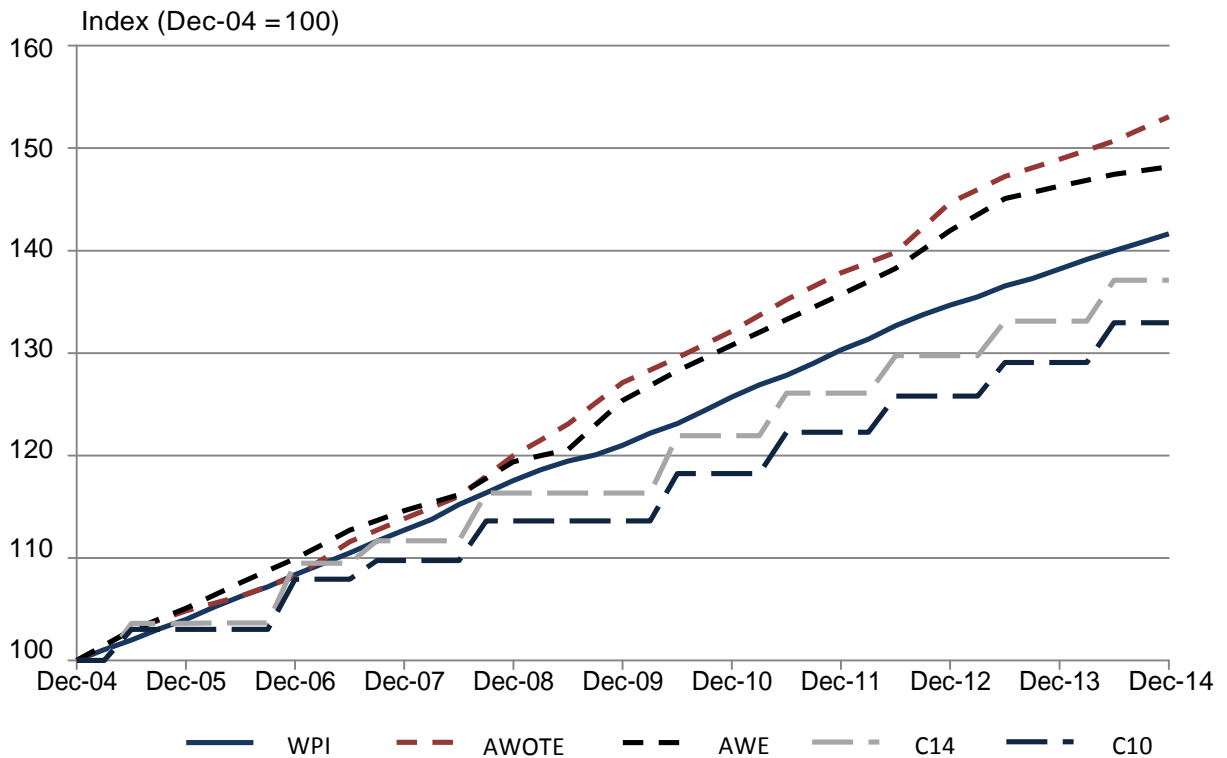
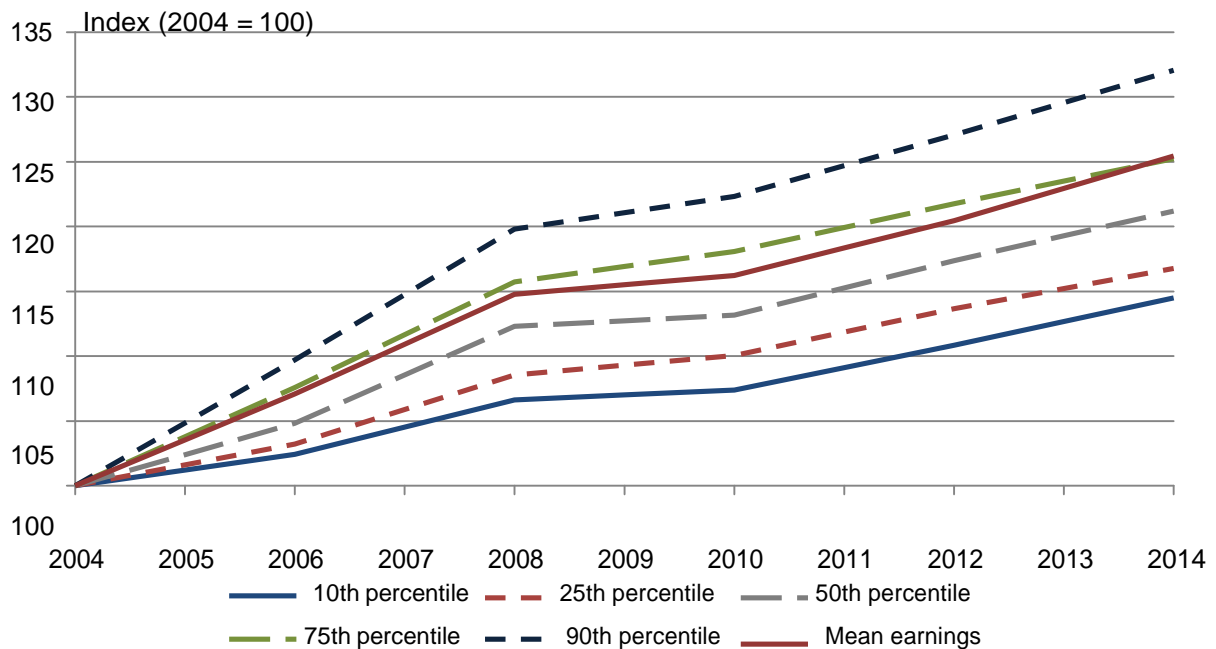


Figure 3
Real weekly total earnings (full-time adult non-managerial employees) by percentile, 2004 to 2014



The FWC's notes to Figure 2 are:

Note: This chart reflects data for the period December quarter 2004 to December quarter 2014. WPI is the index for total hourly rates of pay excluding bonuses in both private and public sectors. It is unaffected by change in the quality or quantity of work performed. AWOTE is calculated by dividing estimates of weekly ordinary time earnings by estimates of the number of employees. It is calculated before taxation and other deductions such as superannuation. It also excludes payments which are not related to the reference period such as overtime, leave loading and redundancy payments. AWOTE estimates refer to full-time adult employees. Average weekly earnings (AWE) is the gross (before tax) earnings of employees (excluding salary sacrifice). The C14 and the C10 are minimum award rates set under the *Manufacturing and Associated Industries and Occupations Award 2010* and the former *Metal, Engineering and Associated Industries Award 1998*.

AWOTE and AWE data are published on a half-yearly basis, hence, a quarterly time-series is derived through linear interpolation. AWOTE and AWE data are expressed in original terms.

Source: ABS, *Average Weekly Earnings, Australia*, Nov 2014, Catalogue No. 6302.0; ABS, *Wage Price Index, Australia*, Dec 2014, Catalogue No. 6345.0; *Metal, Engineering and Associated Industries Award 1998*; *Manufacturing and Associated Industries and Occupations Award 2010 (from 1 January 2010)*

The FWC's notes to Figure 3 are:

Note: Earnings figures are slightly inflated from May 2006 due to the inclusion of salary sacrificing. The Employee Earnings and Hours (EEH) Survey was not conducted in 2003, 2005, 2007, 2009 and 2011. Results for these years have been obtained through linear interpolation.

Source: ABS, *Consumer Price Index, Australia*, Dec 2014, Catalogue No. 6401.0; ABS, *Employee Earnings and Hours, Australia*, various, Catalogue No. 6306.0.

424. If we were to overlay on Figure 3 the real wage changes for safety net-dependent workers we would find that safety net-dependent workers were below the 10th percentile line, which showed a real increase of almost 15% increase over the 10 years 2004 to 2014. Over the period January 2004 to January 2014 the NMW increased by 38.8%, compared to a 31.8% increase in the CPI (see Table 1). This represents a 5.3% increase in real wages for the NMW worker, much less than the almost 15.0% increase received by the lowest paid percentile over a similar period.
425. The same kind of calculation (again using Table 1) would put the C10-dependent worker, with a 1.4% real wage increase, even closer to the x axis. The position worsened for higher paid employees; for example, the worker in the \$550 column of Table 1, who was in receipt of a modest wage of \$787.40 per week in early 2014, had a 31.2% increase over the same period and, therefore, had a small real wage cut. If this worker and others on higher minimum wage rates were separately plotted they would be below the x axis.
426. Of course, safety net-dependent workers are distributed across the percentiles in Figure 3. Because all of them had smaller increases than even the lowest percentile in Figure 3, their positions would have reduced the increases for each of the percentiles in which they were located. Some of them would have fallen into a lower percentile by the end of the decade.
427. Figure 3 and Table 1 demonstrate that great care should be taken when considering national averages, even when broken into percentiles, because they hide what is really happening to the living standards of safety net workers.
428. At the end of its conclusions on relative living standards in 2014 the FWC provided a comprehensive overview of the falling relative living standards of all safety net-dependent workers:

“[402] The evidence on the changes in the relative living standards of those on award rates of pay is consistent. Those on the lowest award rates, including the NMW, have fallen a little relative to rates of pay, as measured by the WPI. The higher award rates have fallen even further behind on this measure, although at the same rate over the past three years. All award-reliant workers have fallen behind more when compared to comprehensive measures of average earnings, such as AWOTE and AWE, as well as

median earnings. They have also fallen behind in the growth in labour productivity, from which growth in living standards is ultimately derived.”

429. The FWC has acknowledged that not only have safety net workers fallen behind measures of community-wide wage increase, but they have even fallen behind the growth in labour productivity. As we saw in Chapters 3C and 4C, because of the average real wage cut in the wage classifications in which safety net workers are employed, it is likely that no part of the productivity increases over the period 2001 to 2014 has been distributed to safety net workers.
430. In a wage setting system based on the promotion of social inclusion and the setting of a safety net of fair minimum wages very substantial reasons would be need to justify such changes in the relative living standards of those workers and their families who depend on the wages safety net.

The role of other factors in the reduction of relative living standards

431. We now return to the passage in paragraph [344] of the 2014 decision that raises a justification for this change in living standards:

“...the concentration of award-reliant employees in the lower deciles of the earnings distribution, the relatively slow rate of increase in the value of awards, and the influence of award rate changes on nearby bargained rates all point towards some direct contribution from annual wage review decisions to rising inequality of earnings. *This is not to imply that the annual wage review decisions were inappropriate, they were made taking into account many factors other than their impact on the inequality of earnings.*” (Emphasis added.)

432. It seems clear from the context in which this passage was written that the FWC was referring to annual wage reviews over the past decade or more and was referring to decisions by the AIRC and the AFPC as well as its own.
433. The last sentence of paragraph [344] claims that the annual wage review decisions had increased inequality because of many factors other than considerations of earnings inequality. This means that, but for those other factors, earnings inequality would not have increased as much as it did. Because rising inequality brings falling relative living standards for the low paid, the passage also means that the wage review decisions reduced the relative living standards of safety net workers on account of those other factors.
434. Because reduced relative living standards impact on poverty levels, poverty was increased because of those other factors. But for those other factors, poverty would not have increased at all, or by as much. The FWC had ample evidence to establish that poverty was increasing among low paid workers and their families; for example:

“Single-earner families that receive the NMW or a low award rate have had declines in their equivalent real disposable income, to the point where today a couple with two children would be in poverty as conventionally measured. Households that rely on earnings as their principal source of income comprise about one-third of all families below a 60 per cent median poverty line.” (*Annual Wage Review 2013-14*, decision, paragraph [399])

The FWC's record

435. To a large extent, the FWC has restored the real value of safety net wages prior to the AFPC's wage freeze decision in 2009. This matter was discussed in connection with Table 5. The

basic issue in assessing the FEC's decisions concerns the relevant datum point for measuring price changes. We argued that it should be the last published CPI figure prior to the AFPC's decision in July 2008 to increase wage rates. On that basis, by July 2014, when the latest FWC wage adjustments commenced, the NMW had increased by 17.9%, compared to a CPI increase of 16.7% (using the latest published figure, for the March quarter 2014). Because of the flat money increase in 2010, other safety net rates have had smaller increases; for example, the C4 rate (now \$896.40 per week) has had an increase of 16.2%.

436. The mere maintenance of real wages does not distribute productivity increases or maintain relative living standards. Over the five years December 2008 to December 2013 GDP per hour worked increased by 8.2%; see Table 8. The 2014 decision did not provide sufficient recompense for that improvement. This was recognised at paragraph [402] of the 2014 decision: minimum wage rates had "... fallen behind in the growth in labour productivity, from which growth in living standards is ultimately derived."
437. Table 10 shows that the FWC failed to maintain the *relative* value of wages in respect of the period since January 2009. At the time of its decision in 2014 the published AWOTE figures showed a 24.1% increase over the latest five year period, November 2008 to November 2013. The 2014 decision left minimum wage rates well behind the increase in those average earnings.

The legacy left to the FWC

438. The FWC was established to provide a fairer wage setting system. In order to provide a fair safety net of minimum wages the FWC has to address past shortcomings. It needed to deal with and repair the *Work Choices* legacy, in particular the wage freeze decision of 2009. Our review in Chapter 3 demonstrates the shortcomings of both the AIRC and, especially, the AFPC: failing to maintain real wages, failing to distribute productivity increases and failing to maintain relative living standards. Having to deal with these matters, especially the wage freeze, placed unusual burdens on the FWC. Catholic Social Services Australia rightly described the pay freeze decision as a "hospital pass" to the new tribunal; see Chapter 3A. However, as we have seen in Chapter 3, some of the unfairness in decision-making pre-dated *Work Choices*.

What were the "other factors"?

439. The FWC's justification for the failure to fully address rising inequality (and, we add, by extension, poverty) is that there were other factors that it had to take into account. Ultimately, this has to turn on fairness because, apart from the *Work Choices* years, the statutory obligation has been to set a fair safety net.
440. The fairness question is whether the FWC could have done more to address the position of those who had most suffered from those changes: the workers, and their families, who had fallen into poverty. ACCER's complaint is that poverty has not been targeted by the decisions made under the *Fair Work Act 2009*. The across the board increase of \$26.00 per week in 2010 slightly favoured the low paid in relative terms. The uniform percentage increases in each year since then have started to restore fairness to the award classification system. However,

repeated claims by ACCER for an extra increase in the NMW in order to target poverty have been rejected without reasons being provided.

441. Of course, the FWC's decision in 2014 that the reference household for the purpose of setting minimum wages is the single person household makes, according to that benchmark, all of these considerations irrelevant to wage setting and reduces them to socio-economic observations. We have addressed the single person issue in Chapter 2. The following comments are made on the basis that the single person benchmark should be rejected.
442. Given the social consequences of rising inequality, poverty and social exclusion, the other factors in the FWC's decisions must have been economic. This means that the promotion of the social inclusion objective of the *Fair Work Act 2009*, which we discussed in Chapter 1, has been inhibited by economic factors. Insofar as the FWC's comments relate to its predecessors, we also conclude that the factors behind their decisions that caused increasing inequality would have been economic. It is unnecessary to canvass the decisions of past tribunals, but we have already discussed and criticised the AFPC's pay freeze decision; see Chapter 3A.
443. The *Fair Work Act* requires that social considerations have to be assessed along with economic considerations so that a fair balance can be struck. The wage increase resulting from that balancing does not need to be uniform, as it has been in the past four years. Because the setting of the NMW and the setting of award wages are made under different statutory provisions, which we discussed in Chapter 1D, an increase in the NMW may be greater than an increase in the award rates; and should be greater than some or all award increases if the circumstances require it.
444. The FWC's position means that economic factors have prevented it from agreeing to the claims by ACCER for an extra amount for those who are most in need.
445. An essential part of this balancing process is a proper analysis of the social and economic facts; and the exposure of those matters through the reasons for decision. Section 577(c) of the *Fair Work Act* requires the FWC to "perform its functions and exercise its powers in a manner that ... is open and transparent". A decision will not be open and transparent the reasons for decision do not disclose the factors that have caused the FWC to make a decision that will increase inequality and poverty. The impact on poverty is particularly important given the statutory requirement to take into account the needs of the low paid and the general object of promoting social inclusion.
446. ACCER has previously 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.

447. If these principles were followed the "other factors", and their weighting in the mix of relevant factors, would be evident. Those reading the decisions would know why the FWC has failed to target poverty. But that has not occurred.

Poverty has not been targeted

448. ACCER has criticised the decisions because they do not give proper consideration and weight to poverty; for example poverty was not even mentioned in the June 2012 decision. In its March 2014 submission ACCER referred to a Productivity Commission Staff Working Paper, entitled *Deep and Persistent Disadvantage in Australia*, which was published in July 2013. We refer to this paper in more detail in Chapter 7B, but note here that it includes a serious attempt to understand and measure the personal cost of disadvantage for the individual and the consequent costs to society. In 2014 it led us to draw a comparison with the content of past wage decisions. We said the Productivity Commission's 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." (ACCER submission to the Annual Wage Review 2013-14, March 2014.)

449. This is a very substantial criticism, which we do not seek to qualify in the light of the June 2014 decision to adopt the single person benchmark in the face of considerable evidence of poverty in family households where there is a full time worker.
450. We do not find sufficient consideration of poverty in the FWC's decisions since 2010. We do not find poverty, including its impact on children, in the FWC's articulation of the relevant factors. Absent that consideration, it cannot be said that the FWC has, in an open and transparent way, balanced social and economic factors relevant to the targeting of poverty and disadvantage.
451. Nor do we find economic reasons why there should not be some modest targeting of poverty. We accept that there can be circumstances, based on unusual economic developments, when a case might be put in favour of a course that would increase inequality and poverty, but if properly argued and considered, the matter would be transparent in the reasons of the tribunal, with an explicit justification for any deleterious effect on the workers concerned. In the proper exercise of its jurisdiction, the FWC should make findings about the level of need even if it concludes that it is unable to award a wage that meets those needs; and having so decided it should state the reasons, including "other factors" for its decision.

