

Fair Work Commission

Fair Work Act 2009

Annual Wage Review 2015-16

**Submission by the
Australian Catholic Council for Employment Relations
30 March 2016**

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Attachment:

Working Australia, 2016: wages, families and poverty

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A. Living wage and award wages claims

1. The Australian Catholic Council for Employment Relations (ACCER) seeks the following orders by the Fair Work Commission (FWC):
 - The National Minimum Wage (NMW) be set at \$682.00 per week and \$17.95 per hour.
 - Award wage rates be increased by \$19.00 per week.
2. The claim in respect of the NMW is for an increase of \$25.10 per week.
3. These claims are made in an annual wage review which requires the FWC to set a "safety net of fair minimum wages" by taking into account, among others, "relative living standards and the needs of the low paid"; *Fair Work Act 2009*, section 284(1). This obligation applies to the setting of the NMW and award wage rates. Because the subsection also requires the FWC to take into account "the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth" when setting safety net wages, the setting of *fair* minimum wages requires the weighting and balancing of economic and social considerations. Social considerations are not uniform across the range of minimum wage rates. The term "safety net" is not defined, but it is a beneficial provision that is intended to protect workers, especially those who are low paid and who depend on the NMW and low-paid award rates.
4. The setting of the NMW and award wage rates are two separate functions, requiring the FWC to first form a view about the NMW rate it proposes to set in the review and then to take that proposal into account in exercising its powers to set, vary or revoke modern award minimum rates; see *Annual Wage Review 2014-15 Decision*, [2015] FWCFB 3500 (June 2015 decision), paragraph 139. The setting of the NMW is independent of the setting of award wage rates. The award system does not cover all of the workers who are covered by the NMW and, consistent with the terms of the legislation, the safety net wage rate set for them cannot be influenced by the terms and operation of the awards.
5. The proper assessment of the needs of the low paid and relative living standards is not constrained by the number of workers who will be paid the NMW as a result of the setting of higher award rates or by the operation of collective and individual arrangements providing for higher rates of pay. In its June 2015 decision the FWC noted data which indicated that "1.6 per cent of all employees were paid at the

equivalent of the NMW"; June 2015 decision, paragraph 318. The appropriate level for the NMW does not depend on the number of workers who will actually be paid the NMW, such as 1.6%, 16.0% or some other figure, but the capacity for the FWC to set and adjust a wage that it regards as appropriate may be influenced by economic factors related to the number of employees who will be affected by its decisions.

6. The claims take into account:

- the needs and relative living standards of workers who depend on the safety net rates set by the NMW and awards;
- the insufficiency of the NMW and low-paid award rates to provide workers and their dependents with a minimum acceptable standard of living in contemporary Australia;
- the NMW and low-paid award rates result in many low paid workers and their families living in poverty;
- the NMW and award rates up to, at least, the C10 award wage rate are insufficient to provide, in the ordinary and expected circumstances, a minimum acceptable standard of living and one that is above poverty levels and do not fulfil their intended function of being a safety net that protects workers who need protection and support;
- published increases in cost of living, productivity and community-wide wages since the June 2015 decision;
- the promotion of social inclusion, being one of the principal objects of the *Fair Work Act*; and
- the claimed increases will not have any, or any significant, adverse national economic impact.

7. ACCER submits that the claims are economically prudent. However, if the FWC finds that there are economic reasons not to grant the claims as sought, ACCER seeks that priority be given to increasing the lowest wage rates, i.e. supporting the most needy. The unmet 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. This means that priority should be given to adjusting the NMW.

8. The giving of priority to the adjustment of the NMW would be consistent with the statutory obligation to first set the NMW by reference to, among others, relative living standards and the needs of the low paid.

B. Attachment: *Working Australia, 2016: wages, families and poverty*

9. The Attachment to this submission is the manuscript for an ebook *Working Australia, 2016: wages, families and poverty*, referred to herein as the Attachment.
10. The following chapters of the Attachment are relied upon in support of these claims, in addition to any specific references. Where the whole of the chapter is not relied upon the section or sections of the chapter that are relied upon are specified.

Chapter 1. Working Australia, January 2001 to January 2016

- B. 15 years of increasing affluence and poverty
- C. A decent wage is a human right
- D. The FWC's failure to address poverty

Chapter 2. The Australian wage setting framework

- D. Support for families in minimum wage decision (re Safety Net Case 1997)

Chapter 3. Safety net workers have suffered real wage cuts

Chapter 4. Safety net workers have not received productivity increases

Chapter 5. Safety net wages have fallen behind general wage levels

- A. General indicators of increasing community incomes
- B. Rising inequality: the impact of minimum wage decisions

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

Chapter 7. Poverty and how we measure it

- D. Budget Standards
- E. Safety net wages have not been based on workers' needs

Chapter 8. Low income working families have fallen below poverty lines.

C. Section 290 inquiry and sole parents inquiry

11. ACCER also seeks the establishment of a process under section 290 of the *Fair Work Act 2009* for the purpose of obtaining evidence about the needs and relative living standards of low paid workers and their families. The matters relevant to this request are set out in Chapter 7D and Chapter 8, sections A to C, of the Attachment.
12. As part of the proposed inquiry, or by some other process, ACCER seeks an inquiry into the appropriateness of the FWC relying on calculations of the living standards of sole parents that are based on sole parents being in full time employment. This reliance is evident in the calculations for sole parents in Tables 8.2 and 8.4 of the FWC's *Statistical Report* and to the FWC's reference to those tables in the June 2015 decision, at paragraph 337. Table 8.2 of the *Statistical Report*, dated 18 March 2016, calculates

that a NMW-dependent sole parent with two children is 16.0% above the 60% relative poverty line, a greater margin than the 13.0% calculated for the single person on the NMW. The equivalence scales used in the calculation of living standards of sole parents do not take into account the costs of childcare. This matter is referred to Chapter 8F in connection with Table 36, where it is proposed that the living standards of sole parents be calculated on the basis of part time work for 27.5 hours per week. This would not exclude some investigation into the costs of childcare for sole parents who work full time. The data on the costs of childcare in Table 15.1 of the *Statistical Report* would provide a starting point for this inquiry.

D. A Living Wage

13. Our submissions in the Attachment 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 15 years 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; for example, see Figure 2 in Chapter 5E and associated commentary.
14. 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.
15. The NMW should be a living wage. Our specific objective is to increase the NMW to the level where it can be rightly described as a living wage. This can be done by a series of modest increases that would be consistent with the range of considerations that the FWC is required to take into account. In recognition of the position of low paid award-dependent workers, ACCER will continue to seek flat money increases, which have the effect of providing most assistance to the lower paid.
16. The claim for a flat money increase to award rates, rather than a percentage increase across all classifications, is intended to provide greater assistance to those who are most in need and to move their award rates towards a living wage. The uniform percentage increases awarded since 2011 have failed to address the greater unmet needs of low paid workers, especially those with family responsibilities, many of whom are living in poverty.