Inequality, poverty and social exclusion have economic costs

452. We should be careful to avoid a false dichotomy between social and economic considerations. While it is convenient to talk about social and economic considerations, it has to be kept in mind that inequality, poverty and social exclusion have economic costs. Not only is a decent wage the way out of poverty for the worker and his or her family, it is of broader economic benefit.
453. It is now widely accepted that inequality does impact on economic well-being and economic growth, even if all of the factors and their relative weight are uncertain. In a speech on 25 February 2014 at Stanford University, the Managing Director of the International Monetary Fund, Christine Lagarde, said:
- “...the International Labor Organization tells us that labor’s share of income has fallen over the past two decades in 26 out of 30 advanced economies—even though labor productivity has risen.
What is causing such a convulsion in the distribution of income? There is no single factor here, although it seems clear that technology is one of the major factors—it can create huge rewards for the extraordinary visionaries at the top, and huge anxieties for the ordinary workers at the bottom.
.... if not managed carefully, rising inequality and economic exclusion can have pernicious effects. It can undermine economic, social—and perhaps even political—stability. It can tear the very fabric that holds society together.
We now have firm evidence—based partly on IMF research—that a severely skewed income distribution harms the pace and sustainability of growth over the longer term.
We also know from our work at the IMF that careful design of tax and spending policies can help reduce inequality. Think about improving access to health and education, putting in place effective, targeted social programs, and making taxation more progressive.
Policies aimed at countering inequality are hard to design. They throw up winners and losers. The potential for conflict and discord requires courage and determination. And yet, giving the huge stakes, the work must begin.
In the years ahead, it will no longer be enough to look simply at economic growth. We will need to ask if this growth is inclusive—whether the small boats rise with the big boats instead of being capsized by them.”
(<http://www.imf.org/external/np/speeches/2014/022514.htm>)
454. The Productivity Commission Staff Working Party, referred to earlier and again in Chapter 7B, elaborates on these kinds of matters in the Australian context. However, it must be pointed out that this report fails to deal with in-work poverty and disadvantage, perhaps because the emerging poverty and disadvantage in the workforce, which is well-known within limited circles, has not been given due recognition in public discussion and debate. The economic consequences of in-work poverty and disadvantage could be usefully explored in the Productivity Commission’s current inquiry into the Workplace Relations Framework.

6

TAX CUTS AND FAMILY PAYMENTS HAVE NOT MAINTAINED LIVING STANDARDS

	Paragraph
A. Tax cuts do not justify real wage cuts	455
B. Family payments have not compensated for wage cuts	476
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wages, families and poverty**

CHAPTER 6

TAX CUTS AND FAMILY PAYMENTS HAVE NOT MAINTAINED LIVING STANDARDS

A. TAX CUTS DO NOT JUSTIFY REAL WAGE CUTS

455. 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 lower paid safety net-dependent workers, arguing that the combined effect of wage increases and tax cuts have increased disposable incomes by more than the increases in the Consumer Price Index (CPI). In effect, income tax cuts given to low paid workers have been used to justify the reduction in their real wages.
456. 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
2001-2015
(\$ 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
2015 Gross	640.90	696.40	746.20	754.80	811.00	863.90	914.10	968.20	1476.30
2015 Net	581.11	624.96	658.72	664.24	700.21	734.06	766.18	800.81	1128.97
\$ increase in Gross	240.50	246.40	254.00	254.80	261.00	263.90	264.10	268.20	677.50
% increase in Gross	60.1%	54.8%	51.6%	51.0%	47.5%	44.0%	40.6%	38.3%	84.8%
\$ increase in Net	234.73	246.59	252.19	251.85	254.08	253.68	251.55	251.93	512.42
% increase in Net	67.8%	65.2%	62.0%	61.1%	57.0%	52.8%	48.9%	45.9%	83.1%
\$ loss in Gross relative to Gross AWOTE	99.04	135.20	163.39	169.20	205.40	244.90	287.10	325.40	-
\$ loss in Net relative to Net AWOTE	53.1	67.84	85.63	90.85	116.65	145.52	176.10	204.19	-

The figures are at 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 2014/15 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.

457. We argue in this chapter that although changes in taxation rates since 2001 have had a major impact on disposable incomes, they cannot justify real wage cuts, or discounting wage increases. It will be readily evident that the net position of lower income earners has improved

more than the higher-paid safety net workers in Table 15. However, that picture needs to be considered more closely, particularly in relation to the AWOTE worker, who represents "middle Australia" in wage-earning terms.

458. In ACCER's submissions to the Annual Wage Review 2013-14 similar calculations were made in the same form as Table 15; see *Working Australia, 2014: wages, families and poverty*, Table 15. A comparison between those figures and Table 15, above, shows the impact of wage and tax increases over the past year. Over that time the C10 wage rate, for example, has increased by \$21.70 per week, but the net wage has only increased by \$10.25 per week. The main reason for the relatively high tax deduction was the increase in the Medicare Levy from 1.5% to 2.0%. The C10 worker's net wage as a percentage of the gross wage has fallen from 89.5% to 88.3% over this time. It will be readily evident that the net position of lower income earners has improved more than the higher-paid safety net workers in Table 15. However, that picture needs to be considered more closely, particularly in relation to the AWOTE worker, who represents "middle Australia" in wage-earning terms.
459. Over the 14 years to January 2015 AWOTE increased by 84.8%, up from 80.0% a year earlier. The AWOTE worker's net wage has risen by 83.1%, slightly less than the gross increase. He or she is now paying a higher proportion of his or her income in tax compared to 2001, with the net falling from 77.2% to 76.5% of the gross. If the AWOTE worker paid the same percentage of income tax in January 2015 as he or she did in January 2001, the net income in January 2015 would have been \$1,139.48, not \$1,128.97 per week. The income tax changes over the past 14 years have left this worker in the middle of middle Australia with a tax increase of \$10.51 per week. As we will see later in this chapter, the position of the AWOTE-dependent family with children is quite different.
460. 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

461. 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 past 14 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.
462. Table 16 shows what has happened to after-tax incomes for various wage groups receiving a wage increase of 84.8% since 2001, i.e. 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 184.8% and finding the difference between that sum and the after-tax sum in January 2015. Clearly, the position of those whose wages have moved by more or less than 84.8% will have different outcomes.

Table 16
Net income of groups receiving wage increases of 84.8%
January 2001 – January 2015
(\$ 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
2015 Gross	739.20	831.60	924.00	1108.80	1478.40	2217.60	2956.80	3696.00	4435.20
2015 Net	654.24	713.37	772.52	890.79	1130.34	1583.72	2034.63	2460.91	2837.89
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 2015	88.5%	85.8%	83.6%	80.3%	76.5%	71.4%	68.8%	66.6%	64.0%
% increase in Net	89.0%	88.5%	87.3%	85.4%	83.1%	84.2%	91.2%	93.5%	92.0%
2015 net at 2001 rate	639.63	699.23	762.10	887.74	1140.92	1589.02	1966.16	2350.40	2731.09
\$ value of tax cuts	+14.61	+14.14	+10.42	+3.05	-10.58	-5.30	+68.47	+110.51	+108.80

463. 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 tax increases for middle income groups stand out from the rest. This was foreshadowed in our comments on the AWOTE figures in Table 15. The \$800.00 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. Across the range of \$1,100.00 to \$1,500.00 per week there have been very small tax cuts and, in most cases, a tax increase. The tax cuts have not favoured this middle income group.
464. On the other hand, higher income earners have done well from the tax changes, even with the temporary Budget Repair Levy introduced in the May 2014 Budget. The Budget Repair Levy, which applies to higher income earners, is only payable by taxpayers in the two right hand columns of Table 16. The weekly amounts are very modest having regard to the benefits those taxpayers have received from the tax cuts. The taxpayer in the \$2,000.00 column, now on \$3,696 per week, pays a levy of \$4.93 per week and the taxpayer in the \$2,400 column, now on \$4,435.20 per week pays \$19.71 per week. These are small amounts compared to the tax cuts provided. Taxpayers on these and higher incomes are doing much better than middle income earners; for example the worker on AWOTE has had a tax increase of \$10.51 per week (see the commentary on Table 15), while the taxpayer on a fraction more than three times AWOTE (the taxpayer in the right hand column of Table 16) has had a tax cut of \$108.80 per week.

465. 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 2015. As the reduction in the top marginal rates over this period was from 47% to 45%, the further tax saving on the income over \$4,435.20 per week, or \$238,428 per year, is one-fiftieth of the excess. Leaving aside the Budget Repair Levy, which is a temporary levy on that part of a person's taxable income which exceeds \$180,000 per year, the person with an annual income of \$500,000 per year has had tax cuts equal to \$228.77 per week. The Budget Repair Levy on this income is \$122.65 per week, thereby temporarily reducing the tax benefit to \$122.65 per week.
466. Another way of presenting the essence of these changes is in Table 17, which compares the percentage of tax paid in 2001 and 2015 by four income groups. It includes the Budget Repair Levy for the highest-paid group. 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 84.8%
January 2001 – January 2015

\$ per week	2001	2015
\$400/\$739.20	13.5%	11.5%
\$800/\$1478.40	22.8%	23.5%
\$1600/\$2956.80	33.5%	31.2%
\$2400/\$4435.20	38.4%	36.0%

467. Tables 16 and 17 contain some useful information regarding the ongoing debates about income-related entitlements, including, for example, the equity of the Budget Repair Levy and broader fairness questions about the differential impact of revenue and expenditure decisions in the Budget.
468. 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.

The tax cuts of 2008 to 2011

469. 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.

470. The tax cuts of 2008 to 2011 were 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.
471. 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 CPI increase from wage claims both in the Annual Wage Review and in enterprise bargaining. The 2013 Budget for 2013-14 and the 2014 Budget for 2014-15 made no changes to the income taxation rates and thresholds which were introduced for the 2012-13 year. However, the Medicare Levy was increased from 1.5% to 2.0% in the 2014 Budget. There has been no adjustment in the past two Budgets to compensate for bracket creep, with the effect that taxpayers are being taxed on a higher proportion of their incomes.

Tax cuts and wage increases

472. 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.)

473. 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 in Chapter 1B, 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.
474. 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 84.8%, apparently unconstrained by the tax cuts.
475. 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

476. 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.
477. 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.
478. 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.

Table 18
Family payments 2001-2015

	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. Per child	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
07.14	88.41	115.01	28.35	726.35	6.16	75.18	52.50	354.05

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

479. 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.
480. Over the fourteen year period the various weekly rates have increased by more than the CPI increases as a result of other indexation arrangements and the introduction of annual supplements. However, annual supplements have been frozen at the July 2010 level and

indexation has been linked to CPI movements, rather than through a mechanism that reflects wage increases, as a result of changes introduced in the May 2009 Budget. In the 2013 Budget a number of initiatives were taken to limit changes to eligibility thresholds. The 2014 Budget proposed a freeze on Family Tax Benefits for two years. However, this measure is yet to pass the Senate, as is a proposal to make substantial changes to FTB B regarding families with children where the youngest is five years or more.

481. 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.
482. 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 2015 is shown by a comparison between the “\$700.00” column and the AWOTE column.
483. 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.
484. The 2015 figures include the Schoolkids Bonus. This payment 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. This equates to \$23.57 per week (at 52.18 weeks per year). The Schoolkids Bonus will be discontinued at the end of 2016.
485. 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.
486. The middle income AWOTE family has had a gross wage increase of 84.8% (Table 15) and a disposable income increase of 97.7% (Table 19), well in excess of similar families who depend on safety net wages. The comparable figures for the NMW-dependent family are 60.1% and 76.0%, 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 they

received outcomes in wages, taxes and transfers as the AWOTE family. It demonstrates a significant widening of disposable incomes between the families of lower paid/safety net-dependent workers and middle income workers. 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.

Table 19
Safety net-dependent and AWOTE families compared
 (Couple and sole parent with two children families)
January 2001- January 2015
 (\$ per week, unless otherwise indicated)

	Safety Net Wages								AWOTE
	(NMW)			(C10)					
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
2015 Gross wage	640.90	696.40	746.20	754.80	811.00	863.90	914.10	968.20	1476.30
2015 Net Wage	593.93	638.89	673.64	679.34	713.29	742.91	771.02	805.65	1128.97
2015 Family Transfers	292.80	292.80	292.80	292.80	292.80	292.80	292.80	291.96	232.94
2015 Disposable Income	886.73	931.69	966.44	972.14	1006.09	1035.71	1063.82	1097.56	1361.91
% Net Wage Increase	68.5%	65.9%	62.7%	61.8%	59.9%	54.7%	49.8%	46.8%	83.1%
% Transfers Increase	93.4%	93.4%	93.4%	93.4%	101.8%	158.6%	242.6%	303.5%	222.8%
\$ Disposable Income Increase	382.63	394.85	401.20	400.53	413.98	441.65	463.21	475.78	673.19
% Disposable Income Increase	76.0%	73.7%	71.1%	70.2%	70.0%	74.4%	77.2%	76.6%	97.7%
\$ Loss per week in Disposable Income of Safety Net family relative to AWOTE family	108.43	128.20	149.59	156.49	163.07	137.30	122.14	130.26	-

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. Family Medicare Levy thresholds are those set by the May 2014 Budget for the 2013-14 year. Any change in them will be made in the May 2015 Budget. At the NMW, for example, the full Medicare Levy exemption currently adds \$12.82 per week to the net wage. Because all of the safety net families are fully or partly 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, but is eligible for the Single Income Family Supplement (payable to couple and sole parent families) at \$4.34 per week. Family transfers in 2015 also include the weekly value of the annual supplements for FTB A and FTB B, the Energy Supplements and the Schoolkids Bonus (on the basis that one child is in primary school and the other is in secondary school).

Rental assistance

487. Rental assistance is available to recipients of FTB A in private rental accommodation, 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.

Conclusions

488. Much of the content of this section 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 2015
(\$ per week unless indicated otherwise)

Household	Disposable Income 2001	Disposable Income 2015	Increase in gross wage	Increase in Disposable Income
NMW Single	346.38	581.11	60.1%	67.8%
NMW 2+2	503.37	886.00	60.1%	76.0%
NMW 1+2	503.37	886.00	60.1%	76.0%
C12 Single	370.50	615.71	55.8%	66.2%
C12 2+2	528.05	907.78	55.8%	71.9%
C12 1+2	528.05	907.78	55.8%	71.9%
C10 Single	406.53	658.73	51.6%	62.0%
C10 2+2	564.50	965.70	51.6%	71.1%
C10 1+2	564.50	965.70	51.6%	71.1%
AWOTE Single	616.55	1128.97	84.8%	83.1%
AWOTE 2+2	688.72	1361.91	84.8%	97.7%
AWOTE 1+2	688.72	1361.91	84.8%	97.7%

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.

489. This evidence has demonstrated that, when changes in wages, taxes and family payments over the past 14 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 71.1% in its disposable income, compared to the AWOTE family's 97.7%. This amounts to a relative loss of \$149.59 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

2015. A major reason for the improvement of the relative position of the AWOTE family has been the 222.8% increase in family payments received by it.

490. 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

491. 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. 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.
492. 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. There are about 3.7 million pensioners in Australia, with the majority being on the aged pension.
493. We referred in Chapter 1E to submissions made in 2014 regarding the relevance of pensions and the living standards of pensioners in regard to the setting of safety net wage rates. The FWC's position is that pensions and the living standards of pensioners are not excluded from its consideration of relevant matters (*Annual Wage Review 2013-14*, decision paragraph [84]), but reliance on those matters was not apparent in the FWC's decision, presumably because the adoption of the single person benchmark made irrelevant the matters that ACCER had relied in regard to pensions and the living standards of pensioners.

The pension safety net reforms of 2009

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

495. 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."
496. 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."
497. 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.
498. 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.
499. 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.
500. 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 2015. The pension rates are the base pension rate and the Total Maximum Periodic Pension-related payments (TMPPPP).
501. 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 2014, the period covered by the most recently released figures prior to the relevant pension increases, MTAWE increased from \$757.60 to \$1,362.60, or 79.9%, considerably more than the NMW increase over a similar period.

502. 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, MTAW, the NMW and the C10 wage.

Table 21
Comparison of pensions and safety net wages
January 2001 – January 2015
(\$ 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
2015	388.35	427.15	585.50	644.00	640.90	581.11	746.20	658.73	106.6
% increase	104.9%	112.2%	85.1%	93.3%	60.1%	67.8%	51.6%	62.0%	45.8%

The pension payments for 2001 are 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*.

503. Table 22 covers the period in which the first five 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 five years pensions have increased by 9.2 percentage points more than the NMW; and by more than that in comparison with other safety net rates. In terms of disposable incomes, pensions have increased by 10.9 percentage points more than the NMW and even more compared to the C10 and other higher award rates. Over the five years MTAW increased by 22.7% while the NMW increased by 17.9%.

504. 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.

505. 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. Declaring the NMW as a wage based on the single worker household does not avoid these major public policy issues.

Table 22
Changes in pensions and safety net wages
January 2010 – January 2015

		January 2010 \$ per week	January 2015 \$ per week	\$ increase per week	Percentage increase
Single	Base	307.90	388.35	80.45	26.1%
	Supplement	28.05	38.80	10.75	38.3%
	Total	335.95	427.15	91.20	27.1%
Couple	Base	464.20	585.50	121.30	26.1%
	Supplement	42.30	58.00	15.70	37.1%
	Total	506.50	644.00	137.50	27.1%
CPI		92.9		105.9	14.0%
MTAWE		1,110.30	1362.60	252.30	22.7%
AWOTE		1,158.50	1476.30	317.80	27.4%
NMW Gross		543.78	640.90	97.12	17.9%
NMW Net		500.04	581.11	81.07	16.2%
C10 Gross		637.48	746.20	108.72	17.1%
C10 Net		575.78	658.73	82.95	14.4%

Pensions are adjusted each March and September. The figures for the CPI index are those at June 2009 and June 2014, the most recently reported increases prior to the pension changes of September in each of those years. The CPI increase from December 2009 (94.3) to December 2014 (106.6) was 13.0 %. The Supplements in 2015 include the Energy Supplements of \$7.05 per week for the single pension and \$10.60 per week for the couple pension. The AWOTE and MTAWE figures are taken from *Average Weekly Earnings, Australia, November 2014*, cat. no. 6302.0 and earlier publications in this series. MTAWE figures are for May 2009 and May 2014, the most recently published figures prior to the setting, in September of each year, of the rates recorded for January 2010 and January 2015. The AWOTE figures are at November 2009 and November 2014; see Table 10.

506. We return in Chapter 8D 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 which have not been predicated on this or any similar criteria. These comparisons establish that low paid workers and their families are at a lower standard of living than those on pensions and provide further support for ACCER's proposed increase in the NMW.

7

POVERTY AND HOW WE MEASURE IT

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**Working Australia, 2015:
wages, families and poverty**

CHAPTER 7

POVERTY AND HOW WE MEASURE IT

A. THE MEANING OF POVERTY

507. A major purpose of this book is to demonstrate that low income safety net-dependent workers have fallen behind rising national living standards to such an extent the National Minimum Wage (NMW) and other low paid minimum wage rates have left increasing numbers of families in poverty. The NMW is not a living wage because many families are now living in poverty. This is not an observation about unusual cases, but an observation about how the NMW impacts on the ordinary and expected circumstances in which workers with family responsibilities live. A living wage is not a wage that merely keeps the worker and his or her family out of poverty in the ordinary and expected cases, but provides a basic acceptable standard of living that enables them to live in dignity. So the absence of poverty in these cases is a necessary, but not sufficient, requirement for the application of the living wage principle.
508. The NMW can be properly described as a poverty wage and not a living wage. In order to demonstrate 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.
509. 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 the promotion of social inclusion.
510. 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.
511. 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)
512. 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.”

513. 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.”

514. 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. MEASURES OF POVERTY

515. 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

516. 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).

517. 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).
518. 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)
519. 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)
520. The Productivity Commission's Staff Working Party paper raises a number of issues and points that should also be the concern of the Fair Work Commission (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

521. 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 of living standards 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.
522. 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.
523. 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 and Poverty in the United States: 2013*, published by the Bureau in September 2014. There are 48 poverty thresholds covering a wide range of households; see Appendix B. 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 migrate to the U.S. must show that the sponsor can support the relative at 125% above the mandated poverty line.
524. 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 Supplemental Nutrition Assistance Program (also called SNAP or Food Stamps) and legislated minimum wages centres on poverty thresholds and the number living in poverty. There is nothing like this in Australia.
525. 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.
526. 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 out-dated. The HPLs, which were rejected by the FWC shortly after being used for four years by the Australian Fair Pay Commission (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.

C. HENDERSON POVERTY LINES

527. 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.

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

529. 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)

530. 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."

531. 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. 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.

532. 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:

“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)

533. 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 (which we quoted earlier) is a sound one; and the "inconsistency" is not a sound reason for its rejection.
534. 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.
535. The shortcoming of a price-adjusted basket of goods is that it becomes increasingly out-dated 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 and preferable.
536. The Australian Catholic Council for Employment Relations (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)

537. 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. In the latest calculations by the Melbourne Institute, housing costs for a family of a couple and two children are \$215.71 per week. This is a very unrealistic figure.
538. ACCER argued that, if the HPLs are modified to take account of contemporary housing costs and supplemented by data on child care costs for sole parents, they could be a useful guide in wage setting, but, in the absence of those modifications, it had limited utility in the setting of wages.

Using the HPLs to identify changes over time

539. 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 2015. This is summarised in Table 23.
540. Table 23 demonstrates that very substantial changes have taken place. Even with the limitations in the utility of the HPLs to set contemporary wage 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 2015 it was 7.2% 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. The fact that this sort of statistic is not prominent in public debate indicates how little is known about the emergence of the working poor in contemporary Australia. The failure of annual wage reviews to expose these kinds of changes has contributed to this situation.

Table 23
Changes in incomes relative to Henderson Poverty Lines
January 2001- January 2015
(\$ 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	508.38	954.89
2014 Disposable income	581.11	886.00
2014 DI:HPL	+14.3%	-7.2%

Each of the HPLs for 2001 is calculated by the formula provided in *Poverty Lines Australia September Quarter 2014*. The 2015 figures are calculated on the figures at September 2014, 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 \$50.43 to \$74.97 per week over the period January 2001 to January 2015 (see Table 28).

541. 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 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 these *Work Choices* years.

D. BUDGET STANDARDS

542. 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 Commonwealth 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.
543. 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.
544. 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 Australian Council of Trade Unions (ACTU) for evidence before the Australian Industrial Relations Commission (AIRC) in the *Safety Net Review Case 2004*.
545. 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. Over the period from the March quarter 1997 to the September quarter 2014 (the latest available) HDI increased by 126.1% compared to a CPI increase of 58.9% since that quarter; see Table 2 of *Poverty Lines Australia, September Quarter 2014* and the notes to Table 2. These comparisons reflect the substantial increase in real incomes and living standards over this period. The HDI increase contrasts with the increase in the incomes of the low paid and their families, as Table 11 has demonstrated.

546. 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

547. 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 34.8% from the September Quarter 2003 to the December Quarter 2014.

548. ACCER has presented an updated table like Table 25 in all five past wage reviews under the *Fair Work* legislation. This year will be the sixth 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.

549. This year the Low Cost budget is \$954.59 for the family of four, compared to the disposable income of \$954.99 (Table 28) for a NMW-dependent family of similar size, although the children are not of the same age in the two estimates. Because the basket of goods and services was designed for social security recipients, the working family should have a disposable income substantially in excess of \$954.59 per week. Furthermore, given that community standards have increased, that figure is conservative and a further margin should be factored in. This is illustrated by the figures given above by way of a comparison between HDI and CPI adjustments since March 1997.

550. 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: 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
	<i>Modest but Adequate</i>				
Housing	222.74	222.74	222.74	270.18	317.75
Energy	12.40	12.40	16.17	20.76	24.66
Food	80.59	96.89	176.39	226.52	310.60
Clothing & footwear	38.14	28.97	57.41	79.23	94.87
Household goods & services	47.97	47.97	4.72	77.49	65.63
Health	7.01	10.37	17.12	21.83	25.47
Transport	120.47	120.07	135.16	139.47	143.78
Leisure	44.61	51.61	87.06	92.45	137.45
Personal care	35.71	15.76	44.74	47.97	49.59
Total	609.63	606.79	761.50	975.89	1169.79
	<i>Low Cost</i>				
Housing	193.78	196.47	196.47	247.68	298.89
Energy	11.45	11.59	15.37	18.46	21.43
Food	76.00	77.21	139.20	177.87	245.25
Clothing & footwear	22.51	22.91	51.61	65.49	82.60
Household goods & services	37.60	38.27	47.84	61.31	93.79
Health	6.47	6.74	11.59	14.96	17.92
Transport	90.01	91.63	103.76	111.58	111.58
Leisure	31.13	31.67	39.62	47.84	59.29
Personal care	8.62	8.76	14.64	20.48	24.26
Total	477.57	485.26	620.12	765.68	954.99

551. 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.)

552. 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.

553. 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. It could not be reasonably argued that the current CPI-adjusted amount of \$298.89 per week is too high in the current housing market. This figure represents 31.3% of household expenditure.

554. 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.)

555. 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.

556. In the following section of this chapter we refer to a report of 11 December 2011 made by members of the FWC entitled *Measuring the Needs of the Low Paid*. In regard to the HPLs and the SPRC material, the report claimed that it lacked “contemporary relevance”, a position adopted by the FWC in its June 2012 decision:

“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])

557. 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]).

558. In the 2014 decision the matter was covered in the following passage:

“[390] ACOSS and ACCER also presented material pertaining to “budget standards”. The budget standards approach estimates what is needed, in terms of material goods and services, by a particular type of family to achieve a particular standard of living in a specified location. In the current Review, ACCER put extensive submissions drawing upon its materials based on the budget standards research of the Social Policy Research Centre (SPRC) in the 1990s. The budget standards material submitted by ACOSS and ACCER is based on a 1997 study by the SPRC, commissioned by the former Department

of Social Security, to assist in the assessment of the adequacy of social security payments. We accept that contemporary budget standards measures can provide an effective means of measuring the needs of the low paid, which can be considered, together with other relevant data. However, the budget standards measures derived from the 1997 SPRC study do not provide useful contemporary information about the needs of the low paid." (*Annual Wage Review 2013-14, decision*, footnotes omitted)

559. Most of this paragraph in the 2014 decision is descriptive of the research. The last sentence states a conclusion, does not reflect the basis upon which the material was advanced and does not disclose the reasoning leading to the exclusion of the evidence for all purposes. It does not address the kinds of matters that we set out in this section, most of which were put to the FWC in 2014.
560. 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. Professor Saunders' evidence in 2004 was that the research was undertaken between 1995 and 1998 and that the prices were established at February 1997.
561. It is inconsistent, in the context of a dispute about whether the NMW itself has contemporary relevance, 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. ACCER maintains its position that the updated Budget Standards research *has relevance* in determining whether the current value of the NMW has contemporary relevance and that there is no good reason for its *total* rejection.
562. 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 *some* 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

563. A criticism sometimes heard 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."
564. 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.
565. 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)

566. 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.
567. 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 and contested when this expensive research comes to fruition.

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

568. 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.
569. This feature was evident in the 1997 decision of the AIRC in the *Safety Net Review April 1997* to establish the Federal Minimum Wage (FMW). The FMW became the NMW in 2010. 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 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"

570. At no time since then has the FMW or the 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.

571. In the *Safety Net Review Case 2003*, Frank Costigan QC, who appeared for the 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."

572. 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. The questions struck home, with the AIRC responding, in the context of the rejection of the call for an inquiry into the needs of the low paid:

[222] Our rejection of the proposals for an inquiry should not be taken as a rejection of the utility of empirically determined "benchmarks" such as the poverty line. Indeed, it seems to us that the use of such measures is relevant to an assessment of the needs of the low paid. In this context we also note that in their oral submissions ACCER argued that the Commission must ensure the minimum rates it sets (and in particular the federal minimum wage) do not fall below the poverty line. It was put that this task involved determining questions such as "*what are needs, who are the low paid, what is the poverty line, what is living in poverty and how does the federal minimum wage compare to the poverty line?*" We acknowledge the relevance of the questions posed by ACCER and would be assisted by submissions and material directed to them. As we have already noted empirical studies dealing with these matters would be of more assistance to the Commission in addressing the specific matters mentioned in the Act than the type of illustrative evidence adduced by the ACTU in these proceedings. There is no impediment to ACOSS and ACCER, or any other party, bringing forward such material in any future safety net review. It is not, however, desirable for the Commission to establish a separate inquiry for that purpose particularly in view of the absence of any support for the proposal from any other party or intervener." (*Safety Net Review Case - Wages, May 2003*, Print PR002003, emphasis in original.)

573. 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, despite

repeated attempts by ACCER and ACOSS to present evidence on relevant aspects of poverty.

The continuing failure to assess the needs of the low paid

574. In 2003 ACCER and ACOSS 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.
575. 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.
576. Starting with its inaugural decision in 2006 the AFPC used the HPLs as a guide to living costs and the sufficiency of the FMW, taking into account 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.
577. 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.
578. 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 that 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])

579. The consultations were held and the report, *Measuring the Needs of the Low Paid*, was delivered on 14 December 2011 (Print PR517718). ACCER said in its March 2012 submission that 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".

580. The FWC did not respond to this request and nothing further came of the earlier process. Furthermore, poverty was not even mentioned in the FWC's decision of June 2012, even though it had substantial submissions before it on the matters.

581. This led ACCER to renew its claim for an inquiry in 2013. 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.

582. ACCER pressed the issue in the 2013-14 annual wage review, with a more focused proposal being based on data held by the Australian Bureau of Statistics (ABS). In its research proposals of August 2013, ACCER referred to an entry on 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)"

583. 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.

584. ACCER's 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)

585. The FWC referred the matter to for discussion at Minimum Wages Research Group, with the capacity for ACCER to raise it again in its 2014 submissions, which it did at paragraph 2 of its March 2013 submission and in Chapter 7B and Chapter 8A to C of the attachment thereto. The

submissions pointed out that 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, matters that bear upon the FWC's legal obligation to take into account "relative living standards and the needs of the low paid".

586. The FWC made no reference to the proposal in the June 2014 decision. Obviously, the decision to adopt the single person benchmark made the proposed inquiry into the needs and living standards of low paid workers *and their families* unnecessary.

Conclusion

587. In the light of the FWC's decision in 2014 to adopt the single person benchmark we were entitled to ask whether the inaction on these matters from 2012 was because it was considering adopting the single person benchmark and concluded that an inquiry into the needs of the low paid, which would necessarily involve the needs of their families, would be rendered redundant by such a decision. Similarly, we are entitled to ask whether the refusal of the FWC over these years to increase the NMW by a further amount in order to address poverty, and to do so without giving reasons, was being rejected wholly or partly because it was considering the adoption of the single person benchmark.

588. A wages system designed to provide a fair safety net, partly based on relative living standards and the needs of the low paid, has failed to produce, or even to seek, a substantial body of data on those matters. Ten years after Mr Costigan's submissions ACCER expressed its frustrations in the following passage:

"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.)

589. This was followed by a response in the 2013 decision (which we quoted earlier) that picked up Mr Costigan's point about the need not to live in poverty:

"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)

590. Despite this progress, there was no movement by the FWC on the proposals for an inquiry into the needs of the low paid.

591. One of the legal principles referred to in Chapter 5E for the exercise of this kind of jurisdiction is that tribunals have to be engaged in an "active intellectual process". The concept a "basic acceptable standard of living", which is also an expression of the living wage principle, forms the basis of the setting of pension rates in Australia. Yet we find no serious attempt by the

FWC to explore what it might mean for workers and their families who are relying on the FWC to lift them out of poverty and to provide them with a decent standard of living.

592. ACCER suggested in 2013, for example, that the FWC put the following questions 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?

593. These kinds of questions are basic questions to be put in the practical pursuit of important statutory functions: yet none of these kinds of questions have been posed. They are the kind of "cut to the chase" questions courts and tribunals often employ to get to the heart of contentious issues. Similarly, a few carefully chosen questions to the Commonwealth about the data that it holds could elicit helpful material. As we noted earlier, the ABS has this kind of data. Of course, in carrying out the multi-factored statutory function the answers to these questions cannot be determinative of the final decision, but without them there cannot be a fair and proper balancing of all of the factors that need to be taken into account.
594. The failure to pursue these kinds questions over a sustained period has caused a systemic failure of the current wage setting system.

8

LOW INCOME WORKING FAMILIES HAVE FALLEN BELOW POVERTY LINES

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CHAPTER 8

LOW INCOME WORKING FAMILIES HAVE FALLEN BELOW POVERTY LINES

A. THE USE AND UTILITY OF RELATIVE POVERTY LINES

595. 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 usually expressed as a percentage of the national median *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*.
596. 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.
597. 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.
598. 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 fixed benchmark for the setting of wages, presumably because a range of factors need to be taken into account in the setting of minimum wages. Given that working families should have a margin over poverty, the 60% of median relative poverty line is the most appropriate measure for understanding needs and the setting of wage levels in the absence of research suggesting another percentage or range of percentages.
599. 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

600. 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 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.

601. 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)

602. 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)

603. 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. MEDIAN EQUIVALISED DISPOSABLE HOUSEHOLD INCOME

604. 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. Like poverty lines, MEDHI can also be plotted on a graph.
605. In Australia, data on disposable incomes is collected by the ABS in accordance with internationally recognised standards. The most recent ABS publication on this subject is *Household Income and Distribution, Australia 2011-12*, cat. no. 6523.0, published in August 2013, where median and mean disposable incomes were calculated for 2011-12.
606. 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 show 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 2011-12*, cat. no. 6523.0, page 25.)
607. Because the ABS usually collects the relevant data for this purpose every two years there is a necessary delay between collection and publication. Because the data will be out-dated by the time of its publication it is necessary to adopt an 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*, i.e. the quarterly changes in per capita household disposable income (HDI). This method has also been adopted by the FWC.
608. In Table 26 we have calculated changes in MEDHI over the period January 2001 to January 2015. 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.
609. The median equivalised figures for 2013 to 2015 are based on the ABS figures adjusted by changes in HDI per head published in *Poverty Lines Australia, September 2014*. For each of the years between the ABS surveys, i.e. 2002, 2005, 2007, 2009 and 2011, MEDHI 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 2015
(\$ per week)

	Median equivalised disposable household income (ABS)	Household Disposable Income per head (Melbourne)	Median equivalised disposable income
January 2001	413.63	415.65	413.18
January 2002	-	457.28	450.66
January 2003	448.50	454.42	448.50
January 2004	500.17	480.83	500.17
January 2005	-	517.00	543.31
January 2006	568.86	536.83	568.86
January 2007	-	576.70	621.21
January 2008	687.87	628.11	687.87
January 2009	-	691.26	714.55
January 2010	714.79	687.81	714.79
January 2011	-	729.64	755.97
January 2012	790.00	763.60	790.00
January 2013	-	775.57	802.38
January 2014	-	797.56	825.13
January 2015	-	808.26	836.20

Household Disposable Income (HDI) per head figures are taken from *Poverty Lines Australia, September 2014*, published by the Melbourne Institute, and, save for January 2015, the figures are those published for the immediately preceding December quarter. The September quarter 2014 figure has been used for January 2015, 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 2014, is due for release by April 2015.

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*, cat. 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

610. In this section we have four tables which present the data for the construction of three relative poverty lines covering three low income families over the period January 2001 to January 2015. The basic data is in Table 27, which 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. In January 2015 the 60% poverty line for a single adult was calculated on a median equivalised disposable household income of \$836.20 per week and was \$501.72 per week. For a family of two adults and two children the 60% poverty line was

\$1053.61 per week, or 2.1 times the poverty line of the single adult. The 60% poverty line for the sole parent and two children was \$802.75 per week, or 1.6 times the single person's.

Table 27
Poverty lines for workers and families
January 2001 – January 2015
(\$ 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	802.38	481.43	1,011.00	770.28
January 2014	825.13	495.08	1,039.66	792.12
January 2015	836.20	501.72	1,053.61	802.75

611. 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. The disposable incomes of single workers are those in the “net” columns. The tables provide the detail of the various kinds of family transfers, with the total disposable income calculated for each year. As explained in Chapter 6B, the transfer payments are the same for couple and sole parent families.

Table 28
Wages, taxes and family payments for NMW-dependent workers and families
January 2001 – January 2015
(\$ per week)

Year	NMW	NMW per	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
2015	640.90	33,442	581.11	12.82	204.51	53.66	27.84	6.79	74.97	961.70

Table 29
Wages, taxes and family payments for C12-dependent workers and families
January 2001 – January 2015
(\$ per week)

Year	C12	C12 per	C12 net	Medicare	FTB A	FTB B	FTB A Supp.	FTB B Supp.	Rental assist.	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
2015	684.70	35,727	615.71	13.69	204.51	53.66	27.84	6.79	74.97	997.17

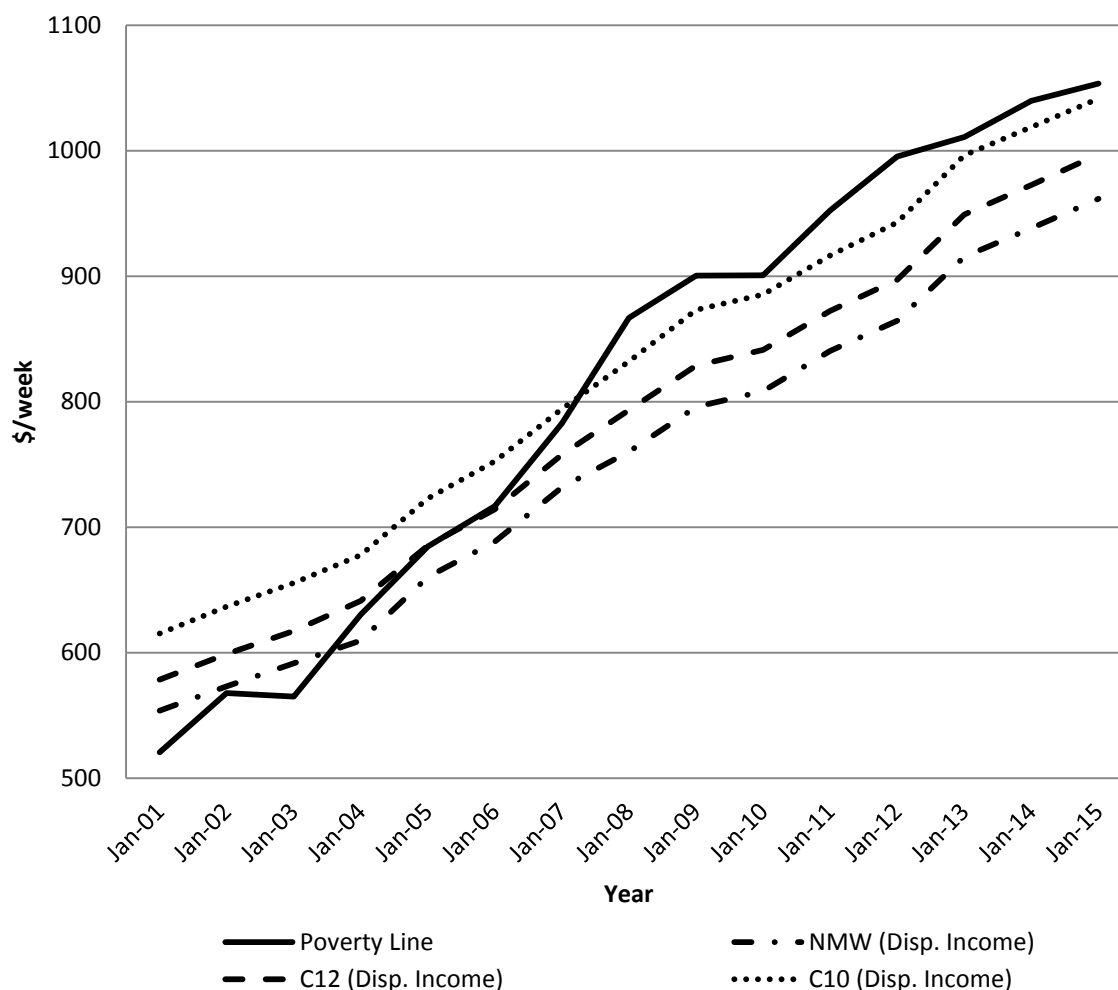
Table 30
Wages, taxes and family payments for C10-dependent workers and families
January 2001 – January 2015
(\$ per week)

Year	C10	C10 per	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
2015	746.20	38,936	658.72	14.92	204.51	53.66	27.84	6.79	74.97	1041.41

The figures in Tables 28 to 30 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. The family exemption is treated as a family transfer.