E. A decent standard of living

17. The setting of a fair NMW means that those who may depend on it will have a decent standard of living and not merely freedom from poverty. In its June 2013 decision 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, Decision*, [2013] FWCFB 4000 (June 2013 decision), paragraph 33.)

18. The passage in the June 2013 decision was repeated in the June 2015 decision in the context of a discussion about the needs of workers:

“[311] The 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.”

“[382] The impact of the NMW and modern award minimum rates of pay upon an employee’s capacity to purchase the necessities of life and to engage in community life are relevant to considering the legislative requirement to take into account ‘the needs of the low paid’” (Footnote omitted)

“[383] 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.” (Footnote omitted)

19. The standard of living expressed in paragraph 311 is reasonable and proportionate to the proper exercise of the FWC’s powers. When exercising its constrained discretionary power under section 284(1) of the *Fair Work Act*, the FWC is obliged to make decisions that are reasonable and proportionate to the powers conferred.
20. These passages in the June 2015 decision may suggest two standards of living: one that avoids poverty and one that provides a decent standard of living. A decent standard of living is more than merely avoiding poverty. A family merely living on the poverty line is not living at decent standard of living.
21. Read in combination, the FWC appears to stating that full time workers have a reasonable expectation of a standard of living that will be in excess of poverty and one which will enable them to purchase the essentials for a “decent standard of living” and engage in community life, assessed in the context of contemporary norms. This is an

expression of a reasonable and proportionate application of the legislation; and, we submit, an obligation imposed upon the FWC, to be exercised in accordance with the proper weighting of all the factors it is required to take into account when setting a fair safety net of minimum wages.

22. We accept that, from time to time, there may be factors that impinge on the FWC's ability to adjust the wage safety net; but where that does happen, transparency in the reasons for decision is required. In this regard, we rely on the matters set out in Chapter 5E.
23. We contrast this view of the FWC's obligations with the position advocated by the Australian Council of Social Services (ACOSS) in its submission to the Annual Wage Review 2014-15. This submission was also relevant to the single person benchmark, to which we return. The ACOSS submission in 2015, as in previous years, made a distinction between the standard of living that is appropriate for a single person and the standard of living to be provided to families. It proposed that families be protected against poverty. ACOSS submitted:

"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.)

24. The origins of this position, which might be called a qualified single person benchmark, are in the Safety Net Review Case 1997, which established the Federal Minimum Wage, the predecessor of the NMW; see Chapter 2D of the Attachment.
25. ACCER cannot support the ACOSS position because it proposes a standard of living for workers with family responsibilities that is less than a decent standard of living. Amongst other considerations this would be contrary to recognised human rights; see Chapter 1C of the Attachment, "A decent wage is a human right". We return to these human rights later.

F. The reasonable and proportionate application of rights

26. The objective of providing a wage that provides "a standard of living that exceeds poverty levels" and which enables "low-paid workers ... to purchase the essentials for a 'decent standard of living' and to engage in community life, assessed in the context of contemporary norms" can only be done by reference to particular circumstances in which workers may find themselves. Those circumstances vary and the obligation

under the legislation and under human rights provisions is limited to circumstances that are reasonable and proportionate.

27. The reasonable expectation to a standard of living that exceeds poverty levels and the expectation of a decent standard of living and the commensurate obligations on the FWC are limited:

"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." (June 2015 decision, 2015, paragraph 338.)

28. Clearly, the wage safety net does not extend to fully support families in exceptional circumstances, such as families with nine children. They will receive some benefit, but not to the standard identified by the FWC. However, the June 2015 decision gives no indication of those families who will not have the protection of the wage safety net so as to provide them with "sufficient income to meet their material needs". Nor has it provided an indication of the kinds of families that are reasonably entitled to expect that they will have sufficient income to meet their material needs.
29. We do not know which families the FWC intends should be supported in the way described by it. It should also be noted that even under the ACOSS proposal, and the articulation of a qualified single person test in the Safety Net Review Case 1997 (i.e. the proposed protection of families against poverty) requires the identification of the families to be protected. That has not been done: the ACOSS submission is silent on this issue.
30. The obligation to set a sufficient income by reference to needs and relative living standards does not extend to those workers who are living in unusual or exceptional circumstances, but the FWC is obliged, we submit, to take into account the ordinary and expected circumstances in which workers find themselves. Workers in the ordinary and expected circumstances "can reasonably expect a standard of living that exceeds poverty levels" and be "able to purchase the essentials for a "decent standard of living" and to engage in community life, assessed in the context of contemporary norms". An examination of the ordinary and expected circumstances in which workers and their dependants live will cover single persons, workers who are sole parents and workers with a spouse or partner and children. In the contemporary Australian context, having two children is within the scope of the ordinary and expected circumstances, as is having only one child. Workers with two children are reasonably entitled to expect a standard of living that exceeds poverty levels and which

provides a decent standard of living. It would not be acceptable to set a wage that is sufficient for one of these categories, but not for the others.

31. A safety net wage must, we submit, 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. As we indicated earlier, consideration needs to be given to sole parents who are unable, because of their family responsibilities, to work full time.
32. The poverty experienced by single breadwinner families highlights a matter of principle: when a family is living in poverty or on a wage does not meet the standard of living identified by the FWC, should the full time breadwinner have to seek overtime or a second job, and/or the primary carer have to seek employment in order for the family to escape poverty and achieve a decent standard of living?
33. ACCER's consistent position has been that it should not be necessary for this extra work to be undertaken. This issue is intrinsic to wage setting, but it has not been the subject of any consideration in the past six decisions under the *Fair Work Act*. If the FWC believes that breadwinners should take on extra work and/or the primary carers of children should seek employment so that the family can escape poverty and achieve a decent standard of living it should say so and give reasons for its views, including how its view would be consistent with recognised human rights.
34. In regard to these issues, we refer to the matters in Chapter 8E and to the data in Chapter 8F.

G. The single person benchmark

35. The FWC's decision in June 2014 stated that the "appropriate reference household for the purposes of setting minimum wages is the single person household"; *Annual Wage Review 2013-14, Decision* [2014] FWCFB 3500 (June 2014 decision), paragraphs 38 and 373.
36. This was a fundamental limitation on the protection and support of families that was evident in the above-quoted passage from the June 2013 decision, because it meant that the earlier view was being restricted to single workers without family responsibilities. Following submissions by ACCER in the next annual wage review the FWC stated:

"[The FWC] ...is bound to take into account relative living standards and the needs of the low paid, as prescribed by the Act, without limitation." (June 2015 decision, paragraph 143)

37. 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. This effectively disposed of the single person household criterion as articulated in the June 2014 decision; but the FWC decided that it could use the single-person household as the principal reference point in the setting of minimum wages:

"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." (June 2015 decision, paragraph 38)

38. The FWC later reaffirmed its position that "the appropriate reference household for the purposes of setting minimum wages is a single-person household":

"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. 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, footnote omitted.)