612. Table 28 shows wage, tax and family payment calculations for NMW-dependent workers and families over the period January 2001 to January 2015. The data for this table and Tables 29 and 30 are mostly from Tables 19 and 15. The breadwinner in each family is employed full time and is paid the safety net rate. The family comprises a couple where one parent stays at home to care for two children or a working sole parent with two children. In each case the Schoolkids Bonus is included in the FTB A figure on the basis that one child is in primary school and the second child is in secondary school.
613. Table 29 shows wage, tax and family payment calculations for C12-dependent workers and families over the period January 2001 to January 2015. 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 \$684.70 per week, 20 cents a week more than the base cleaner's rate.
614. Table 30 covers similar data for a worker paid at the C10, trade-qualified rate. This family is \$12.20 per week below the poverty line. Something very significant has happened when a family supported by a worker in a skilled trade has fallen into poverty.
615. Figure 4 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 2015.

Figure 4
Disposable Incomes of Safety Net-dependent Families Relative to Poverty Line
(Couple and two children)
January 2001 – January 2015



616. Comparing the changes over the years January 2004 to January 2015, we find:

- the NMW-dependent family of four fell further into poverty: from 3.3% below the poverty line to 8.7% below it, with a poverty gap in January 2015 of \$91.91 per week;
- the C12-dependent family of four fell into poverty: from 1.7% above the poverty line to 5.4% below it, with a poverty gap in January 2015 of \$56.44 per week; and
- the C10-dependent family of four fell into poverty: from 7.6% above the poverty line to 1.2% below it, with a poverty gap in January 2015 of \$12.20 per week.

617. 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 2015 had fallen to 22.7% 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.

618. The position of sole parent families has followed a similar downward trend to the couple parent family of four. Because they are in receipt of the same tax and transfer arrangements as the couple parent family, the equivalence scales put sole parent families on a higher standard of living. At January 2015 the NMW-dependent sole parent family with two children was 19.8% above poverty, with a margin over poverty close to the single person's. This kind of figure has been produced each year since the AFPC introduced poverty line comparisons in 2006.
619. ACCER has argued in the AFPC and FWC wage reviews that the information gives a misleading picture of the living standards of sole parents because the equivalence scales take no account of child care costs. The equivalence scales treat the children in a single breadwinner family of four with a stay at home parent in the same way as the children in the sole parent family. ACCER has argued that the very high cost of child care, including before and after school and vacation care, has the capacity to drive the family into poverty, or close to it. Furthermore, the publishing of these figures without proper explanation is likely to engender a misleading view that low paid sole parents are doing well.
620. It should be pointed out that there has been some improvement over the past year in the position of these safety net workers by reference to the poverty lines. The disposable income of the NMW-dependent family, for example, increased by 2.5%, while the poverty line rose 1.3%. This kind of event occurs from time to time because the relative poverty line is relative. Table 27 and Figure 4 show that the relative poverty line was almost flat during 2002 and 2009.

D. COMPARING THE PENSION AND WAGES SAFETY NETS

621. 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.
622. 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, i.e. some will argue that pensions are insufficient, but we are proceeding in this section on the basis that the pensions do provide a basic acceptable standard of living that is appropriate in Australian society.
623. 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 of Table 31 is to put each of the households in a community-wide context.

Table 31
Relative living standards of pension and safety net-dependent families
January 2015

Household	Disposable income \$ per week	Modified OECD Equivalence scale	Equivalised income \$ per week	Disposable income as percentage of MEDHI
NMW-dependent family, second parent not seeking employment, 2 children	961.70	2.1	457.95	54.8%
C12-dependent family, second parent not seeking employment, 2 children	997.17	2.1	474.84	56.8%
C10-dependent family, second parent not seeking employment, 2 children	1041.41	2.1	495.91	59.3%
Sole parent on disability pension 2 children	794.92	1.6	496.83	59.4%
Single person on disability pension	493.03	1	493.03	59.0%
Couple on age pension	707.20	1.5	471.47	56.4%
Single person on age pension	493.03	1	493.03	59.0%

The median equivalised disposable household income (MEDHI) used for January 2015 is \$836.20 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 \$64.02 (single), \$60.21 (couple) and \$74.97 (two children) per week. The pensions and rental assistance 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.

624. Table 31 shows, by reference to the equivalence scales used by the ABS, that the pension safety net for a couple, \$707.20 per week, produces a standard of living that is 1.6 percentage points higher than that of NMW-dependent family of two adults and two children with a disposable income of \$961.70 per week. In equivalised terms, the family is \$28.39 per week below parity with the pensioner couple. This margin is calculated by multiplying the difference in equivalised income by the equivalence scale. The family would need a disposable income of \$990.09 per week to equal the pensioner couple. However, it is worse than this because the NMW-dependent family has the costs of work, unlike pensioners. The contrast is even starker if we compare the NMW family with single pensioners. The C10-dependent family is barely above the single pensioner standard without taking into account to costs of work.
625. These comparisons raise serious issues about the levels of the wage and pensions safety nets. Pensions have been set, quite properly, to provide a basic acceptable standard of living and are adjusted to reflect increasing national wealth. On the other hand, safety net wages have been reduced relative to rising national wealth. That resulting disconnection between the wages and the pensions safety nets has increased over the past year. In January 2014 the difference between the equivalised incomes of the NMW family and the couple on the pension was \$9.26 per week (see Table 31 of ACCER's March 2014 submission), which meant that the

family needed an increase in disposable income of \$19.45 per week to match the pensioner couple. That gap has now grown to \$28.39 per week, without any consideration of the costs of work.

626. 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.

E. THE WORKING FAMILY PROFILE: ISSUES AND DATA

627. 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, if ever.
628. 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 juniors and workers living in higher income households. In both cases, it is said, that these workers have fewer needs than the single-breadwinner families. 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.
629. The first point in response is that 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.
630. The substantive point in response to this workforce diversity argument is that the purpose of a safety net is to provide for those who need it, even if many do not need it. This response is central to the living wage principle and international instruments, discussed in Chapter 2A, and to more than a century of minimum wage setting in Australia, following the decision in the *Harvester* case in 1907. 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. This is required for, and promotes, the common good. To the extent

that government provides financial support for families, the amount of over-compensation can be reduced; but the essential role of wages remains.

Promoting the common good by supporting workers with family responsibilities

631. 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.)

632. The Poverty Commission was the result of widespread concern about the fact that families with a single full time breadwinner were living in poverty. The passage notes that low wages were being compensated for by fathers working overtime or taking a second job and the pressure on women to take up paid employment. Its point was that these responses to poverty were not acceptable. The breadwinner should not have to undertake extra work for the family to escape poverty; nor should the parent who is the primary carer have to take paid employment in order for the family to escape poverty.

633. 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 quoted 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. It concerns the capacity of families to choose how best they care for their children. The passage is just as relevant today as it was 40 years ago.

634. 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 breadwinner to work overtime or take a second job or for the other parent to undertake, or apply for, paid employment.

635. 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.
636. 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.
637. 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 that need to be made in regard to this important area of public policy:
- 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.

Despite increased workforce participation families are still living in poverty

638. If couple parent families are living in poverty on a single wage, it is to be expected that there will be an increasing frequency of part time and casual work undertaken by the parent who is the primary carer of the children. 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”.
639. The second parent should not have to undertake full or part time employment in order for the family to escape poverty and achieve a basic acceptable standard of living. Similarly, the full time breadwinner should not have to work overtime or get a second job in order for the family to

escape poverty and achieve a basic acceptable standard of living. Coming back to our comparison with those on pensions, it should not be necessary for the full time breadwinner to work more hours or for both parents to work in order to achieve the basic acceptable standard of living provided to pensioners. Because the lowest of the minimum wage rates are poverty wages for families and do not provide a basic acceptable standard of living, the frequency with which a second parent works in low income households should not be a factor that reduces wage rates for low paid workers.

640. The FWC raised questions about the number of single breadwinner families in 2012 and 2013. 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.
641. 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.
642. 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.)
643. 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 *Annual Wage Review 2012-13, Decision*, paragraphs [363] and [387].
644. 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 (aged 8 and 12) 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 per week (after taking into account the Medicare levy exemption for the family). The disposable income of the family of four 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.

645. An unknown proportion, but most likely a substantial proportion, of the 575,000 single breadwinner couple families would have been families with two children and, consequently, have had 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.

646. 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 overaward 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)

647. The FWC apparently remained concerned about the data and made the following comments in its Decision:

"ACCER reiterated its concern that the modeling 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.*" (*Annual Wage Review 2012-13, Decision*, paragraph [409], emphasis added)

648. 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/C14 award rate, but it extended to families on higher award rates; up to, and beyond, the lowest rate fixed for cleaners. The NMW, as the worst case, was proposed as the starting point to address poverty, with a proposal that it be increased by an extra \$10.00 per week. Asking how many families are on the NMW is asking a far too narrow question. The relevant question is how many low paid families are living in poverty and then seeking to find the best way to address the problem in a graduated way.

649. 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.

650. 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.
651. Third, the FWC also had evidence from a research report by the ACOSS, similar to that which we discuss below, showing that that 17.7% of Australians 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 Australians 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])
652. 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, and the depth of poverty among them, cannot be quantified?
653. The FWC's decision in June 2014 to adopt the single person household as the criterion for setting wages means that the evidence of poverty among low income working households had been disregarded. The evidence of poverty in this chapter demonstrates why, in the interests of so many workers and their families, the decision needs to be reversed.

F. THE 2011 CENSUS AND THE WORKING FAMILY PROFILE

654. 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. This data adds to the abovementioned material on the extent of poverty among low income working households and demonstrates that a second income does not provide an escape from poverty.
655. 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.

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. The tables in Appendix A have been extracted from the Census data by the Pastoral Research Office of the Australian Catholic Bishops Conference. 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.

656. 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.

657. 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.

Poverty among low income working families

658. 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.

659. 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).

660. In contemporary Australia, full time work is not necessarily a path out of poverty; but it should be. The best way out of poverty is through work that pays a living wage.

The work profiles of low income families

661. 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", is added that percentage rises to 47.4%. By comparison, 20.3% of the families had more than 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%.

662. 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.

Sole parent families

663. 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.

664. 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.

665. 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.

G. NATIONAL MEASURES OF POVERTY IN THE LUCKY COUNTRY

666. 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.

667. *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)

668. 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).

669. *Poverty in Australia 2014* was published by ACOSS in October 2014. It is the fourth publication in a series first published in 2011 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. Each publication contains updated material. The 2014 report is not current because it "tells the story of poverty in Australia in 2011-12, in the last year of the previous government, three years out from the Global Financial Crisis and with unemployment remaining above 5%" (page 7).

670. 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, which is used by the OECD, as one that "equates to a very austere living standard" (page 7), an assessment we agree with. It describes the 60% relative poverty line as one that "... is widely used in Britain, Ireland and the European Union" and states that "it equates to an income of \$480 per week for a single adult, and \$1,009 per week for a couple with two children. Both poverty lines take account of

people's housing costs in measuring poverty" (page 7). These figures for the 2011-12 year are close to our January 2012 calculations at Table 27, where the single person's poverty line is \$474.00 per week and the couple with two children are at \$995.40 per week.

671. The ACOSS report covers the risk of poverty within different sectors of the population and the composition by sector of those in poverty.
672. The striking feature of the report is the extent of poverty among those in full time employment, at both the 50% and 60% relative poverty levels.
673. The report shows that among households with fulltime workers 4.7% 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 8.1% (page 31). Looking at the profile of those living in poverty, the report finds that 20.5% 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 22.2% (page 32). The estimated numbers of those living in poverty in households where there is full time employment are 522,138 at the 50% measure and 891,343 at the 60% measure (page 16).
674. Similar statistics to those 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.*" (*Annual Wage Review 2012-13, Decision*, paragraph [408], footnote omitted, emphasis added)

675. Over the two years the figure of 20.5% referred to by the FWC has risen to 22.2%. This passage in the 2013 decision, 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. 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.
677. 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 based 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.
678. 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 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)

679. 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)

680. 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.
681. 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*.
682. 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.
683. In September 2014 the UNICEF Innocenti Research Centre issued a further report, *Innocenti Report Card 12*, in regard to the impact of the economic crisis on child poverty and well-being in the same kinds of countries. The special focus of the report was the response of governments to the impact of the economic crisis on child poverty. The report covered the

2008 to 2012 period and used an "anchored" 60% of median poverty line. The 2008 line was adjusted by inflation between 2008 and 2012, rather than by changes in the median. The study recorded a reduction in child poverty in Australia from 19.2% to 13.0%, the third best of the 41 countries in the survey (Table 1, page 8). In 2012 it had the seventh lowest rate of child poverty. In regard to Australia's performance, the report commented:

"As with most other OECD countries, the Great Recession hit Australia. But unlike many other countries, Australia managed to protect families as part of its economic recovery strategy. One of the most important contributory factors was a fiscal stimulus of more than 4 per cent of GDP (a move that was facilitated by the fact that the country had the necessary fiscal space). A portion of the stimulus package was designed to support families in economic difficulties and to sustain their consumption. In particular, the 2009 household stimulus packages were made up of three main one-off payments: the Tax Bonus for Working Australians, provided to eligible taxpayers; and the Back to School Bonus and Single Income Family Bonus, which were targeted at low- and middle-income families with children." (Page 29)

684. In commenting on this report, Professor Peter Whiteford has drawn attention to the recent and prospective changes in Commonwealth fiscal policies:

"...while public policy was effective at reducing child poverty from 2008 to 2012, there are strong reasons to be concerned about more recent changes and future trends. The stimulus payments in 2008 and 2009 had strong positive effects on low-income families with children, but other changes in family payments since then and the proposals in the 2014-15 federal budget will have accumulating negative impacts.

In 2009, the indexation of Family Tax Benefit Part A was switched from a more generous earnings index to a lower prices index, while some thresholds were frozen at their nominal rates. If these changes had not been made, the base rate would now be A\$10 a fortnight higher, and the higher income test threshold would be over \$107,000 a year rather than just over \$94,000.

....

The 2014-15 budget went even further. Family assistance appears to be a "big ticket" budget item with a current annual cost of around \$20 billion, but in fact this is only around 5% of total federal budget spending. If implemented, proposed changes to family payments would provide 35% of estimated spending reductions and, in many cases, have a severe impact on lower-income families.

Two proposals in particular are of concern. The non-indexation of Family Tax Benefit payments for a period of two years would have the largest proportional impact on low-income families receiving the maximum rate of payment. This is generally those on benefits or in low-paid work. These families would be between \$8 and \$11 per child per fortnight worse off in real terms.

The strongest negative impact would come from the proposed ending of Family Tax Benefit Part B once the youngest child is of school age. If this proposal goes through, an unemployed lone parent with one eight-year-old child would lose \$54 per week or 12% of their disposable income. Lone parents earning around two-thirds of the average wage would lose between 5.6% and 7% of their disposable income. A single-income couple with two school-age children and average earnings loses \$82 per week or 6% of their disposable income.

The impacts would be particularly severe on lone parents, who have already gone backwards by being moved from the Parenting Payment to Newstart in 2013.

So while Australia seems to have improved significantly in UNICEF's latest report card, the future for children in low-income families here appears bleaker." (*Australia bucks child poverty trend but the future looks a lot bleaker, The Conversation*, 29 October 2014.)

685. These matters are particularly relevant to the issues that we have raised in relation to the decision to adopt the single person benchmark and to remove the element of family support from minimum wage rates. To maintain that decision will be to leave the families of low paid workers in increasingly deeper poverty.

9

ACCER SUBMISSION TO THE ANNUAL WAGE CASE 2014-15

**Working Australia, 2015:
wages, families and poverty**

Fair Work Commission

Fair Work Act 2009

Annual Wage Review 2014-15

**Submission by the
Australian Catholic Council for Employment Relations
March 2015**

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Note: The paragraph numbers in this chapter have been amended. In the submission filed with the Fair Work Commission, the paragraphs commenced at number 1.

A. INTRODUCTION

Living wage and award wages claim

701. The Australian Catholic Council for Employment Relations (ACCER) seeks the following orders be made by the Fair Work Commission (FWC):

- A. The National Minimum Wage (NMW) be set at \$669.60 per week.
- B. Award wages currently set at a rate below the rate fixed for the C10 classification in the *Manufacturing and Associated Industries and Occupations Award* be increased by \$18.70 per week and award rates equal to or above the said rate be increased by 2.5%.
- C. The minimum wage rate in all awards be no less than \$669.60 per week
- D. All classifications that provide wage rates equal to or more than the C10 wage rate, currently \$724.50 per week, be increased by 2.5%.

702. The claim of a 2.5% increase in award wages is to compensate for the cost of living increases as measured by the Consumer Price Index (CPI) since the handing down of the *Annual Wage Review 2012-13* in June 2014 and to reflect published productivity increases and community-wide wage increases over the same period. The claim of \$18.70 per week is made to provide a small amount of further compensation to lower paid workers in recognition that the wages set by awards do not provide a living wage.