39. Starting with an analysis of the single person household may be operationally useful in inquiring into changes in, and the levels of, relevant variables. The concern that ACCER has with this approach, which drew some support from the ACOSS submission, is that it might imply the distinction advanced by ACOSS regarding the levels of support to be given to single workers and workers with family responsibilities. The matters set out in section E, above, appear to contradict the double standard in wage setting, but we ask that the FWC make it clear that the method of investigation and analysis referred to in paragraph 337 of the June 2015 decision is not intended to limit or prejudice the rights of workers with family responsibilities to a standard of living that will be in excess of poverty and one which will enable them to purchase the essentials for a "decent standard of living" and engage in community life, assessed in the context of contemporary norms.

H. Poverty and the essentials for a decent standard of living

40. The decent standard of living identified by the FWC in the June 2015 decision is one that depends on an understanding and measurement of poverty. The measurement of poverty does not constrain that standard, but it is needed to identify whether any further income is required so that workers and their families can purchase the essentials for a decent standard of living and engage in community life, assessed in the context of contemporary norms.
41. Poverty, its measurement and its alleviation are essential parts of the FWC's approach to wage setting. These are necessary, but not sufficient considerations in wage setting. The FWC's finding that the "assessment of the needs of the low paid [in section 284(2)] 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" (June 2015 decision, paragraph 310) requires that it consider evidence about the needs of low paid workers and the costs of those needs. It also involves judgments about community engagement and contemporary norms of need and engagement. These concerns are consistent with the social inclusion object of the *Fair Work Act*, where 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".
42. This process, and the FWC's own position on the alleviation of poverty in wage setting, can only occur if there is some measure of poverty and of the costs of purchasing the essentials for a decent standard of living. There is a brief discussion of poverty and its dimensions and of related concepts in Chapter 7A of the Attachment and a discussion of the measurement of various aspects of poverty and disadvantage in Chapter 7B. One point that emerges from those sections and Chapter 8 is that there is no precise income-based metric for measuring poverty and needs. The various manifestations of poverty (such as different kinds of financial stress) or the indicators of disadvantage (such as those used in the UNICEF research) can assist, if properly framed, in making a judgment about income levels, community engagement and contemporary norms. However, they do not provide a measure of the costs of purchasing the essentials for a decent standard of living. If there were to be an inquiry into the needs of the low paid, as we have proposed, one of the matters could be the identification of family-specific measures of stress and disadvantage, based on the met

and unmet needs of children. We not expect that it would lead to an operational measure, but it would assist in the assessing the adequacy of various income levels to provide a decent standard of living and promote social inclusion.

43. The FWC has identified poverty as a key reference point in wage setting. We draw attention to, and rely on the research in Australia, and overseas research concerning Australia, in Chapter 8G. The NATSEM/UnitingCare and ACOSS reports demonstrate that a very significant part of child poverty occurs in homes where there is full time employment. We are concerned that the discussion in paragraph 396 of the June 2015 decision in regard to this kind of research may have the unintended consequence of unfairly questioning a wide range of research. Paragraph 396 is introduced by “The use of a poverty line is a fairly crude way to measure the extent to which a family or individual is in need.” The paragraph also contains a reference to indicators of disadvantage in Table 11.1 of the FWC’s *Statistical Report*, which are not focussed on the stresses and needs of low income working families. The poverty research of the kind in Chapter 8G, typically acknowledges the limitations of the income measure as a precise guide to poverty (as we do in Chapter 8A); but the description of the research as “fairly crude” is, in our view, unwarranted.
44. As paragraph 337 of the June 2015 decision shows, reliance is put on the calculations of household poverty prepared by the FWC, now revised at Table 8.2 of the FWC’s *Statistical Report* of 18 March 2016. The latest figures confirm that, even with full time employment, a single breadwinner family with two children receiving the base wage rate for a trades-qualified worker is still living in poverty. Chapter 8C includes an analysis of poverty based on the same methodology. It makes following conclusions in regard to poverty gaps and changes in living standards over the years January 2004 to January 2016.
 - The NMW-dependent family of four fell further into poverty: from 3.3% below the poverty line to 11.0% below it, with a poverty gap in January 2016 of \$121.58 per week.
 - The C12-dependent family of four fell into poverty: from 1.7% above the poverty line to 7.7% below it, with a poverty gap in January 2016 of \$85.21 per week.
 - The C10-dependent family of four fell into poverty: from 7.6% above the poverty line to 3.9% below it, with a poverty gap in January 2015 of \$42.48 per week.

45. In each year since 2010 ACCER has argued that pension rates and the estimated living standards of pensioners are a relevant consideration; and has pointed out that pensioners have a higher living standards than low paid safety net dependent families (within the ordinary and expected category). Despite evidence to this effect the FWC has not even acknowledged this material. Once again our submissions point to a comparison between the living standards of low paid safety net-dependent workers and their families; see Chapter 8D. We draw particular attention to the analysis which shows that the C10-dependent family has a lower standard of living than pensioners. Quite apart from the utility of these figures for wage setting the inconsistency between the living standards is an important public policy issue.

I. Human rights

46. ACCER's submissions emphasise minimum wage setting as an exercise in the application of a fundamental human right: the right to a decent wage and to a standard of living for the worker and the worker's family that is worthy of human dignity. The FWC's task is not setting prices for economic inputs. It is dealing with much more fundamental matters. We rely on Chapter 1C and Chapter 2A (in regard to the living wage) of the Attachment.
47. Too often recognised human rights are regarded as optional by governments, but the true and sustainable economic, political and social progress of the 21st century, in Australia and elsewhere, will depend on a serious commitment to the application of human rights, by legislation and by statutory authorities.
48. The *Fair Work Act*, which has one of its principal objects the promotion of social inclusion and which establishes a wage-setting system based on the establishment and maintenance of a "safety net of fair minimum wages", is consistent with recognised human rights. Another of the objects of the legislation is the establishment of a framework for workplace relations that "take[s] into account Australia's international obligations"; section 3(a). One of those obligations is found in the *International Covenant on Economic, Social and Cultural Rights*, which 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)).
49. This international obligation gives effect to 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)).

35. In regard to the way in which these kinds of rights should be implemented, the International Labour Organisation's *Minimum Wage Fixing Convention, 1970*, brings together a range of factors that need to be considered in setting minimum wages:

“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.”

50. Australia has ratified this convention and the terms of the domestic legislation are consistent with this international obligation.
51. These are important considerations because they emphasise that the FWC is concerned with the implementation of basic human rights and doing justice for those most in need. The legislation evinces an intention to give special attention and priority to the low paid and, consistent with that, priority should be given to the position of those on the lowest rates of pay, in particular the NMW. ACCER's emphasis on the setting of the NMW is consistent with the terms of the *Fair Work Act* and these fundamental human rights.

ATTACHMENT

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**Submission by the
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Annual Wage Review 2015-16

30 March 2016

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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

CHAPTER 1

WORKING AUSTRALIA, JANUARY 2001 TO JANUARY 2016

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A. INTRODUCTION

1. This is the third in an annual series of ebooks based on submissions made by the Australian Catholic Council for Employment Relations (ACCER) to annual wage reviews conducted by the Fair Work Commission (FWC). 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. The first ebook in the series was published in March 2014 as *Working Australia, 2014: wages families and poverty*. We intend that the books will 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, some disturbing trends were under way before that time. Although our comparisons and commentary concentrate on the period 1 January 2001 to 1 January 2016, 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 the low paid”; section 284(1).
6. Our principal focus is on those low paid workers, and their families, who are unable to bargain for higher wages than the safety net wages set by the National Minimum Wage (NMW), now at \$656.90 per week, and by the safety net wages set by awards for low paid work classifications; but we are also concerned about the plight of those workers who cannot bargain for a wage that enables them and their families to live in dignity. About one-fifth 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 low paid workers who are able to bargain individually or collectively (through their unions) for better wages and other terms and conditions of employment. In some cases safety net 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 the prescribed minimum wage rates.
7. The welfare of families in the modern world is intimately bound with questions about work, wages and governmental policies, all of which are interconnected. We need to address the economic foundations of family life, with particular reference to

widespread poverty among families. Poverty is a threat to families, both in the ability of men and women to prepare for family life and in their ability to sustain a nurturing environment for their children. Children disadvantaged by poverty are most likely to carry their burdens into adult life and into the lives of their own children.

Poverty matters and wage decisions affect child poverty

8. 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)

9. 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 wage review decisions. Regrettably, this has been the case.
10. 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. There is room for debate about matters of detail and competing economic views, but the debate should be within that context.

No child need live in poverty

11. 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, such as the FWC, 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. We argue that, in contemporary Australia; those cases must *include* couple and sole parent 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*.

Inequality matters

12. 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*. Wages have a social value because they enable workers and their families to participate in their societies and realise their human potential. Social exclusion destroys that opportunity.
13. 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 them and "middle 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.
14. 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..."
15. A precondition for social inclusion is a decent wage and a wage that takes into account the needs of workers with family responsibilities. 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 decent wage.

The single person benchmark

16. Our advocacy for low paid workers and their families received a major setback in 2014. 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, Decision* [2014] FWCFB 3500 (June 2014 decision), at paragraphs 38, 365 and 373.
17. This was the first time in more than a century of minimum wage setting in Australia that an industrial tribunal decided that minimum wages should be set on that basis, thereby excluding considerations of the needs of workers with family responsibilities. The FWC gave no indication to the parties that it was contemplating making a decision to adopt the single worker criterion 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.
18. 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 the legislation provided 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 apparent intended consequence of the decision was to transfer to the Commonwealth Government the total responsibility for the support of the dependants of low paid workers.
19. Our submission for the Annual Wage Review 2014-15 argued that the use of the single person criterion was contrary to law and was inconsistent with established human rights and Australian wage setting precedents. The principal contentions were that the legislation "requires the FWC to take into account the living standards and needs of the low paid with family responsibilities" and that "the establishing and maintaining of a safety net minimum wage ... without taking into account the living standards and the needs of the low paid with family responsibilities would be contrary to law". The arguments and the FWC's response are discussed in Chapter 2, at sections D and E.
20. ACCER's submissions on the single person criterion were successful, but were not the subject of any analysis of the issues raised or any insight into the basis for the 2014 and the reasons for the change in 2015. After referring to ACCER's submissions the FWC simply stated that it "is bound to take into account relative living standards and the needs of the low paid without limitation"; see June 2015 decision, paragraphs 140 to

143. This effectively disposed of the single person household benchmark that was 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.

21. The FWC, nevertheless, saw a role for the single-person reference household: as the “appropriate reference household” for identifying a “starting point” for the “assessment of relative living standards and needs”, including “the relative living standards and needs of other types of families, including single-income families”; see June 2015 decision, paragraph 377. It said that it would “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”. This is to be contrasted with the June 2014 formulation when the consideration of changes in family-specific transfers was ruled out.
22. Starting with an analysis of the single person may be *operationally* useful in inquiring into changes in, and the levels of, relevant variables and providing a basis for the consideration of a wider range of variables. However, this does not appear to be the limit of the use of the starting point. As we explain in our discussion of the June 2015 decision, in Chapter 2D, there is reason to believe that the purpose of the inquiries proposed by the FWC may be to provide a decent standard of living to single workers and merely to provide workers with family responsibilities with a standard of living that is free from poverty. If this is what the FWC proposes it would be a matter of substantial importance in the operation of a system designed to provide a fair safety net of minimum wages.

Family payments cut and more are threatened

23. Over the past four decades the wage packets of Australian workers with family responsibilities have been supplemented by rising levels of family support through a range of family payments. The respective contributions of the wage packet and the public purse to family welfare have changed markedly. At January 2016 the weekly disposable income of an NMW-dependent single breadwinner couple family with two children (aged 8 and 12, with one in primary school and the other in secondary school) in private rental housing was \$980.73 per week, of which \$386.98, or 39.5%, came from the public purse; see Table 28 in Chapter 8. By contrast, in 1973, the public purse contributed 7.7%; see Table 11 in Chapter 5.

24. Although substantial, family payments are insufficient to support low paid workers with family responsibilities. They are not intended to remove the need for the wage packet to provide substantial family support. Furthermore, the current and prospective circumstances of the Commonwealth's fiscal position will not permit it to provide the full support of a worker's dependants.
25. The Commonwealth Government also takes the view that the transfers are for the *partial* support of families. Just three weeks before the decision by the FWC to adopt the single person criterion, 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)
26. The May 2014 and May 2015 Budgets contained various measures to reduce the amount of transfers to low and middle income families. Some measures have been passed. The Schoolkids Bonus will be discontinued at the end of 2016. In the case of a family with a child at primary school and another at secondary school, the consequential loss will be \$24.65 per week. At the end of 2015 the Government was able to secure the passage of legislation to remove from single breadwinner couple parent families the ability to receive Family Tax Benefit, Part B (FTB B) once their youngest child turns 13. This change will cause many families to lose \$60.20 per week during the time that the child remains at secondary school. At the end of March 2016 a Bill to reduce the rate of Family Tax Benefit, Part A (FTB A) and to make further changes to FTB B payments for all recipients was before the Senate. We refer to these matters in more detail at section E of this chapter. The effect of these proposed changes would be to cut the family payments to families with two children by at least \$24.55 per week when fully implemented in July 2018. This would come on top of the loss of the Schoolkids Bonus and the losses suffered by families where the youngest child has turned 13. Cuts of this magnitude are unprecedented.
27. While the fate of the pending Bill is unclear, we know that over the next few years family transfers will comprise a smaller proportion of the disposable incomes of many Australian families, thereby reversing a trend of the past four decades. This will have substantial consequences for living standards and minimum wage decisions. The strengthening of the social safety net through increases in family payments over the past four decades has constrained wage increases. The reversal of that trend means that

the wages safety net will have more work to do if living standards are to be maintained and improved