703. The living wage claim in respect of the NMW comprises the amount of \$18.70 per week and a further amount of \$10.00 per week.

704. The NMW is a safety net wage that should be a living wage, but it is not. ACCER contends that a living wage appropriate to Australia is in excess of the lowest wage rate currently set for cleaners under the *Cleaning Services Industry Award 2010*, which is currently \$43.60 per week more than the NMW.

705. In order that the NMW can become a living wage, ACCER will continue seek further increases in the NMW until it can be established that the NMW is a living wage and there are no award rates set at a lower rate than the NMW.

Issues of law

706. In its decision in the *Annual Wage Review 2013-14* that FWC stated the "appropriate reference household for the purposes of setting minimum wages is the single person household" (the single person benchmark) see; *Annual Wage Review 2013-14, decision* [2014] FWCFB 3500, at paragraphs [38], [365] and [373]. ACCER submits that, upon a proper construction of the terms of the *Fair Work Act 2009* :

- (c) the establishing and maintaining of a safety net minimum wage under section 284(1) of the *Fair Work Act* requires the FWC to take into account the living standards and needs of the low paid with family responsibilities; and
- (d) the establishing and maintaining of a safety net minimum wage under section 284(1) of the *Fair Work Act* without taking into account the living

standards and the needs of the low paid with family responsibilities would be contrary to law.

707. The reasons in support of these submissions on the construction of the minimum wage provisions of the *Fair Work Act* are in section B of this submission. Similar reasons are relied on in respect of submissions concerning the construction of the provisions regarding safety net wage rates in awards. ACCER seeks rulings from the FWC consistent with those submissions. The historical context of wage setting in Australia and the relevance of fundamental principles to wage setting are addressed in Chapter 2A and 2C of the Attachment. Those matters are referred to in order to illustrate the significance of the statutory construction issue.
708. ACCER also seeks a ruling that the *Fair Work Act 2009* requires that the NMW be set independently of the setting of wage rates prescribed by awards made under the legislation. The reasons in support of this statutory construction issue are in Chapter 1D of the Attachment hereto.

Section 290 inquiry

709. ACCER also seeks the establishment of a process under section 290 of the *Fair Work Act 2009* for the purpose of obtaining evidence regarding the needs and relative living standards of low paid workers and their families. The matters relevant to this request are in sections A to C of Chapter 8 of the Attachment.

A living wage

710. 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 NMW.
711. We ask the FWC to refer to take into account the matters in Chapter 2A of the Attachment concerning the living wage and its development in Australia, especially. In particular, we draw attention to the human rights matters raised in that section, including the right of workers to be paid a wage that will support their families.
712. Our submissions show that many 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.
713. The NMW and the rates set for low paid award classifications are not living wages: they do not enable families to provide for their children, to live in dignity and to achieve a basic acceptable standard of living by reference to contemporary national living standards. This assessment is made on the basis of the ordinary and expected situation in which workers find themselves and is not made on the basis of unusual or exceptional circumstances.
714. Our specific objective is to increase the NMW to the level where it can be rightly described as a living wage. In 2015, as in previous years, ACCER proposes that this be done by way of modest adjustments over the next few years, principally by the awarding of a further increase in

the NMW, but also by the awarding of a money increase, rather than a percentage increases, in the wage rates for lower-paid work, i.e. those set for the C10 trade-qualified, or equivalent, classifications. These targeted increases are proposed along with general increases in safety net rates that reflect cost of living increases, productivity gains and the improvements in incomes across the broader Australian community.

715. The living wage issue before the FWC in the Annual Wage Review 2014-15 falls into two parts.
716. First, ACCER seeks the abovementioned rulings on the construction of the statutory provisions concerning the single person benchmark. There can be no living wage if the single person benchmark is applied to wage setting under the *Fair Work Act*.
717. Second, ACCER relies on extensive evidentiary material and policy principles in support of progress towards a living wage. The evidentiary material demonstrates that the NMW and low paid award rates are not living wages. The principles to which we refer emphasise the need for the FWC to make substantial progress towards a living wage.
718. 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.

Low paid workers with family responsibilities and the protection of children

719. 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.
720. 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 the 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.
721. 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 provide for all of the needs of a worker's dependents; and 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)

722. Under the last two Budgets various measures have been proposed to reduce the amount of transfers to low and middle income families. Given the Commonwealth's budgetary outlook, there will be reductions in family payments; for example, the Schoolkids Bonus will be abolished at the end of 2016. The wage packet will become increasingly important in the family budget.
723. 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.
724. 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 \$684.70 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.
725. Over the 11 years to January 2015 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 5.4% below it, with a poverty gap in January 2015 of \$56.44 per week; see Tables 27 and 29 of the Attachment.
726. 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 real terms than they were in 2001.
727. ACCER welcomed the Commonwealth's *Fair Work* reforms in 2009 to the framework of national wage setting because they provided an opportunity to address these kinds of inadequacies in the wages safety net.

728. We argue in these submissions, as we argued in 2013 and 2014, that the *Fair Work Act* 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 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. Even since 2010 the position of safety net workers relative to the workforce as a whole has declined.
729. In our view, the 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, who depend on the wages safety net, are lower than those who depend on the pension safety net.
730. 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, adopting instead in 2014 the single person benchmark.
731. Since 2010 the FWC has been presented with substantial evidence on poverty among low paid working families. In 2012 poverty was not even mentioned in the FWC's decision. In 2013, again there was substantial material on the issue, similar to the material that we are relying on in this submission. In its 2013 decision the FWC said, 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]) and said that:
- "Low-paid employment appears to contribute more to the total numbers in poverty than does unemployment." (*Annual Wage Review 2012-13* paragraph [408])
732. In 2014 the FWC adopted the single person benchmark when there was evidence of substantial numbers of working households living in poverty. The FWC stated
- "Single-earner families that receive the NMW or a low award rate have had declines in their equivalent real disposable income, to the point where today a couple with two children would be in poverty as conventionally measured. Households that rely on earnings as their principal source of income comprise about one-third of all families below a 60 per cent median poverty line." (*Annual Wage Review 2013-14*, paragraph [399])
733. The FWC has, we submit, an obligation to set the NMW at a level that will enable workers with family responsibilities to achieve a basic acceptable standard of living by Australia standards, a standard of living that is above poverty as it is conventionally measured: see the passage quoted in the previous paragraph. It should provide this in the ordinary and expected cases; and those cases must include families, whether couple parent or sole parent, with two dependent children. We are not advocating the coverage of unusual or exceptional cases, but a fair, realistic and rational application of a statutory obligation.

734. The FWC has, we submit, an obligation to ensure that, in these ordinary circumstances, no child in a working family need live in poverty. It should, we suggest, 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.
735. 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 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. 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. Our proposal may be criticised for being too modest given the level of in-work poverty, but if it is accepted by the FWC as the first step in a planned principled and realistic evidence-based process, it is more likely to bear fruit than making claims that have no realistic prospects of success.
736. The cleaner's base wage rate is our initial target rate for the NMW in the expectation that by that stage there will be a completed research program on Budget Standards from the Social Policy Research Centre at the University of New South Wales. In this regard, we refer to and rely on the matters in Chapter 7D
737. In regard to the matters canvassed in the foregoing paragraphs we refer to and rely on the matters in Chapter 1B of the Attachment. The issue of law in the next section is reproduced in Chapter 2B of the Attachment.
738. The commentary in the following sections is based on the contents of various parts of the Attachment. A reference to a table or a figure is a reference to the Attachment.

B. ISSUE OF LAW: THE SINGLE PERSON BENCHMARK

739. Section 285 (1) of the *Fair Work Act 2009* (the Act) requires that the FWC conduct and complete an annual wage review in each financial year by reviewing modern award minimum wages and the national minimum wage order. In the annual wage review the FWC must also make a national minimum wage order to set the National Minimum Wage (NMW) for the year and thereby maintain a safety net of fair minimum wages; Part 2-6, in particular, sections 284(1), 285(2) and 294(1)(a).
740. Section 284(1) prescribes the minimum wages objective. The subsection requires that the FWC establish and maintain a safety net of fair minimum wages by taking into account the matters that comprise the minimum wages objective.
741. The terms of section 284 (1) are to be given their ordinary meaning, taking into account the minimum wages objective and the general objects of the Act. In particular, the term "safety net", which is not defined, must be given its ordinary meaning, informed by the minimum wages objective and the general objects of the Act.
742. The terms of section 284(1), so understood, require a broad consideration of the employment and personal circumstances of a wide range of employees, including those with family

responsibilities. In particular, section 284(1)(c) requires the consideration of the relative living standards and the needs of the low paid with family responsibilities. Each specified matter in the minimum wages objective must be taken into account; see *Minister for Aboriginal Affairs v Peko-Wallsend Limited* (1986) 162 CLR 24.

743. ACCER submits that:

- (a) the establishing and maintaining of a safety net minimum wage under section 284(1) of the Act requires the FWC to take into account the living standards and needs of the low paid with family responsibilities; and
- (b) the establishing and maintaining of a safety net minimum wage under section 284(1) of the Act without taking into account the living standards and the needs of the low paid with family responsibilities would be contrary to law.

744. Section 3 of the Act, which sets out the object of the Act, includes the following:

"The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes *national economic prosperity and social inclusion for all* Australians by:

- (c) providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity and take into account *Australia's international labour obligations*; and
- (d) *ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders*; and"(emphasis added.)

745. In order to promote "social inclusion for all Australians", when establishing and maintaining a safety net of fair minimum wages the FWC must take into account the circumstances of the low paid with family responsibilities, in particular:

- (f) their relative living standards; and
- (g) their needs.

746. The right of an employee to remuneration that provides for the employee's family responsibilities is recognised under Australia's international labour obligations which s 3 of the Act requires be taken into account.

- (c) The United Nations' *International Covenant on Economic, Social and Cultural Rights*, recognises a universal right "... to the enjoyment of just and favourable conditions of work which ensure, in particular: ... Remuneration which provides all workers, as a minimum, with ... Fair wages and ... A decent living for themselves and their families" (Article 7(a)).

- (d) The International Labour Organisation's *Minimum Wage Fixing Convention, 1970* provides in article 3:

"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—

- (c) 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;
- (d) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment”

747. Australia has ratified the *International Covenant on Economic, Social and Cultural Rights* and the *Minimum Wage Fixing Convention, 1970*, and these are within the scope of the reference to "Australia's international labour obligations" in section 3(a) of the Act.
748. The *Universal Declaration of Human Rights* also recognises 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)). A minimum wages set without taking into account the relative living standards and needs of the low paid with family is not only inconsistent with recognised human rights but would be contrary to law.
749. The object of social inclusion calls attention to the requirement to promote the ability of workers and their families to live in dignity and participate in society. The provisions in the Act regarding the setting of the NMW should be treated as beneficial legislation and should not be construed or applied narrowly.
750. The construction of the minimum wages objective is assisted by the inclusion in the Explanatory Memorandum to the *Fair Work Bill* of a reference to the fulfilling the election commitments made by the Government:

"As the means for fulfilling the election commitments made by the Government in *Forward with Fairness*, released April 2007, and *Forward with Fairness – Policy Implementation Plan*, released August 2007, this Bill provides a much needed opportunity to reconceptualise the legislation from first principles and..." (*Explanatory Memorandum, Fair Work Bill 2008*, page iv)

Forward with Fairness, released in April 2007, provided:

“Working families in modern Australia face the daily challenge of balancing the pressures of work with the demands of family life, pay their mortgage and participating in the community....

Labor believes in support Australian working families. Labor also believes in a fair day's pay for a fair day's work....

A Rudd Labor Government will guarantee a safety net of decent, relevant and enforceable minimum wages and conditions for working Australians.

....

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” (Pages 7 and 11)

751. Further, by section 578 of the Act the FWC must, in performing functions or exercising powers under the Act (such as making a minimum wage order), take into account the need to respect and value the diversity of the work force by helping to prevent and eliminate discrimination on the basis of family responsibilities. Similar provisions are found in sections 153, 195 and 351 of the Act. These provisions reflect the intention of Parliament to prevent discrimination against (among others) employees with family responsibilities. The setting of wages upon the basis that employees are from a single household and do not have family responsibilities

would be discriminatory. Thus the living standards and needs of the low paid with family responsibilities must be taken into account by the FWC when establishing and maintaining safety net wages.

752. The relative living standards and needs of the low paid with family responsibilities are affected by their family responsibilities. Family responsibilities have been consistently recognised and accepted by national wage fixing tribunals in relation to the fixing of minimum wages; see, for example [Chapter 2C, above]. In the absence of anything in the terms of the Act or in the extrinsic materials to suggest that, in setting minimum wages, the Act would permit a departure from past practice, it must be presumed that Parliament did not intend to change the basis upon which wages had been set for more than a century.
753. The setting of award wage rates is covered by Part 2-3 of the Act, in particular, sections 134(1) (which prescribes the "modern awards objective") and 139. Section 284(2) provides that the minimum wages objective applies to the "setting, varying or revoking [of] modern award wages". For the reasons set out in the foregoing paragraphs, ACCER further submits that:
- (c) the setting and varying of award safety net wages under Part 6-2 of the Act requires the FWC to take into account the living standards and needs of the low paid with family responsibilities; and
 - (d) the setting and varying of award safety net wages under Part 6-2 of the Act without taking into account the living standards and the needs of the low paid with family responsibilities would be contrary to law.

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

C.1. Introduction

754. 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 and the estimated increase in wages.
755. 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.

- 756. 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.
- 757. 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 Chart 6.5, in the FWC's *Statistical Report*, of 27 February 2015, which is reproduced as Figure 3 in Chapter 5.
- 758. If we were to overlay on Figure 3 the real wage changes for safety net-dependent workers we would find that safety net-dependent workers were below the 10th percentile line, which showed a real increase of almost 15% increase over the 10 years 2004 to 2014. Over the period January 2004 to January 2014 the NMW increased by 38.8%, compared to a 31.8% increase in the CPI (see Table 1). This represents a 5.3% increase in real wages for the NMW worker, much less than the almost 15.0% increase received by the lowest paid percentile over a similar period. The same kind of calculation (again using Table 1) would put the C10-dependent worker, with a 1.4% real wage increase, even closer to the x axis. The position worsened for higher paid employees; for example, the worker in the \$550 column of Table 1, who was in receipt of a modest wage of \$787.40 per week in early 2014, had a 31.2% increase over the same period and, therefore, had a small real wage cut. If this worker and others on higher minimum wage rates were separately plotted they would be below the x axis.

C.2. On average, safety net workers have had real wage cuts

- 759. In regard to this subject, we refer to and rely on the matters in Chapter 3 of the Attachment.
- 760. 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 2015 real wages were reduced for safety net rates that are now paying \$842.00 or more per week. For example, the classification originally paying \$600.00 per week in January 2001 and paying the modest wage of \$863.90 per week in January 2015, has had a real wage cut of \$10.90 per week.
- 761. In Table 2 to Table 5 we have looked at several periods over the years 1997 to 2014, by reference to the NMW, C10 and C4 rates. As Table 2 shows, that the C4 classification, which now attracts a modest wage of \$896.40 per week, increased by only 50.1% from July 1997 to July 2014, during which time the CPI increased by 57.1%. This is a real wage cut of \$41.00 per week.

762. 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. While workers on the NMW are in the greatest need, the concentration on the NMW presents a misleading picture of the impact of wage decisions on low paid workers. Figure 1 shows that only 2.1% of award only workers are paid the NMW. The varying outcomes across the range of safety net rates are hidden by the use of that single wage rate. A clearer picture is provided by the three rates in Tables 2 to 5, i.e. the NMW, C10 and C4 rates. If we were to focus on only one wage rate, the trade-qualified C10 rate presents a more realistic picture of the impact of wage setting decisions on low paid workers and their families. As we show in Chapter 8, over the past 11 years the single worker on the C10 wage rate has seen his or her margin over poverty fall from 48.2% to 33.3%, a loss of just over one-third, while the C10-dependent single breadwinner family of a couple and two children fell from 7.6% above the poverty line to 1.2% below the poverty line.
763. 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 \$842.00 per week or more; i.e. to find out the net effect of the re-allocation of the compensation for price increases.
764. 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.
765. On the basis of the data in Figure 1, Table 7 and *Employee Earnings and Hours, Australia, May 2014*, cat. no. 6306.0, we conclude that the body of data does not permit the drawing of any precise measures of the net impact of real wage increases and real wage cuts across the award classifications in which award only workers are employed. However, the material does support the proposition that there has been, on average, a real wage cut in the classifications in which award only workers are employed. Put another way, there is, at the least, no persuasive evidence that, on average, award only workers are employed in wage classifications that have had real wage increases since January 2001.
766. We are entitled to proceed on the basis that there has been no increase in average real wages over the period January 2001 to January 2015 for the wage classifications in which award only workers are employed.

C.3. Safety net workers have not received productivity increases

767. 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).

768. We refer to and rely on the matters in Chapter 4 of the Attachment in regard to the productivity matters.
769. The substantial increases in productivity since 2001 are shown in Table 8 by way of movements in the ABS indexes of Gross Domestic Product (GDP) per hour worked and Gross value added (GVA) per hour worked in the market sector at December in each of each year, starting from December 2000. GDP per hour worked increased by 23.7% over the 14 year period December 2000 to December 2014, averaging over 1.5% per year. Gross value added per hour worked in the market sector increased by 31.1% over the same period, averaging over 2.0% per year.
770. There was no distribution of productivity gains to safety net workers because, on average, wage increases did not match 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 51.6% while the CPI increase over the same period was 45.8% (see Table 1), leaving the worker with a real wage increase along way short of the increase in labour productivity as measured by the two indexes.
771. 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.
772. Over the period January 2001 to January 2015 average weekly earnings (by the AWOTE measure) increased by 84.8% (see Table 10), while prices, as measured by the CPI have increased by only 45.8%. 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, 39.0 percentage points, shows a very large increase in real wages that is not explained by the substantial increase in labour productivity, measured at 23.7% (GDP per hour worked) and 31.1% (GVA per hour worked in the market sector).
773. Price increases have been modest even though there has been a substantial gap between prices and productivity and wages because the terms of trade have increased dramatically in Australia's favour. The Terms of Trade index rose from 58.0 in December 2000 to a high of 114.0 in December 2011 before falling to 88.1 in December 2014; see Table 9. Even after the recent decline the index rose by 51.9% over the 14 year period. This improvement has provided the capacity for workers to receive more than prices and productivity.
774. 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.

775. 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.

C.4. Safety net workers have fallen behind general wage increases

776. 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.
777. In regard to this subject, we refer to and rely on the matters in Chapter 5 of the Attachment.
778. Table 10 provides a comparison between safety net wages and various measures of wages and incomes.
779. The figures show that safety net wage rates have fallen substantially against these other measures of community income. The NMW increase of 60.1% compares unfavourably with the 84.8% increase in AWOTE. The NMW fell from 50.1% to 43.4% of AWOTE over the 14 years to January 2015. If the NMW had increased at the same rate as AWOTE, the NMW would now be \$739.90 per week, \$99.00 per week more than it is. 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 38.3% over the same period.
780. 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 short term factors, 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.