B. 15 YEARS OF INCREASING AFFLUENCE AND POVERTY

28. The last 15 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. There are currently clouds on the economic horizon, but the Australian economy remains relatively strong.
29. One measure of the increase in national wealth over this period is the increase in average wages: for example, over the 15 years Average Weekly Ordinary Time Earnings (AWOTE), increased by 87.7% (see Table 10 in Chapter 5), while the rate of inflation measured by the Consumer Price Index (CPI) increased by only 48.3% (see Table 1 in Chapter 3). In the two years to November 2015 the rate of increase in the growing gap between the two has slowed. In that period AWOTE increased by 4.3%, while over a similar period (December 2013 to December 2015) the CPI increased by 3.4% (see Tables 1 in Chapter 3 and Table 10 in Chapter 5).
30. The broad economic growth over the past 15 years 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.
31. Compared to the rest of the workforce, *all* safety net workers are *relatively* worse off in 2016 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, reflecting lower living standards and increasing numbers falling into poverty.
32. As measured by the 60% relative poverty line, the changes were dramatic. Over the 12 years from January 2004, the NMW-dependent family of a couple and two children referred to in paragraph 23 fell further below the poverty line: from 3.3% below to 11.0% below; and in January 2016 they had a poverty gap of \$121.58 per week. Many more families fell below the poverty line. Even trade-qualified workers on the widely-used C10 wage classification, whose pay we would have assumed could support a family of four (of the same kind as the NMW-dependent family), saw their family's position fall from 7.6% above the poverty line in January 2004 to 3.9% below the

poverty line in January 2016, with a poverty gap of \$42.48 per week; see Chapter 8C, at Figure 3.

33. This decline in living standards has been the result of falling relative wages. The deterioration in the economic position of these families would have been worse but for increased family payments. This is apparent when we compare their changes with the change in the position of single workers. Over the same period, January 2004 to January 2016, the single NMW-dependent worker's margin over poverty fell from 26.0% to 13.1% and at the C10 level the single person's margin fell from 48.3% to 27.8%; see Chapter 8, Tables 27, 28 and 30. These are dramatic changes and they require close attention.
34. These figures demonstrate a very concerning change in circumstances for those workers and their families who depend on the decisions of minimum wage tribunals for their ability to live at a decent standard of living.
35. The figures also demonstrate 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.
36. A clear message from our review of the changes since 2001 is that there has been growing inequality between safety net-dependent workers 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.

Measuring poverty and needs

37. Advocacy for a society that pays decent wages and provides a standard of living that is worthy of human dignity requires the production of two fundamental measures: we have to measure, as best we can, the required living standard and quantify the wage required for that standard.
38. In doing so, there are two basic issues to be considered. First, we have to identify the workers and families who are to be given protection. Compliance with generally expressed human rights and statutory rights requires that the decisions made and the

measures introduced are reasonable and proportionate to those rights. The protection provided by the minimum wage does not have to extend to the unusual cases, such as the worker with nine children. Unusual and extraordinary situations do not need to be covered, but the ordinary and expected, i.e. those that are reasonable and proportionate, need to be covered. The ordinary and expected criterion would include, at least, single breadwinner couple parent families with two children, sole parent families with two children and single workers. A wage should be sufficient for all three, and the wage needed for one of these groups, particularly the single person, should not compromise the right of the others to a sufficient wage.

39. The second basic issue concerns the standard of living to be provided through the minimum wage, supplemented by government payments. The standard of living to be provided may be expressed in various ways: a decent standard, a basic acceptable standard of living, a standard of living that enables people to live in dignity, a standard of living that protects workers and their families from poverty, a standard of living that is in excess of poverty. We need to be clear about the standard: there is a difference between, for example, a decent standard of living and one that merely protects against poverty. All of these terms require judgments to be made on the basis of evidence about relative living standards and the needs of workers and their families and the costs incurred in meeting those needs; and the work to be done by the wage packet after taking into account taxes and transfers.
40. In 2015 the FWC said: "The "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"; June 2015 decision, paragraph 310. This is a useful summary of the various formulations of living standards that should be provided.
41. Poverty, which can be defined as an inability to buy the material resources required to meet basic needs, is implicitly or explicitly part of all of these formulations. Having workers and their families merely left with enough to meet basic needs, i.e. merely sitting on the poverty line, would be inadequate. They are entitled to something more. In 2013 the FWC said, in a sentence has been repeated in the June 2014 and June 2015 decisions (at paragraphs 323 and 383, respectively), that workers have a reasonable expectation of a standard of living in excess of poverty:

“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 (June 2013 decision), paragraph 33.)

42. Each of these extracts from the FWC’s decisions begs an important question. “Which low paid workers are to be supported so that they can purchase the essentials for a decent standard of living for themselves and their families?” “Which workers in full time employment can reasonably expect a standard of living for themselves and their families that exceeds poverty levels?” This is why we need to be clear about the workers and families who are to be given protection through the wages system. Save for its short-lived adoption of the single person criterion in 2014, the FWC has given no indication of its own views on the answers to these questions.

Measuring poverty

43. Australia does not have a generally accepted poverty line that is based on research and judgments about the actual needs and costs of families if they are to avoid falling into poverty. Yet much public discussion in Australia about the adequacy of wages and social security payments is conducted by reference to poverty. There is some very good budget standards research published by the Social Policy Research Centre at the University of New South Wales, but it is based on research carried out in the mid-1990s and is not specifically designed to measure poverty. We return to this research in Chapter 7D.
44. In 2008 the AFPC, which was then national wage setting tribunal, published relative poverty lines for a range of households, comparing them to the disposable incomes, through wages and transfers, received by members of those households. The poverty lines were set at 60% of national median equivalised household disposable income (MEDHI). This practice has been continued over the succeeding years and updated figures are published by the FWC in its *Statistical Report* series. The FWC has referred to this measure as the conventional measure of poverty; see the June 2013 decision, at paragraph 33 and the June 2014 decision, at paragraph 399.
45. The first step in setting a relative poverty line is the measurement of MEDHI. The 60% relative poverty line is simply 60% of MEDHI. Changes in poverty lines can be measured over time and plotted on a graph once we measure changes in MEDHI. In Australia, the relevant data on disposable incomes is collected by the Australian Bureau of Statistics in accordance with internationally recognised standards. The relative poverty line for each kind of household is based on internationally recognised

equivalence scales. The poverty line for the family of two adults and two children is 2.1 times the single person's poverty line and the poverty line for the sole parent family with two children is 1.6 times the single person's poverty line.

46. 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. Research such as the budget standards research can assist us in placing the poverty line somewhere between the two, so that it will be adjusted over time in line with movements in MEDHI. One way of dealing with this issue is to treat the 60% relative poverty line as being a line where a household is "at risk of poverty" (as some do), with the 50% relative poverty line being the "deep poverty line" for the household.
47. 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 Australian legislation because, they enable the positioning of various income groups relative to each other and to the community's median income. They enable, for example, the positioning of low income households relative to households which rely on unemployment benefits or pensions
48. Two points of reference on this issue are provided by the position of pensioners relative to MEDHI and to their poverty lines. In 2009 pensions were set on the basis that they would provide a basic acceptable standard of living (see Chapter 6C). In January 2016 couple pensioners were at 54.7% of MEDHI and 5.3 percentage points below their 60% relative poverty line. Single pensioners were a little better off, at 57.1% of MEDHI and 2.9 percentage points below the 60% relative poverty line: see Chapter 8, Table 34. In Chapter 8D we argue that, after taking into account the costs of work for the working family and the fringe benefits available to pensioners, these pensioners have a higher standard of living than the low paid working families.
49. ACCER has argued that, because working families should have a margin over poverty, the 60% of median relative poverty line, which is 60% of MEDHI, 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. It is, we submit, also an approximation of the money that is needed to enable low-paid workers

“to purchase the essentials for a 'decent standard of living' and to engage in community life, assessed in the context of contemporary norms”, to use the words of the FWC at paragraph 310 of the June 2015 decision. It is the best approximation that we have to what is needed for a decent, or basic acceptable, standard of living for wage-dependent families, where the costs of work and a reward for work are taken into account.

50. One of the shortcomings of the OECD equivalence scales is that they do not take into account the costs of work incurred by various kinds of households. This is apparent when comparing the relative poverty positions of sole parent and couple parent families. Under current provisions the family payments made to sole parent and couple parent families are the same where they have the same number of children and the children are of the same age (see Chapter 6B). Applying the OECD equivalence scales, in January 2016 the sole parent family was 16.0% above the poverty line, compared to the family of four being 12.0% below the poverty line (see the FWC’s *Statistical Report* 18 March 2016, Table 8.2). The *Statistical Report* even has this sole parent family at a higher standard of living than the single worker, who is 13% above the poverty line.
51. In addition to the personal costs of work (clothing, transport, etc), the equivalence scales do not take into account the childcare costs which must be borne by the sole parent. Even with government subsidies, childcare expenses can drive sole parents into poverty and/or into inadequate childcare arrangements. This is exacerbated by the fact that many sole parents are unable to find sufficient hours of work and, when they do, some of the work is inconsistent with the proper care of their children. The FWC’s figures in the *Statistical Report* assume that sole parents work 38 hours per week and that childcare is costless. The figures would mislead an insufficiently informed reader to believe that sole parents in full time employment are doing very well.
52. The major causes of poverty among sole parent families are: inadequate employment opportunities, high childcare costs, low wage rates and insufficient income support payments. The Australian Census of 2011 showed that among low income sole parent families, with two children and receiving less than \$800.00 per week, only 9.9% were employed full time; see Chapter 8, Table 36.

C. A DECENT WAGE IS A HUMAN RIGHT

53. The modern antecedents of the recognised right of workers to a decent wage and a decent standard of living for themselves and their families are to be found in the living

wage campaigns in industrialising countries in the late nineteenth and early twentieth centuries. We return to this development in Chapter 2A. The living wage principle articulated in those campaigns came to be the guiding principle for important developments in minimum wage legislation and an understanding of inherent human rights.

54. The living wage principle is reflected in the *Universal Declaration of Human Rights* (Declaration), which was adopted by the General Assembly of the United Nations in December 1948. The Declaration 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)).

55. The Declaration did not impose specific obligations on members of the United Nations. The instrument that gives effect to the wages part of the Declaration and a number of the other rights declared in 1948 is the United Nations’ *International Covenant on Economic, Social and Cultural Rights* (Covenant), which was adopted in 1966 and subsequently adopted by Australia. The Covenant 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)).

56. On 10 May 1944, the International Labour Organisation (ILO) adopted a declaration which included the objective of promoting “policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection.”; see *Declaration concerning the aims and purposes of the International Labour Organisation*, Article III (d). The living wage not only informed the ILO’s decision, but would have had a major role in the formulation of the wages aspect of the Declaration when it was adopted by the United Nations General Assembly in December 1948.

57. The recognition of these rights necessarily involves the recognition of the need for workers to support their families. When the Declaration declares the right of workers to an existence worthy of human dignity, 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 following the catharsis of World War II, a conference of the ILO 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)).

58. The living wage identified in that resolution was a wage that would maintain the family at an adequate standard of living.
59. The Declaration and the Covenant, like the living wage principle, do not provide a fixed formula that will apply to all economies and societies. The practical application of these human rights requires the proper consideration of a range of factors, personal and community, social and economic. These rights have to be applied in a way that is reasonable and proportionate.
60. The International Labour Organisation's *Minimum Wage Fixing Convention, 1970*, which Australia has ratified, 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--

- (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.”
61. The object of the *Fair Work Act* includes the provision of “a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by [among others] 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”; section 3.
62. The wage setting provisions in the *Fair Work Act 2009* are consistent with the Australian human rights obligations, including its labour obligations. Furthermore, the object of social inclusion is consistent with common and fundamental themes in international human rights instruments: human dignity and the promotion of the common good. The promotion of the common good requires laws, social structures and regulatory decisions that promote the development and social participation of all citizens.

63. Wages have a social value. The connection between the social value of wages and justice in the application of fundamental rights is highlighted in the following discussion of basic justice in a *Pastoral Letter* issued in 1986 by 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.)

64. The right to social participation that was highlighted by the bishops in 1986 is recognised in the importance that the *Fair Work Act* attaches to social inclusion. 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. This is a measure by which the FWC's decisions should be judged.
65. Australia's international obligations require that proper 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. The fact that some workers do not have family responsibilities does not qualify or limit the right of workers with family responsibilities to a decent wage.
66. The wage that is sufficient for workers with family responsibilities will be more than the wage that is needed to provide a similar standard of living for workers without family responsibilities. In practice, the gap between the two will be reduced by family

payments made by governments. Unless family payments cover the full costs of dependants, minimum wages that are set in conformity with these recognised rights will have a component for family support and, of necessity, the worker without family responsibilities will have a degree of “overcompensation” in his or her wage packet. If this overcompensation is unacceptable, the answer is not to penalise the poor by reducing wage levels, but to make changes through the tax/transfer system that limit or remove the need for that overcompensation.