Wage Price Index

781. Changes in the Wage Price Index (WPI) have been used by the FWC as a comparator for wage rate adjustments. We refer in Chapter 5B to the reliance placed on the WPI over recent years and argue that the WPI is not an adequate guide for the setting of minimum wage rates. The limitations inherent in the WPI are explained in some detail. The WPI is an index that inherently underestimates criteria relevant to wage setting, yet safety net wages have lagged the WPI, significantly at the NMW level over the past six years, but very greatly over the past 14 years in regard to higher-paid classifications. By January 2015, the C10 rate had had increased by 51.6% compared to an increase of 62.7% in the WPI. Had the C10 followed the WPI it would have been \$800.80 per week, \$54.60 per week higher than it was in January 2015.

Household Disposable Income

782. 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 2015. The 94.5% increase in HDI since January 2001 exceeds other income measures in Table 10; it is substantially greater than, for example, the 84.8% increase in the AWOTE over the same period, but much greater than the increases for safety net workers.
783. 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 2015. This enables a comparison of the kind of outcomes in the first 28 years and the last 14 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.
784. 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 7.2% below in January 2015. This trend is consistent with other measures of change over the past 14 years.

Other wage setting tribunals

785. 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 2015 the average minimum wage in the three States which still set a State minimum rate was \$21.50 more than the NMW; see Table 12. This confirms that our claim for an extra \$10.00 is modest and shows that our interim target of the base rate for cleaners is only \$22.10 above that average.
786. Table 13 sets out adjustments to two of the four Principal Executive Office (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. In June 2014 the Tribunal announced that it would not increase the rates during 2014. The increases in the median total remuneration for members of the SES were between 78.2% and 95.3% over the 13 years to 2014. Table 13 also includes AWOTE for the public sector, which increased by 77.0% over the 14 year period. 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 C10 trade-qualified safety net rate increased by only 51.6% between January 2001 and January 2015.

C.5. The causes of wage inequality

The changing skills mix of the workforce

787. In its 2012 wage review decision the FWC identified changes in workforce composition as causing a divergence between safety net rates and average wage levels across the workforce:

“...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)

788. In 2013 the FWC came back to this issue and its possible serious 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.” (*Annual Wage Review 2012-13*)

789. ACCER's Annual Wage Review submission of March 2014 considered 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. 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 of its March 2014 submissions, ACCER submitted that it did not establish what the FWC has claimed. That material is essentially reproduced in Chapter 5D of the Attachment to these submissions.

790. 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 1.5% increase 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).

791. Table 14 demonstrates that increasing skill levels over the decade were not a substantial cause of growing inequality between safety net workers and the rest of the workforce. The change in

skill levels cannot explain or justify the decrease in safety net wages for the higher-paid safety net classifications. Along with the good news of an increase in the skill mix of Australian workers we have the more skilled safety net-dependent workers at a greater disadvantage relative to community incomes.

792. In its March 2014 submissions, the Australian Government provided updated data on this topic, which showed changes for the decade to February 2014, whereas the ACCER submissions of March 2014 were based on the data made available in the previous year, i.e. to the decade to February 2013. At paragraph 199 of its submission the Government noted that the workers in the highest skill group were 30.1% of the total and those in the lowest skill group were 17.5% of the total. In 2013 they were 29.3% and 17.3%, respectively (see Table 14). These and other figures in the 2014 data show a welcome increase in skill levels, but they would have only a minor impact on the calculations in Table 14 and the conclusion drawn from them. Furthermore, if we were to update Table 14 to cover the decade to February 2014 we would have to compare the new estimated increase in average skills against an even wider gap between award rates and the broader income measures over the latest year. Against a 2.6% increase in award rates during that further 12 months we would have to take into account a 3.2% increase in AWOTE (see Table 10).

793. ACCER argued in 2014 that increased inequality cannot be explained by changes in the skill levels of the workforce. The principal cause of the divergence between award rates and going rates was 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.

The FWC accepts a connection between wage decisions and increasing inequality

794. In a significant development, the FWC acknowledged in its 2014 decision that wage review decisions had contributed to increasing wage earnings inequality. It accepted that there was “some direct contribution from annual wage review decisions to rising inequality of earnings”, but claimed that the decisions “were made taking into account many factors other than their impact on the inequality of earnings”. The relevant passages were introduced by data on growing earnings inequality:

[344] A number of arguments were put to us about the reasons for the continuing rise in inequality of earnings. These included an increased premium on higher skills; the strong demand from, and high pay in, the resources sector; and a change in the structure of jobs towards the more highly paid. These are, in turn, driven, at least in part, by both technological change and the greater integration of the world economy. ... The number of adults who are employed at or near NMW rates is probably not large enough for there to be a strong and direct link between rises in the NMW and lower award rates that are below average and relatively slow growth in the earnings of the lower deciles of the earnings distribution. *But the concentration of award-reliant employees in the lower deciles of the earnings distribution, the relatively slow rate of increase in the value of awards, and the influence of award rate changes on nearby bargained rates all point towards some direct contribution from annual wage review decisions to rising inequality of earnings. This is not to imply that the annual wage review decisions were inappropriate, they were made taking into account many factors other than their impact on the inequality of earnings.*

[345] The Australian Government highlighted the impact of the trend towards higher-paid, higher-skilled jobs on earning inequality. If the economy has a changing structure of jobs

towards the higher skilled, as the Australian economy has had, we would not expect minimum rates of pay to keep pace fully with average earnings. Nonetheless, the evidence is clear that even the lowest award rates have barely kept pace with growth in rates of pay 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. *We conclude 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.*" (Footnotes omitted, emphasis added.)

795. In Chapter 5E we discuss in some detail the justification proffered for the acknowledgment that annual wage review decisions have contributed to rising inequality of earnings. This growing inequality is illustrated in Figure 3, to which we referred in section C.1. In the last sentence of paragraph [344] the FWC states that the decisions that contributed to the growing inequality "were made taking into account many factors other than their impact on the inequality of earnings". This means that, but for those many other factors, earnings inequality would not have increased as much as it did. Because rising inequality brings falling relative living standards for the low paid, the passage also means that the wage review decisions reduced the relative living standards of safety net workers on account of those other factors.
796. Because reduced relative living standards impact on poverty levels, poverty was increased because of those other factors. But for those other factors, poverty would not have increased by as much, or at all. The FWC and its predecessors had ample evidence to establish that poverty was increasing among low paid workers and their families.
797. The FWC's justification for the failure to fully address rising inequality and, therefore, rising poverty is that there were other factors that it had to take into account. Ultimately, this has to turn on fairness because, apart from the *Work Choices* years, the statutory obligation has been to set a fair safety net.
798. The fairness question is whether the FWC could have done more to address the position of those who had most suffered from those changes: the workers, and their families, who had fallen into poverty. ACCER's complaint is that poverty has not been targeted by the decisions made under the *Fair Work Act 2009*. The across the board increase of \$26.00 per week in 2010 slightly favoured the low paid in relative terms. The uniform percentage increases in each year since then have started to restore fairness to the award classification system. However, repeated claims by ACCER for an extra increase in the NMW in order to target poverty have been rejected without reasons being provided.
799. Of course, the FWC's decision in 2014 that the reference household for the purpose of setting minimum wages is the single person household makes, according to that benchmark, all of these considerations irrelevant to wage setting and reduces the FWC's description of poverty levels to socio-economic observations.
800. Given the social consequences of rising inequality, poverty and social exclusion, the other factors in the FWC's decisions must have been economic. This means that the promotion of the social inclusion objective of the *Fair Work Act 2009*, has been inhibited by economic

factors. Insofar as the FWC's comments relate to its predecessors, we also conclude that the factors behind their decisions that caused increasing inequality would have been economic.

801. The *Fair Work Act* requires that social considerations have to be assessed along with economic considerations so that a fair balance can be struck. The wage increase resulting from that balancing does not need to be uniform, as it has been in the past four years. Because the setting of the NMW and the setting of award wages are made under different statutory provisions, which are explained in Chapter 1D, an increase in the NMW may be greater than an increase in the award rates; and should be greater than some or all award increases if the circumstances require it. This is an important issue and is the reason why ACCER is seeking a ruling in respect of those provisions.
802. The FWC's position means that economic factors have prevented it from agreeing to the claims by ACCER for an extra amount for those who are most in need.
803. An essential part of this balancing process is a proper analysis of the social and economic facts; and the exposure of those matters through the reasons for decision. Section 577(c) of the *Fair Work Act* requires the FWC to "perform its functions and exercise its powers in a manner that ... is open and transparent". A decision will not be open and transparent the reasons for decision do not disclose the factors that have caused the FWC to make a decision that will increase inequality and poverty.
804. The impact on poverty is particularly important given the statutory requirement to take into account the needs of the low paid and the general object of promoting social inclusion. An open and transparent decision requires more than a recitation of matters put by the parties and a conclusion such as "Having taken all factors into account, we are not persuaded to ...". It requires a manifest testing of the arguments and material advanced. Where it is apparent that inequality and poverty will increase, those who are going to fall into poverty (and their representatives), should know why the decision adverse to their interests has been made. We need to keep in mind that we are not talking about infrequent occasions, but a systemic feature of the past 14 years, and more.
805. Wage decisions should provide reasons that make evident the relevant factors and the weighting given to them. Those reading its decisions should know why the FWC has failed to target poverty. But that has not occurred. This is illustrated in Chapter 1B, where reference is made to the rejection of ACCER's claims for an extra increase in the NMW of \$10.00 per week. In 2012 and 2013 the claim for an extra \$10.00 per week was rejected without any reason being given and the NMW has been increased by the same amount as award increases. Conclusions were stated, but reasons were not given; see; *Annual Wage Review 2011-12*, paragraph 28 and *Annual Wage Review 2012-13*, paragraph [45]. In 2014, apart from a reference to the claim for an extra \$10.00 per week in the recitation of claims before the FWC, it was not mentioned, possibly on the basis of the decision to adopt the single person benchmark.
806. We do not find sufficient consideration of poverty in the FWC's decisions since 2010. We do not find poverty, including its impact on children, in the FWC's articulation of the relevant

factors. Absent that consideration, it cannot be said that the FWC has, in an open and transparent way, balanced social and economic factors relevant to the targeting of poverty and disadvantage.

807. Nor do we find economic reasons why there should not be some modest targeting of poverty. We accept that there can be circumstances, based on unusual economic developments, when a case might be put in favour of a course that would increase inequality and poverty, but if properly argued and considered, the matter would be transparent in the reasons of the tribunal, with an explicit justification for any deleterious effect on the workers concerned. In the proper exercise of its jurisdiction, the FWC should make findings about the level of need even if it concludes that it is unable to award a wage that meets those needs; and having so decided it should state the reasons, including "other factors" for its decision.

Setting wages in a more diversified workforce

808. In addition to the factual issue concerning changing skill levels, there is 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 objective.

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

809. 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 lower paid 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.
810. In Chapter 6 of the Attachment we argue that the 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. 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.
811. 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 to 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 of "middle Australia", and various similar, but safety net-dependent, families: those dependent on the NMW and the C12 and C10 award wage rates.

812. The middle income AWOTE family has had a gross wage increase of 84.8% and a disposable income increase of 97.7%, well in excess of similar families who depend on safety net wages. The comparable figures for the NMW-dependent family are 60.1% and 76.0%, respectively. For the C10-dependent family, the comparable figures are 51.6% and 71.1%. 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-dependent family is \$149.59 per week worse off. The C10 family has fallen from 79.4% of the AWOTE family to 70.9% over the period 2001 to 2015. 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 divergence would be greater.
813. 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.

D. TWO AUSTRALIAS: POVERTY IN THE LAND OF PLENTY

D.1. Introduction

814. The purpose of Part C 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.
815. 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.)

816. 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)

817. 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 14 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. Claims for an extra increase of \$10.00 per week in the NMW have been rejected without reasons. 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.

818. 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.*" (AC CER submission, Annual Wage Review 2012-13, March 2013, paragraph 57, emphasis added.)

819. Similar views were expressed in ACCER's March 2014 submission. Our position on this aspect is unchanged, particularly given the adoption of the single person benchmark. The submissions made in the previous section in regard to rising inequality and poverty fall into the same category. We appreciate that our views might not be welcomed by the FWC, but

they are based on fact and are made in the interests of those who have no voice in these matters.

820. We emphasise, as we did in 2014, 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 C on the subject of *Work Choices* is evidence of that.
821. 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 sustained plan to attack in-work poverty. The way to achieve it is for the FWC to gather the evidence and act on it.
822. 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.

D.2. Measuring needs and contemporary relevance

823. 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.
824. 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 2015, 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.
825. Average household disposable income, as measured by the Melbourne Institute, has

increased from \$361.61 per week in the June quarter 1997, the quarter in which the FMW was set, to \$808.26 per week in the September quarter 2014 (the latest available quarter); see *Poverty Lines: Australia, September Quarter 2014*. This is an increase of 123.5%: more than double the 1997 figure. The NMW is only 78.3% higher than the initial FMW, and the C10 award rate increase is even less, at 65.4%; 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 the NMW has lost contemporary relevance.

826. 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.

D.3. HPLs and Budget Standards

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

828. 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)

829. 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])

830. 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 7C, 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 7D.

831. 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)

832. 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]).

833. ACCER has continued to argue the relevance and utility of the Budget standards, without any success. In the 2014 decision the matter was covered in the following passage:

"[390] ACOSS and ACCER also presented material pertaining to "budget standards". The budget standards approach estimates what is needed, in terms of material goods and services, by a particular type of family to achieve a particular standard of living in a specified location. In the current Review, ACCER put extensive submissions drawing upon its materials based on the budget standards research of the Social Policy Research Centre (SPRC) in the 1990s. The budget standards material submitted by ACOSS and ACCER is based on a 1997 study by the SPRC, commissioned by the former Department of Social Security, to assist in the assessment of the adequacy of social security payments. We accept that contemporary budget standards measures can provide an effective means of measuring the needs of the low paid, which can be considered, together with other relevant data. However, the budget standards measures derived from the 1997 SPRC study do not provide useful contemporary information about the needs of the low paid." (*Annual Wage Review 2013-14, decision*, footnotes omitted)

834. Most of this paragraph in the 2014 decision is descriptive of the research. The last sentence states a conclusion, does not reflect the basis upon which the material was advanced and does not disclose the reasoning leading to the exclusion of the evidence for all purposes. It does not address the kinds of matters that we set out in Chapter 7D, most of which were put to the FWC in 2014.

835. ACCER submits that the FWC should change its past position and take it into account. The reasons it should do so are in Chapter 7D.

836. 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 \$954.99 per week for the family of four (Table 25), compared to the disposable income of \$961.70 per week (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.

837. 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. 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.
838. 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.

D.4. Poverty Lines

839. 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 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.
840. 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 research is based on equivalence scales that permit a comparison between differently constituted households in order to establish how much disposable income each will be required to achieve the same standard of living. There are now well-established equivalence scales.
841. 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 can move in line with community income, as measured by MEDHI.
842. Relative poverty lines are, we submit, an important tool in the setting of 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).

843. 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.
844. 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: it is at 59.0% of the median. Couple pensioners are at 56.4% of MEDHI. By contrast, single breadwinner families, comprising a couple and two children, have lower standards of living, especially when taking into account the costs of work in working households. The NMW provides 54.8%; the cleaner's base wage rate provides 56.8%; and the base trade-qualified rate provides 59.3%. 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.
845. We note that in its June 2014 decision, the FWC indicated that it could take into account pensions and the living standards of pensioners. However, there is no indication that this has been done, presumably on the basis of the adoption of the single person benchmark. ACCER's reliance on those matters related to its contentions about the living standards of workers with family responsibilities.
846. ACCER continues to rely on the matters raised regarding pensions and the standard of living of pensioners which are at Chapters 6C and 8D
847. 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.
848. In Table 26 we have calculated changes in MEDHI over the period January 2001 to January 2015. 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.
849. 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 2015. 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, set out the disposable incomes of families on the NMW, C12 and C10 wage rates over the period January 2001 to January 2015. They are summarised and shown in Figure 4. 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 the

current Budget Standards research into the financial needs of low paid workers and their families.

850. 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 period January 2004 to January 2015. Over that period:

- the NMW-dependent family of four fell further into poverty: from 3.3% below to 8.7% below, with a poverty gap of \$91.91 per week;
- the C12-dependent family of four fell into poverty: from 1.7% above the poverty line to 5.4% below it, with a poverty gap of \$56.44 per week; and
- the C10-dependent family of four fell into poverty: from 7.6% above to 1.2% below, with a poverty gap of \$12.20 per week.

851. 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 2015 had fallen to 22.7% above the poverty line; see Tables 27 and 29.

852. 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.

853. 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.

D.5. The national Census, 2011

854. 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.

855. 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).

856. 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.

857. 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.
858. 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%. By comparison, 20.3% of the families had more than 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%.
859. ACCER has argued that, as a matter of principle, wages should be set on the basis of a single breadwinner family; see Chapter 8E. 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.
860. 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, they do emphasise the urgency of increasing low wage rates in a measured and sustained manner.

D.6 Research reports on poverty in Australia

861. 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.
862. *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.)

863. *Poverty in Australia 2014* was published by ACOSS in October 2014. It is the fourth publication in a series first published in 2011 based on research undertaken in 2010 by the Social Policy Research Centre. Each publication contains updated material. The 2014 report is not current because it "tells the story of poverty in Australia in 2011-12, in the last year of the previous government, three years out from the Global Financial Crisis and with unemployment remaining above 5%" (page 7). Nevertheless, it has valuable information.
864. The ACOSS report covers the risk of poverty within different sectors of the population and the composition by sector of those in poverty. The striking feature of the report is the extent of poverty among those in full time employment, at both the 50% and 60% relative poverty levels.
865. The report shows that among households with fulltime workers 4.7% 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 8.1% (page 31). Looking at the profile of those living in poverty, the report finds that 20.5% 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 22.2% (page 32). The estimated numbers of those living in poverty in households where there is full time employment are 522,138 at the 50% measure and 891,343 at the 60% measure (page 16).
866. 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.
867. 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. Fulltime work should be a way out of poverty.
868. Our concern about poverty levels 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.

869. In May 2013 the Organisation for Economic Development and Co-operation (OECD) published a report entitled *Crisis squeezes income and puts pressure on inequality and poverty*. The report refers to changes in poverty levels from 1995 to 2010, noting that relative poverty increased in Australia, amongst others. Australia ranked poorly 26th in the 34 OECD countries in this study. 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*.
870. 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.
871. In September 2014 the UNICEF Innocenti Research Centre issued a further report, *Innocenti Report Card 12*, in regard to the impact of the economic crisis on child poverty and well-being in 41 countries. The special focus of the report was the response of governments to the impact of the economic crisis on child poverty. The report covered the 2008 to 2012 period and used an "anchored" 60% of median poverty line. The 2008 line was adjusted by inflation between 2008 and 2012, rather than by changes in the median. The study recorded a reduction in child poverty in Australia from 19.2% to 13.0%, the third best of the 41 countries in the survey. In 2012 Australia had the seventh lowest rate of child poverty.
872. The UNICEF report identifies the Australian Government's budgetary response to the Great Recession as the critical factor in improving Australia's relative standing compared to countries which largely had less effective responses to the economic challenges. While Australia's international standing has improved, the figures are unacceptably high and the budgetary capacity to continue that support, for in-work and unemployed families remains uncertain. What is certain is that recently introduced changes to family benefits, and others that are being proposed, will make the wage packet a more important component in the budgets of low income families.

10

THE ANNUAL WAGE REVIEW DECISION, JUNE 2015

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**Working Australia, 2015:
wages, families and poverty**

A. INTRODUCTION

873. The previous chapters in this book were written in March 2015. This chapter was written following the decision of the Fair Work Commission (FWC) on 2 June 2015 to award an increase of 2.5% in the National Minimum Wage (NMW) and award wage rates; see *Annual Wage Review, decision, June 2015*, [2015] FWCFB 3500 (June 2015 decision). Between March 2015, when the initial submissions were filed by the parties and the date of the decision various steps were taken. Reply submissions, Post-Budget submissions and responses to the FWC's questions on notice were filed and consultations were held on 19 and 20 May 2015.
874. There are four important aspects of the FWC's decision that are covered in the following commentary:
- a) the decision to increase minimum wages by 2.5%;
 - b) the acceptance by the FWC of the submission that the NMW has to be set independently of award rates of pay and its implications;
 - c) the abandonment of the single person benchmark for wage setting; and
 - d) the relevance of poverty to wage setting decisions.

B. THE DECISION TO INCREASE MINIMUM WAGES BY 2.5%

875. The claim by the Australian Council of Trade Unions (ACTU) was in two parts: a flat dollar increase of \$27.00 per week to the NMW and award minimum wages up to and including the C10 classification rate (then \$746.20 per week) and a 3.6% increase to all award minimum wages above that level. At the NMW level the claimed \$27.00 per week equated to an increase of 4.2%. The increase of 2.5% awarded by the FWC equated to \$16.00 per week.
876. The Australian Catholic Council for Employment Relations (ACCER) sought a flat dollar increase of \$18.70 per week in minimum rates up to the C10 rate and a 2.5% increase for higher paid classifications. In addition, ACCER sought an extra \$10.00 per week in the NMW. It referred to this as its Living Wage claim. The extra \$10.00 had ACCER's NMW claim at \$669.60 per week (equal to a 4.5% increase), compared to the ACTU's \$667.90. Leaving aside the extra \$10.00, ACCER's flat dollar proposal involved increases of up to 2.9% for the lowest paid workers. ACCER argued that it was a specifically targeted first step in alleviating poverty and accepted that it might be criticised for being too modest given the level of in-work poverty; see Chapter 9, at paragraphs 734-6. (The references herein to chapters, paragraphs and tables are references to chapters, paragraphs and tables in this book.) ACCER told the FWC that it "supports the targeting of poverty through increases such as these even if it involves some diminution of the increases otherwise available to higher income earners"; *Post-Budget Submission and Response to Questions for Consultations*, paragraph 4.
877. This was the fifth successive year in which the ACTU has claimed a combination of flat

money and percentage increases and the fourth successive year that the ACCER has made the same claim, albeit with different figures proposed. Every claim made by ACCER under the *Fair Work Act 2009* has included an extra increase in the NMW; for the past four years it has been \$10.00 per week. In each of the last five years the FWC has only awarded a uniform percentage increase.

878. The claims by ACCER for flat dollar increases have been based on the need to give priority to those most in need and to reduce the number living in poverty. The needs of workers across the wage classifications are not uniform and priority should be given to lower paid workers who are living in, or are at risk of, poverty.
879. The ACTU's case placed substantial emphasis on the declining "minimum wage bite" over the past decade and more, which demonstrated an increasing disconnection between minimum wages and community-wide measures of wage increases. It acknowledged that the trend had been largely contained in the last few years, but argued that earlier changes needed to be taken into account.
880. ACCER placed substantial weight on the changing position of the low paid relative to the 60% of median relative poverty line. This covered single workers and workers with family responsibilities. Measured against the relative poverty lines (which take into account the effect of changes in wages, taxes and transfers and changes in community-wide changes in disposable incomes), the disposable incomes of minimum wage earners in various kinds of households have remained steady over the last two years, but the medium term picture is very different. ACCER considered the impact of changes on three minimum wage rates. These are detailed in Chapter 8C. Taking into account some post-March 2015 data, over the years January 2004 to January 2015:
 - the NMW-dependent family of four fell further into poverty: from 3.3% below the poverty line to 9.3% below it, with a poverty gap in January 2015 of \$98.40 per week;
 - the C12-dependent family of four fell into poverty: from 1.7% above the poverty line to 5.9% below it, with a poverty gap in January 2015 of \$62.93 per week; and
 - the C10-dependent family of four fell into poverty: from 7.6% above the poverty line to 1.8% below it, with a poverty gap in January 2015 of \$18.69 per week." (ACCER *Post-Budget Submission and Response to Questions for Consultations*, 15 May 2015. This passage updates the January 2015 figures in Chapter 9, at paragraph 616.)
881. In January 2013 the NMW-dependent family was 9.4% below the poverty line and in January 2014, it was 9.8% below the poverty line; see Chapter 9, at Tables 27-30. So the decline in living standards, as reflected by the poverty line, has been contained; but the position is substantially worse than in 2004. This is consistent with the ACTU's data on the decline in the relative value of minimum wages.
882. The FWC's decision in June 2015 does not give any reasons for the rejection of the claim for flat dollar increases, save that it stated that it thought a 2.5% increase was sufficient. The critical point in this regard appeared to be its view that "the relative living standards of NMW

and award-reliant employees have improved a little over the past year or two”; paragraph [70]. But the finding is too narrow. The decision does not address the current situation in which families are living in poverty, including those relying on a C10 skilled wage rate, or address the substantial decline in living standards suffered by low paid workers and their families over the past decade or so.

883. Again, in 2015 the FWC adopted a “one size fits all” kind of approach. If the general 2.5% increase awarded by the FWC had been converted to a money amount for those below the C10 rate, the extra increase in the NMW would have been \$2.70 per week, with progressively smaller increases as wage rates approach the C10 level. Over time this targeted approach can make a difference. In the five years that the ACTU has sought flat dollar amounts for lower paid workers the C10 wage rate has increased by \$101.30 per week, compared to an increase of \$87.00 per week in the NMW. The difference of \$14.30 is significant, especially for the many working families living in poverty. It is almost as much as this year’s \$16.00 per week increase in the NMW.

884. The FWC’s failure to give reasons for refusing these further increases adds to ACCER’s ongoing concern about the lack of transparency in successive FWC decisions, which are referred to in Chapter 1 at paragraphs 27-30 and in Chapter 5 at paragraphs 445-7. In the latter paragraphs we refer to the obligation of the FWC to be transparent in its reasoning on important aspects of its decisions. The Australian Chamber of Commerce and Industry (ACCI) made a similar point in its March 2015 submission:

“Given that a broad exercise of judgement guides the determination of the Panel, detailed explanation of the factors that most significantly influenced the Panel’s decision making would assist the parties in approaching future annual wage reviews. To ensure that all statutory considerations are appropriately taken into account, it is very important to justify how these considerations have been interpreted and operationalised and how judgements have been formed about the relationship between these considerations and changes in minimum and award wages, both in general and in relation to prevailing circumstances.” (Paragraph 23)

885. The FWC responded to this submission at paragraphs [7] to [12] of its decision, where the substance of its response is “it is not feasible to quantify the weight given to particular factors in balancing the various considerations prescribed by the Act” (paragraph [12]). Perhaps ACCI was asking for too much, but the substance of its complaint is not answered by the FWC’s response. Because the FWC is not subject to a merits review, parties who are aggrieved by “broad brush” conclusions without sufficient explanation and transparency have no recourse.

C. SETTING THE NMW INDEPENDENTLY OF AWARD RATES

886. One of the two issues of law raised by ACCER concerned the relationship between the NMW and award rates of pay; see Chapter 1D. It contended that the *Fair Work Act 2009* requires that the NMW be set independently of award wage rates. The FWC accepted ACCER’s contention. It concluded:

“... as part of the decision making process in an annual wage review the [FWC’s] Panel must first form a view about the rate of the NMW it proposes to set in the review (taking into account the statutory considerations relevant to that discrete task) and then take that proposed NMW rate into account (along with the other relevant statutory considerations) in exercising its powers to set, vary or revoke modern award minimum wage rates.” (Paragraph [137])

887. ACCER argued that, in practice, the award classification system has operated to constrain the adjustment of the NMW. In 1997 the Federal Minimum Wage (FMW), the predecessor to the NMW, was set at the C14 award classification rate. That award classification was not set on the basis of any considerations similar to the provisions that currently apply to the NMW; see Chapter 1E. Since 1997 the NMW/FMW has been increased in lockstep with lower paid award classifications. In both 2012 and 2013 the FWC refused to “disturb” (2012) or “depart” (2013) from the relationship between the NMW and the C14 rate; see Chapter 1 at paragraph 28. Decisions were made about award wage increases and were then applied to the NMW. The proper process under the *Fair Work Act* had been reversed. The effect of this was that the adequacy of the NMW was not subjected to scrutiny.
888. The further increases in the NMW, as sought by ACCER, would impact on a number of wage classification structures, either by overtaking some award rates or prompting some change in the classification structure. However, many awards would not be affected by the proposed progressive increases; for example, in early 2015 the base wage rate in the *Cleaning Services Industry Award* was \$43.60 per week more than the NMW. Progressive increases to this wage rate, as sought by ACCER, would have no impact on this award.
889. A further matter raised against the case for a higher relative increase in the NMW has been the fact that a small proportion of employees is actually employed on the NMW. This aspect is discussed in Chapter 9, at paragraphs 638-53. In the June 2015 decision there was reference to evidence that in 2014 1.6% of all employees were paid the equivalent of the NMW rate (see June 2015 decision, paragraph [318]).
890. The FWC is required to set a NMW in accordance with the minimum wage objective in section 284(1) of the *Fair Work Act*. The legislation provides that the FWC must establish and maintain the NMW as a fair safety net, taking into account the specified matters in the subsection, including relative living standards and the needs of the low paid, and the object stated in section 3, ie the promotion of national economic prosperity and social inclusion of all Australians. Under this process it does not matter that the operation of award rates will provide higher wage rates. Nor does it matter that those who are actually paid the NMW are 1.6%, 16.0% or some higher percentage of the workforce.
891. The NMW, which has its origins in a very different statutory regime in 1997, has never been set or adjusted by any process that has taken into account the current statutory obligations, including that it be set independently of award wage rates. The June 2015 was the first decision under the *Fair Work Act* that drew a distinction between the two wage setting functions. The increase of 2.5% was based on changes in relevant variables over the past

year and did not deal with the sufficiency of the NMW as a safety net set in accordance with the terms of the legislation. Furthermore, at no stage since the new legislative scheme commenced in 2010 has the FWC found that it is satisfied that the level of the NMW, if independently assessed, provides a safety net in accordance with the legislation.

892. The obligation on the FWC is to set a safety net NMW that will cover a diversity of employees and circumstances. In its submissions on the single person benchmark ACCER said:

“The terms of section 284(1)...require a broad consideration of the employment and personal circumstances of a wide range of employees, including those with family responsibilities.” (Chapter 9, at paragraph 742)

893. ACCER has argued that the NMW must cover the ordinary and expected situations; see Chapter 1, at paragraphs 72-3. This includes the single person, the sole parent with two children and the couple parent with two children. They can be regarded as benchmarks. ACCER has argued that the NMW should be sufficient for all three and that, for example, the averaging across all three would be unacceptable. This does not rule out the inclusion of any other kind of household. The category is not closed, but the inclusion of another benchmark household would have no practical effect unless it could be established that the proposed household is in greater need than the neediest of the three already proposed. .

894. The obligation to cover the ordinary and expected does not extend to unusual or exceptional circumstances. We agree, therefore, with the following passage in the June 2015 decision:

“It is not possible for changes in the NMW and modern award minimum wages to ensure that every employed family, whatever their composition, has sufficient income to meet their material needs. Society must, and does, require other instruments to assist in this task, the principle (sic) one being the tax-transfer system.” (Paragraph [338])

895. However, the FWC’s decision gives no indication of which family circumstances will be taken into account and how the family will be protected by the wage safety net. This is a matter of concern that we return to.

D. THE SINGLE PERSON BENCHMARK

896. The main question of law raised by ACCER in the 2015 wage review was the FWC’s decision in June 2014 that the “appropriate reference household for the purposes of setting minimum wages is the single person household”. The FWC said “[For] this reason, it should not be assumed that the tax-transfer payments announced in the May 2014 Budget will automatically be taken into account in determining the level of increase in next year’s review”; see Chapter 2, at paragraphs 170-2. This followed Post-Budget submissions that pointed to the proposed abolition of the Schoolkids Bonus (since agreed to) and the proposed delayed withdrawal of Family Tax Benefit Part B from families without pre-school age children (still pending). ACCER provided substantial submissions on these proposals and their consequences, which concluded:

“The foregoing paragraphs cover matters that the FWC will have to consider in future wage reviews if the proposed changes to FTB B are enacted. If the Schoolkids Bonus is abolished, giving effect to a policy announced before the election, ACCER will rely on

that change to argue in the next wage review for a higher level of wage increase than would otherwise be awarded.” (*ACCER Post-Budget Submission and response to Questions for final consultations*, May 2014, paragraph 27)

897. ACCER claimed that changes in family-specific transfers would be relevant to the consideration of relative living standards and the needs of the low paid, which the FWC has to take into account when setting minimum wages. However, under the single person benchmark, these important changes in the family payments would not be taken into account. The FWC’s position in June 2014 meant that the impact of the Budget on single person households would be taken into account, but, otherwise, changes in taxes and transfers impacting specifically on families would not be taken into account.

898. ACCER’s submissions to the FWC on the single person household benchmark are now set out Chapter 9B. They are summarised by the FWC in paragraphs [140]-[142] of the June 2015 decision, which are followed by:

“The Panel is bound to take into account relative living standards and the needs of the low paid, as prescribed by the Act, without limitation.” (Paragraph [143])

899. This effectively disposed of the single person household benchmark as articulated in the June 2014 decision. The FWC has accepted that it has to take into account the needs of workers with family responsibilities and that it would be contrary to the *Fair Work Act* not to do so.

900. There still remains a range of issues as to how the FWC takes into account the relative living standards and the needs of the low paid, whether they have family responsibilities or not. The FWC has some discretion as to how it goes about decision making, but it is a discretion constrained by the terms of the legislation, especially the requirement to “establish and maintain a safety net of fair minimum wages”; *Fair Work Act 2009*, section 284(1). A safety net is for those who need it. ACCER has argued that the purpose of the wage safety net is to cover and protect workers in the ordinary and expected cases in which workers find themselves; eg Chapter 1, at paragraphs 72-3.

901. The FWC returned to the “single-person reference household” at paragraphs [323]-[344] of the decision. This section of the decision refers to the way in which the FWC will go about the task of setting wages. It might be described as “operational”. It is introduced by references to submissions by ACCER, the ACTU and ACCI. It then continues with a reference to the ACOSS submission:

“ACOSS submitted that decisions on the level of minimum wages should be informed by “benchmark” estimates of the cost of attaining a “decent basic living standard” for a single adult according to contemporary Australian standards, well above poverty levels, and that the tax-transfer system should meet the basic costs of raising children in a low-income family.” (Paragraph [327], footnote omitted, emphasis added.)

902. The footnote to this passage is to page 6 of the ACOSS submission of March 2015. But the passage does not accord with the FWC’s description of the submission. The ACOSS submission stated:

“ACOSS recommends that:

- FWA (sic) should substantially increase real minimum wages in order to significantly reduce the gap between them and median pay levels.
- Decisions on the level of minimum wages should be informed by ‘benchmark’ estimates of the cost of attaining a ‘decent basic living standard’ for a single adult according to contemporary Australian standards.
- The combined effect of the minimum wage and family payments on the extent of poverty among families should also be taken into account in setting minimum wages.
- Research should be commissioned and consultations held with key stakeholders to develop a robust set of indicators of a minimum adequate living standard for people in low paid work. This should take account of new research to update and revise ‘Budget Standards’, and include regular assessment of the living standards of people on minimum wages against this benchmark as well as median household disposable incomes, poverty lines, deprivation indicators and financial stress indicators.”

903. The description of the ACOSS position in paragraph [327] of the June 2015 decision is incorrect: the emphasised passage in the extract from the decision is inconsistent with the third dot point in the extract from the submission. ACOSS did not propose that “that the tax-transfer system should meet the basic costs of raising children in a low-income family”. As we have explained in Chapter 2, at paragraphs 198 to 207, the ACOSS position has its origins in the *Safety Net Review Case of 1997*, where the ACOSS submission on these matters was taken up in the dissent of Vice President Ross (as he then was). ACOSS intended that the modified single person test would protect families against poverty. We note that this the second time in successive years that this kind of error has been made. In the June 2014 decision the FWC claimed that ACOSS supported a single person test, without making any reference to the further submission concerning the protection of families; see Chapter 2, at paragraphs 171-3.

904. ACOSS has put this position for a number of years; see, for example, its 2010 submission to the first wage review under the *Fair Work Act 2009* and its July 2006 submission to the first wage review conducted by the Australian Fair Pay Commission (AFPC). The quoted passages from ACOSS’s 2015 submission were copied from its 2014 submission. Why else would ACOSS make extensive submissions to successive wage claims if it did not see the need for wages to play some role in the protection of workers and their families against poverty?

905. The ACOSS submission, at page 22, provides reasons for its choice of the single person household as the “appropriate reference point” for wage setting (which is picked up by the FWC at paragraph [328]), but the submission does not dwell on it. It is replete with references to poverty in family situations, including those families where there is a person working full time. Poverty and low paid work are the central concerns of the submission. As the last dot point from its submission shows, ACOSS (like ACCER) has made many calls for appropriate research to be undertaken, but each time without success. In its summary and recommendations, the ACOSS submission states:

“Our interest in *minimum wages* stems from their impact on people at risk of poverty and disadvantage in Australia:

1. through their *direct effect on the disposable incomes of people in low paid work and their families*;
2. through their indirect effect on the adequacy of social security payments;
3. through their effect on employment; and
4. through their effect on people’s future retirement incomes.”

(Page 5, emphasis added.)

906. These are not just quibbles about the detail of the June 2015 decision. It is important that we point out these matters because the FWC suggests, for the second time, that ACOSS has a very different position to the one it actually advocates.

907. The single person benchmark articulated in the ACOSS submission (and in the 1997 dissent) does not impose a ceiling on the minimum wage because, in order to protect families against poverty, circumstances may require, and typically do require, the setting of a wage rate that is above the minimum necessary for the single person to achieve a decent standard of living.