67. Generally expressed human rights, such as those found in the Declaration and the Covenant in regard to wages and the rights of workers have to be applied in a variety of circumstances, taking into account a range of factors. The test for compliance of domestic legislation with human rights obligations is whether the domestic legislation is a reasonable and proportionate measure having regard to the terms of the human right. Similarly, the exercise by tribunals of generally expressed powers, such as the setting of a safety net of fair minimum wages, as is required of the FWC, needs to be reasonable and proportionate to the power conferred. The right that is recognised does not extend to the setting of a minimum wage that is required in exceptional cases, such as the setting of a wage that would be needed to support a family with nine children.
68. The practical questions to be asked in giving effect to the right recognised in the Covenant to a wage that enables the worker and the worker’s family to have a decent living are similar to those raised in the previous section in regard to decision making under the terms of the *Fair Work Act*. Which workers with family responsibilities are to be supported by a wage that provides a decent standard of living for themselves and their families? Which families are to be supported through minimum wages so that they can live in dignity?
69. A reasonable and proportionate response to the human right and to the statutory provision should cover the ordinary and expected circumstances in which workers live. These circumstances would *include*, and not be limited to, the circumstances of couple parent families with two children and sole parent families with two children. Single persons would, of course, fall into the ordinary and expected test. Couples and sole parents with one child would not be excluded, but given that their needs are typically less than families with two children, the question of wage adequacy focuses on families with two children. A minimum wage should be sufficient for all within the expected and ordinary category.

D. THE FWC'S FAILURE TO ADDRESS POVERTY IN FAMILIES

70. ACCER's principal purpose for participating in annual wage reviews has been to promote the interests of low income workers and their families. It has argued over the years that the NMW is manifestly inadequate. As the poverty data referred to in the section B demonstrates, the position of low income workers has deteriorated over this period. The experience of the *Work Choices* years (discussed in Chapter 3A) meant that we welcomed the enactment of the *Fair Work Act 2009*. From the annual wage review in 2010 we urged the FWC, then known as Fair Work Australia, to pay special regard to the position of low paid workers with family responsibilities.
71. Despite evidence of workers on the lowest wage rates living in poverty and having the greatest need for a wage increase, the tribunal has awarded the same wage increases to all classifications. The \$26.00 per week increase in 2010 did have the effect of delivering a little more in percentage terms to the low paid, but the uniform percentage increases awarded in each year since 2011 demonstrated that no priority was being given to addressing poverty among low income workers.
72. In the *Annual Wage Review 2011-12, Decision* (June 2012 decision) poverty was not mentioned, even though substantial submissions were put to the FWC about poverty.
73. In its 2013 submissions ACCER argued that the wage decisions under the *Fair Work Act* 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)
74. In the subsequent June 2013 decision 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." (Paragraph 33)

Needs include the need not to live in poverty

75. The first sentence in this passage has an identifiable provenance. In the 2003 national wage review by the AIRC, ACCER's advocate, Frank Costigan QC, put and developed

an argument that the needs of the low paid were not being met if workers were being left in poverty. ACCER repeated his point and argument over the years without a response until 2013, while the position of low income families worsened.

76. We were happy to see this passage in the June 2013 decision, but it failed to have any practical effect. 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, said that "single earner couples, with and without children,...had disposable incomes near to or even below the threshold" (paragraph 411).
77. The 2.6% wage increase awarded in 2013 was the same for high paid and low paid classifications. 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. Many were left in 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.
78. In 2014 a uniform increase of 3.0% was awarded and the single person criterion for wage setting was adopted in the full knowledge of widespread poverty among wage-dependent families and that their position had worsened, 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*." (June 2014 decision, paragraph 399, emphasis added.)

79. The references in the second sentence of the foregoing extract from the June 2013 decision and in the passage just quoted from the June 2014 decision to the conventional measure of poverty are references to the 60% relative poverty line which we discussed in section B and will return to in Chapter 8.

The reasonable expectation of a standard of living in excess of poverty

80. The final sentence in the foregoing passage from the 2013 decision, that those in full-time employment can reasonably expect a standard of living that exceeds poverty levels, is important because it holds out the prospect of workers having a standard of living that will lift them out of poverty through the operation of the minimum wages

system. A similar passage appeared in the June 2014 decision: "We also accept that those in full-time employment can reasonably expect a standard of living that exceeds poverty levels" (June 2014 decision, paragraph 323). The adoption of the single person criterion in the same decision of June 2014 formulation was tantamount to inserting the "single person" into the passage. The final sentence also appears in the June 2015 decision: "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" (paragraph 383).

81. These passages prompt the kind of question referred to earlier in this chapter concerning human rights: which full time workers, and their families, can reasonably expect a standard of living that exceeds poverty levels? The question was not answered in 2013. In 2014 it was implicitly answered as a result of the decision to adopt the single person household criterion for wage setting: under that test only full time single workers could expect a standard of living in excess of poverty. In 2015 the question was not answered once the FWC abandoned the 2014 criterion. After six decisions under the *Fair Work Act*, we still have no answer to this fundamental issue, nor have we had any serious discussion of it.
82. Once we take into account the needs of workers with family responsibilities, as we should, the question of which workers can reasonably expect a standard of living in excess of poverty levels is a vitally important one, not only for the Australian legislation, but also for the application of internationally recognised human rights concerning wages and living standards which we discussed in section C of this chapter.

ACCER's claims for increases that target poverty rejected by FWC

83. In each of its claims from 2012 to 2015 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. Each year it foreshadowed further "bottom up" claims working towards, at least, the base rate for cleaners, which is currently \$44.70 per week above the NMW. Families on higher award rates were living in poverty and the \$10.00 increase in the NMW 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. ACCER's argument was not limited to NMW-dependent families and did not depend on the narrow question of how many families depend on the NMW.
84. In 2012 and 2013 ACCER's claims for an extra \$10.00 per week were 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." (June 2012 decision, 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." (June 2013 decision, footnote omitted, emphasis added.)

85. It should be noted that the C14 rate is a transitional rate, applicable only to the first three months of employment, from when the C13 award rate applies; see Chapter 3B and Table 6. The C13 rate is \$19.00 per week more than the C14/NMW rate. The NMW, which now applies as the primary minimum wage for the Australian workforce, applies to workers who are not covered by an award (and therefore unable to gain pay increases by the passing of time) and applies regardless of the length of employment, is based on an historical assessment that has no relevance to wage setting in 2016.
86. In the June 2014 decision there was only the mention of this further NMW claim (at paragraph 113) and no response to 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 adoption of the single person criterion may have been the explanation: the position of workers with family responsibilities was the basis upon which ACCER put its claim. However, that does not explain the lack of response to the claim in 2015, when the FWC accepted that the position of workers with family responsibilities had to be taken into account.
87. The history of annual wage review decisions following the enactment of the *Fair Work Act* shows that the NMW has been treated as an adjunct to the award classification system and that adjustments to the NMW have been determined by the changes in award rates of pay. It is apparent that the FWC was not 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.