908. It is implicit in this approach that families will be left with a standard of living that is less than a decent standard of living. ACCER regards this view as inconsistent with the living wage principle and human rights considerations because it leaves the family short of a decent standard of living; see Chapter 1, at paragraph 161. ACCER has raised its concerns about this aspect in the past. In its Reply of April 2012 ACCER said that it could not agree with the ACOSS position because it did not seek to provide families with a decent standard of living, but sought to provide them with a lesser standard based on keeping them out of poverty. It concluded:

“Families need to be supported at a decent standard of living. Given the inadequacy of family payments, this objective will mean that the wage of a single person will be more than that needed to provide him or her at a decent standard of living and that there will be a degree of over-compensation. If it is unacceptable from an economic point of view, then it is the function of government to increase transfers to a point where there need be no over-compensation of single workers.” (Paragraph 16)

909. While there is a difference between ACOSS and ACCER on the issue of the standard of living that should be provided to families, both of them are agreed that families should not be left in poverty. ACCER and ACOSS share a deep concern about poverty and, in particular, for children who live in poverty. Legislation that has as one of its two principal objects the promotion of social inclusion and which requires the setting of a safety net of fair minimum wages, inevitably draws attention to poverty and the need to address it. The differences between ACOSS and ACCER at the present time are more theoretical than real and will only emerge in a practical way once it can be said that, in the ordinary and expected cases (and not the unusual and exceptional cases), families have been lifted out of poverty. Given that the NMW leaves many families who are in receipt of a full time wage in substantial poverty, the practical consequences of this difference are some time away.

910. In its introduction to its decision the FWC stated:

“We affirm our use of the single-person household as the principal, but not the sole, reference point. We consider the position of many family types and take into account the interaction between wages and the tax-transfer system to produce equivalent household disposable income.” (Paragraph [38])

911. It elaborated on this position in the context of its consideration of relative living standards and the needs of the low paid:

“The Panel reaffirms its position that the appropriate reference household for the purposes of setting minimum wages is a single-person household rather than the couple household with children, for the reasons given by ACOSS. *By appropriate, we mean that the single adult provides the starting point for our assessment of relative living standards and needs.* We also consider relative living standards and needs of other types of families, including single-income families. We routinely examine the circumstances of different family types, including their equivalent disposable income relative to measures such as a poverty line and the situation of families who earn “average” wages [footnote]. While we pay particular attention to the impact of our decision on the needs of low-paid single adults, we also note and take into account the combined effects of changes in minimum wages and the tax-transfer system on the needs of other low-paid household types, including those with dependent children.” (Paragraph [337], emphasis added. The footnote reads “See for example tables 8.2 and 8.3 of the Statistical Report”.)

912. This passage is different in nature to the June 2014 formulation when the consideration of changes in family-specific transfers was ruled out. The term “appropriate” in the first sentence is given a limited meaning: the single person household is to provide the “starting point” for inquiry. Starting with an analysis of the single person may be *operationally* useful in inquiring into changes in, and the levels of, relevant variables.
913. What is unclear, and the cause for concern, is the reference to the intention to “pay particular attention” to the impact of the decision on low-paid single adults, and the reference to “take note and take into account” account the position of other households, including those with children. It suggests a different ranking of the two and that the FWC may be prepared to give greater weight to circumstances of the single worker than to the interests of the workers with family responsibilities. At the least, an approach that pays “particular attention” to single adults is unclear.
914. Paragraph [337] does not indicate how this approach is consistent with the FWC’s views that an “assessment of 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, assessed in the context of contemporary norms” (paragraphs [34] and [311]) and “if the low paid are forced to live in poverty then their needs are not being met” (paragraph [334]). These passages are not limited to low paid singles. How are these objectives to be met in the case of different family types?
915. The paragraph does not indicate how this process of inquiry and assessment will give effect to the FWC’s statutory obligation to provide a fair safety net of minimum wages. Too much can be expected of one paragraph in a very long decision, but the other parts of the decision do not indicate how these matters will be addressed.

E. THE RELEVANCE OF POVERTY TO WAGE SETTING

916. In the previous section we noted the absence of any guidance as to how poverty among families would be taken into account in setting wages. Despite substantial evidence of poverty among wage-dependent households, poverty has not been targeted, even though there been substantial reference to poverty in recent annual wage review decisions. The greater needs of the very low paid have not been reflected in wage decisions. Those in most need have received the same percentage increases as those received by higher paid workers. Even the very modest proposal to have flat dollar increases up to the C10 level has been rejected without reasons.

917. The FWC's June 2012 decision made no reference to poverty, despite extensive material being before it on the extent of poverty among low paid workers and their families. In 2013 the FWC's decision made substantial reference to poverty, without the decision targeting poverty, ie the same increase, 2.6%, was applied to all minimum rates. A passage on poverty in the June 2013 decision provides the introduction to our discussion on poverty in the June 2015 decision and comments on the FWC's statutory function. In 2013 the FWC said:

"An assessment of the needs of the low paid is more challenging. There is no single contemporary measure available to assess either the needs of the low paid or the extent to which those needs are being met. 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, decision*, [2013] FWCFB 4000, paragraph [33].)

918. The point that is referred to in the third sentence is the point made by Frank Costigan QC in the Safety Net Review Case 2004, and repeated, once again, by ACCER in 2013: see Chapter 7, at paragraphs 571 and 588-9. The FWC accepted that the needs of the low paid are not limited to those in poverty, as "conventionally measured". The term "conventionally measured", as used by the FWC, refers to the 60% relative poverty line; see June 2014 decision at paragraph [399], which is reproduced in Chapter 1, at paragraph 25.

919. The FWC's 2013 views were affirmed in the June 2015 decision:

"Poverty entails an inability to buy the material resources required to meet basic needs. We accept that if the low paid are forced to live in poverty then their needs are not being met and that those in full-time employment can reasonably expect a standard of living that exceeds poverty levels. We also accept that information about the low paid and award-reliant employees at risk of poverty is relevant in assessing relative living standards, given poverty measures typically involve benchmarks of community incomes or expenditure standards. (Paragraph [383], footnote omitted.)

920. These views represent the articulation of the standard of living that the NMW is meant to deliver: a standard of living above poverty. As poverty is regarded as the inability to buy the material resources required to meet basic needs, the function of the NMW is to deliver something more than that. That is consistent with the one of the two principal objects of the legislation, social inclusion.

921. The FWC’s concluding sentence in the passage from the June 2015 decision that “those in full-time employment can reasonably expect a standard of living that exceeds poverty levels” is broad and needs some qualification. The FWC made this clear in the passage quoted earlier from paragraph [338] of the June 2015 decision: “It is not possible for changes in the NMW and modern award minimum wages to ensure that every employed family, whatever their composition, has sufficient income to meet their material needs”. However, the FWC has given no indication as to which families can reasonably expect protection from poverty and provided with a standard that exceeds poverty. On the other hand, ACCER argued that the obligation to protect and provide for workers covers the ordinary and expected circumstances of workers, not the unusual or exceptional. This does not provide a firm and certain, but it is preferable to the absence of any attempt to delineate the workers who “can reasonably expect a standard of living that exceeds poverty levels”.
922. Two major questions emerge from this. The first is, which workers are to be supported at a standard of living that exceeds poverty? We have covered this question in the preceding paragraphs. After six decisions under the *Fair Work Act*, we still have no answer from the FWC.
923. The second question is, how do we measure poverty? Before turning to this question we refer some comments made by the FWC about ACCER’s submissions that the FWC had not targeted poverty and should do so.
924. After referring to its earlier statement that it is bound by law to take into account relative living standards and the needs of the low paid “without limitation”, the FWC referred to ACCER’s submissions that poverty be targeted:
- “Beyond the legal point, ACCER submitted that the Panel has:
- ‘an obligation to set the NMW at a level that will enable workers with family responsibilities to achieve a basic acceptable standard of living by Australian standards, a standard of living that is above poverty as it is conventionally measured.’” (Paragraph [330]. The footnote to this passage is to paragraph 33 of the submission, which is now at Chapter 9, paragraph 733)
925. It will be readily apparent that this submission by ACCER reflects a similar position to that adopted by the FWC in the above-quoted paragraph in the June 2013 decision and affirmed in 2015 at paragraph [383]. The 2015 passage does not, however, refer to the conventional measure of poverty.
926. ACCER referred to an *obligation*, whereas the FWC was concerned with a *reasonable expectation*. The difference between these expressions, if any, may be debated. What is clear is that the FWC has a statutory obligation to set a NMW that provides a *fair safety net* having regard to the stated object of the legislation, ie the promotion of “national economic prosperity and *social inclusion* for all Australians” (emphasis added). It appears that the FWC accepts that this gives rise to a reasonable expectation of a standard of living in excess of poverty for those in full time employment, subject to the proviso mentioned earlier that it will not cover “every employed family, whatever their composition” (see paragraph [338]).

927. After providing a brief description of ACCER's claims the FWC continued:

"To the extent that the ACCER submission suggests a particular primacy upon targeting poverty among single breadwinner families, it is problematic in two respects." (Paragraph [332])

928. Those two "problematic" matters raised by the FWC are the multiplicity of factors that it is obliged to take into account when setting minimum wages and the range of households that it needs to consider when setting wages.

929. The passage from ACCER's submission which, in the FWC's view, has raised problematic matters needs to be seen in its context. ACCER's submission on this aspect is now in Chapter 9, at paragraphs 731-5. The context was a recitation of the FWC's views on poverty, which provided the basis for the submission that it had the obligation set out in the quoted paragraph. The consequences of that obligation follow on from the passage quoted by the FWC (which is now underlined):

"The FWC has, we submit, an obligation to set the NMW at a level that will enable workers with family responsibilities to achieve a basic acceptable standard of living by Australia standards, a standard of living that is above poverty as it is conventionally measured: see the passage quoted in the previous paragraph. It should provide this in the ordinary and expected cases; and those cases must include families, whether couple parent or sole parent, with two dependent children. We are not advocating the coverage of unusual or exceptional cases, but a fair, realistic and rational application of a statutory obligation.

The FWC has, we submit, an obligation to ensure that, in these ordinary circumstances, no child in a working family need live in poverty. It should, we suggest, 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.

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 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. 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. Our proposal may be criticised for being too modest given the level of in-work poverty, but if it is accepted by the FWC as the first step in a planned principled and realistic evidence-based process, it is more likely to bear fruit than making claims that have no realistic prospects of success. (ACCER submission, March 2015, paragraphs 31-5.)

930. The first of the "problematic matters" is discussed at paragraphs [333] to [335]. It is that the FWC has to address and balance a range of statutory considerations and cannot "simply target poverty". The FWC notes that ACCER has accepted this in the consultations. ACCER did, consistent with its earlier written submissions. ACCER has not suggested that the FWC should *simply* target poverty. The passages quoted from the ACCER submission make this clear. Poverty has to be tackled over time, but it requires recognition that there is a matter of great importance to be addressed.

931. ACCER's submissions frequently refer to the targeting of poverty because of the extent and depth of poverty and because the relative need for a wage increase is greatest at the lower income levels. ACCER has argued for a series of modest steps over time in recognition that

other factors be taken into account. If the FWC concluded they were not modest, it could have said so and ordered a smaller adjustment. But it was not even prepared to award the very small increase that would come from a flat dollar increase. ACCER was, and remains, concerned that in the balancing of factors the FWC has given insufficient weight to poverty.

932. ACCER's concerns about the way in which the FWC has approached this balancing of factors and the consideration of poverty is outlined in Chapter 5, at paragraphs 439-451. Those paragraphs cover increasing inequality and poverty among safety net-dependent workers. ACCER argues that the past decisions do not give proper consideration and weight to poverty. They should be read in the context that the FWC has accepted that there is a need not to live in poverty, if the low paid are forced to live in poverty then their needs are not being met and the needs of the low paid is not limited to those in poverty, as conventionally measured.
933. In 2014 ACCER referred to a Productivity Commission Staff Working Paper, entitled *Deep and Persistent Disadvantage in Australia*, which included a serious attempt to understand and measure the personal cost of disadvantage for the individual and the consequent costs to society. It led ACCER to draw a comparison with the content of past wage decisions. ACCER said:
- “... 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.” (Now at Chapter 5, paragraph 448.)
934. That passage was reproduced in ACCER's March 2015 submission in the context of a discussion of the contribution that wage decisions to growing wage inequality, which caused increasing poverty; see Chapter 5E. The following paragraph appears in that section:
- “We do not find sufficient consideration of poverty in the FWC's decisions since 2010. We do not find poverty, including its impact on children, in the FWC's articulation of the relevant factors. Absent that consideration, it cannot be said that the FWC has, in an open and transparent way, balanced social and economic factors relevant to the targeting of poverty and disadvantage.” (Paragraph 450)
935. ACCER contends that more could have been done, and can be done, to alleviate poverty and its personal and social consequences. It has proposed flat dollar increases and extra increases in the NMW as ways to target poverty. If the FWC believes that this cannot be done because of its obligation to take into account other factors, then we should be given the reasons for the failure to do so.
936. The second “problematic” aspect raised by the FWC in the targeting of poverty is in paragraphs [336] to [344] of the decision. The FWC says it needs to consider the “circumstances of all award-reliant employees and the low paid, not simply workers with family responsibilities” (paragraph [336]) and that more data is needed (paragraph [344]). This should not delay or restrict a wage increase to those who are most in need. There is already sufficient data about the extent of poverty in households where there is a full time wage earner. The ACOSS *Poverty in Australia 2014* report estimated that in 2011-12 the

number of those living in poverty in households where there was full time employment was 522,138 at the 50% relative poverty measure and 891,343 at the 60% relative poverty level; see Chapter 9, at paragraphs 669-77. The 2011 Census data shows that in couple families with two children there were over 110,000 children living in homes below the 60% relative poverty level, even though there was a full time wage earner in the home; see Chapter 8, at paragraphs 654-60. We know from the FWC's own figures that a NMW-dependent family of a couple and two children was 10% below the same poverty line; see Table 5.7 at paragraph [394].

937. The identification and quantification of other kinds of households that are not in poverty will not reduce the number of households that are in poverty. The case for targeting poverty among working families is not weakened by finding that there are others who are doing rather better. If the further data shows that some other groups are worse off then no detriment will have been caused to them by a prompt response to poverty. Further data will not reduce the need to do something about the poverty that is known to exist.

938. Our final commentary on poverty concerns the FWC's discussion on "poverty and poverty lines" at paragraphs [382] to [397] of the June 2015 decision. This section is introduced by commentary which emphasises the importance of poverty in wage setting. It includes paragraph [383], which was quoted earlier. The following paragraphs of the decision deal with the measurement of poverty and contain a number of references to the 60% relative poverty line. This section on poverty lines concludes with the view that a poverty line is a "fairly crude" measure of need, financial stress and deprivation:

"The use of a poverty line is a fairly crude way to measure the extent to which a family or individual is in need. Its main attraction is that it produces a single and easy to grasp number, and it identifies those who are at greater risk of being without the income that is required for a decent standard of living and to engage in community life. In recognition of its limitations, researchers have turned to direct measures of financial stress or material deprivation. When a filter is applied that identifies how many households both have low incomes and report being unable to buy essentials, then the numbers who are defined as being in need falls substantially." (Paragraph [396])

939. There follows an illustration of research that points to a large number of low income households not reporting financial stress and an observation:

"We draw attention to these differences in how poverty is measured because considerable emphasis has been placed, for example by ACCER, on the relationship between the disposable incomes of single-earner families with children and the 60 per cent poverty line." (Paragraph [397])

940. The description of the poverty line as a "fairly crude" measure is intended to cover the 60% poverty line. This is extraordinary given its use since 2008 as a measure of need and its use in a wide range of research. The description sits very uneasily with the way in which this poverty line has been used in the past. It was introduced in 2008 by the Australian Fair Pay Commission (AFPC) and it has been calculated annually ever since, by the AFPC and the FWC. It has been used by the FWC as an indicator of poverty. It has been described by the conventional measure and the FWC's commentary in past decisions has treated it as a measure on which weight could be placed.

941. The value and limitations of the relative poverty line are well-known. For example, ACCER explained it in these terms in its 2014 and 2015 submissions:

“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.

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 fixed benchmark for the setting of wages, presumably because a range of factors need to be taken into account in the setting of minimum wages. Given that working families should have a margin over poverty, the 60% of median relative poverty line is the most appropriate measure for understanding needs and the setting of wage levels in the absence of research suggesting another percentage or range of percentages.” (ACCER submission, March 2015, Attachment, at paragraph 597-8; now at Chapter 8, paragraphs 597-8)

942. Although there may be debate about the appropriate percentage level for an operational relative poverty line, no case has been made out for a lower percentage to be adopted. It is clear that there are very large numbers of families who are well below the 60% level and, on any reasonable view, are living in poverty. Given that working families should have a margin over poverty, as the FWC accepts, the 60% of median relative poverty line is the most appropriate measure for understanding needs and the setting of wage levels.
943. A relative poverty line also has the advantage of adjusting over time in response to increases in community living standards (poverty is relative), tracking changes in the circumstances of particular groups (to see whether groups are improving relatively or not) and calculating relative living standards (such as comparisons between low income earners and pensioners). All of this is underpinned by calculations of median equivalised household disposable income by the Australian Bureau of Statistics; see Chapter 9, at paragraphs 595-609.
944. The FWC refers to the availability of measures of financial stress and material deprivation (at paragraphs [396] to [397] and [398] to [403]). These can be useful in gaining an appreciation of the burdens that come with living low paid, but they do not provide an operational metric on which wages can be set. We have already mentioned the Productivity Commission Staff Working Paper, *Deep and Persistent Disadvantage in Australia*. It and related research are discussed in Chapter 7, at paragraphs 516-20. We would welcome any proposal to extend this kind of research into the lives of low paid working families. It must be said in this context that the FWC has ignored or refused the repeated requests by ACCER for inquiries into the needs of the low paid; see Chapter 7, at paragraphs 574 to 586. Each year ACOSS has made a similar request.
945. The FWC’s decisions have contained repeated references to poverty and the crucial role that it should play in wage setting. The FWC has now questioned the emphasis given by various

parties to poverty and poverty lines. The FWC's comments about poverty and poverty lines raise a major question for the FWC itself: how does it measure poverty? Unfortunately, this question is unanswered by the FWC's June 2015 decision, the sixth decision under the *Fair Work Act 2009*. That, in itself, demonstrates the lack of attention that has been given to the setting of wages that protect low paid workers and their families from poverty.

APPENDICES

Appendix A	Tables of data extracted from the 2011 Census
Appendix B	Why we advocate for low paid workers and their families
Appendix C	The Bishops' 2005 Statement on <i>Work Choices</i>

**Working Australia, 2015:
wages, families and poverty**

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

	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 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 labour force	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
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 families 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 families 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

WHY WE ADVOCATE FOR LOW PAID WORKERS AND THEIR FAMILIES

The following is extracted from ACCER's March 2013 submissions to the Annual Wage Review 2012-13

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 C

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.