88. This practice was, however, inconsistent with the minimum wages system established by the *Fair Work Act*. In 2015 ACCER made submissions that the NMW has to be set independently of the award rates, and that award rates are to be set after the FWC has decided on the rate it proposes to set for the NMW. This argument, which had also been put, but not considered, in 2014, is outlined in Chapter 2C.) The FWC accepted this submission but, nevertheless, arrived at the same percentage increase for the NMW and all award rates: 2.5% in the NMW and 2.5% in all award rates. Clearly, the living standards, exposure to poverty and the unmet needs are not the same over these wage levels. A uniform increase does not reflect a fair adjustment to the wages of the very low paid and the consequential beneficial impact on the unmet needs of low paid workers would have for them and their families.

The ACTU's and ACCER's claims for money increases for low paid workers

89. In addition to seeking an extra increase in the NMW, ACCER has sought flat money increases for low paid workers in order that they might have greater increases, in percentage terms, than other safety net workers. In each year ACCER has argued that the percentage adjustment should be converted to a money amount at the C10, trade-qualified rate, and applied to all lower paid classifications. This practice followed a similar claim in 2011 by the Australian Council of Trade Unions (ACTU). ACCER followed the ACTU's position.
90. ACCER and the ACTU have continued this form of claims, but with different amounts. In 2015 the ACTU's claim comprised 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%. 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, as discussed in the foregoing paragraphs. Leaving aside the extra \$10.00, ACCER's flat dollar proposal involved increases of up to 2.9% for the lowest paid workers. 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*, May 2015, paragraph 4.
91. The claims by the ACTU and 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.

92. Again, in 2015 the FWC adopted a “one size fits all” kind of approach. The increase of 2.5% awarded by the FWC to all minimum rates equated to an increase of \$16.00 per week in the NMW. As in the earlier years, the FWC’s June 2015 decision does not give any reasons for the rejection of the claims for flat dollar increases to assist low paid workers. If the general 2.5% increase awarded by the FWC (the same as the underlying increase sought by ACCER) 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 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 the increase of \$16.00 per week in the NMW awarded by the FWC in 2015. The opportunity to target the pressing needs of the low paid was lost.
93. Despite the finding by the FWC in 2015 that the NMW should be determined independently of the award rates, the same percentage was applied to the NMW and all award rates. Once again no priority was given to the position of the low paid and no reasons were given for the failure to do so. The June 2015 decision did not address the current situation in which wage rates up to, at least, the C10 level, supplemented by family payments, were insufficient to keep families out of poverty and the fact that there had been a substantial decline in the living standards of low paid workers and their families over more than a decade. The greater needs of the very low paid have not been reflected in wage decisions since uniform percentage increases were introduced in 2011; and even before that the greater increases, in percentage terms, did not address poverty among low paid workers and their families.

E. THE SOCIAL SAFETY NET UNDER ATTACK

94. The May 2014 Federal Budget proposed the greatest reductions in the living standards of Australian families of any legislation ever considered by this Parliament. Since then, legislation has been enacted to abolish the Schoolkids Bonus, with effect from the end of 2016 and, from 1 July 2016, to remove the access of couple parent families to

Family Tax Benefit, Part B (FTB B) once their youngest child turns 13. These changes will have a major impact on families.

95. The abolition of the Schoolkids Bonus will result in the loss will be \$430 per year for each child in primary school and \$856 per year for each child in secondary school. The removal of FTB B eligibility for families where one parent stays home to care for their child or children once the youngest turns 13 will result in a loss of \$60.20 per week. This sum comprises \$53.41 per week by way of the regular fortnightly payments and \$6.79 per week by way of the weekly value of the annual supplement, which is paid following the end of the financial year. On the basis that the child turns 13 at the end of the first year of secondary school, this will amount to a loss of about \$15,700 (plus expected indexation increases) over the last five years of secondary education. The changes to the right to access to FTB B were made by the *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Act 2015*
96. Because this recent FTB B legislation only applies to couple parent families, the change has left untouched the FTB B payment to sole parent families. It will mean that a sole parent earning up to \$100,000 per year will retain this payment while unemployed couple families will lose the payment. The change discriminates against couple parent families by reason of their marital status or personal relationship and discriminates against children by reason of their parents' marital status or personal relationship. The discrimination against couple parent families cannot be justified by any comparison of relative needs of the two groups.
97. At the time of writing this chapter (March 2016) there is a further Bill before the Senate to give effect to further proposals for changes to family payments announced in the May 2014 Budget. The *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill (No. 2) 2015* proposes the abolition of the annual supplement components of Family Tax Benefit, Part A (FTB A) and FTB B, to be partly offset by increases in the fortnightly FTB A payments. For sole parents, the Bill proposes reductions in the FTB B payment once the youngest child turns 13 (from \$53.41 per week to \$19.17 per week) and the removal of eligibility for the payment once the youngest child turns 16. The changes in FTB A payments would result in losses of \$8.88 per week per child and a further loss of \$6.79 per family if the family is still eligible for FTB B. In a two child family this will amount to \$24.55 per week (plus indexation increases) once fully implemented on 1 July 2018. Once the

youngest child turns 13 the FTB B loss would increase by a further \$53.41 per week as a result of the FTB B changes already enacted. The Bill, like the legislation already passed in regard to couple parents, seeks to deliver these savings under the rubric of "structural reform" and the encouragement of "workforce participation", but the substantive intent of the Bill is to assist the Budget's bottom line. Any enactment of the Bill's FTB eligibility provisions for sole parents would not remove the discrimination in the provisions already enacted; and both would discriminate against children by reason of age without reference to their financial needs and circumstances.

FTB B: its history and nature

98. The origins of FTB B are found in the first Commonwealth income tax legislation. Section 79 of the *Income Tax Assessment Act 1936* provided taxpayers with a concessional deduction for dependent spouses and children. In 1942 the concessional deductions were converted into taxation rebates; see *Income Tax Assessment Act 1936* (as amended), section 160.
99. A significant change occurred in 1994 as a result of a policy announced by the Australian Labor Party in the 1993 Federal Election to introduce a Home Child Care Allowance (HCCA) to replace the rebate. In a speech on 6 December 1993 to launch the International Year of the Family, Prime Minister Keating referred to legislation about to be introduced to give effect to the announced policy:

"Our policies must address the diverse nature of Australian families, and the diverse nature of their employment and assistance needs.

A major issue to address in this context is how families balance the responsibilities of work and family life.

Governments should, I believe, promote policies which recognise and support choices families are making in combining paid work and family care.

We have to make these aspects of peoples' lives fit more harmoniously together.

We have to keep pressing for more "family-friendly" workplaces.....

We recognise that childcare needs are neither uniform or identical.

We recognise that women, throughout their lives, have a range of equally legitimate choices about being in the workforce or being at home.

We appreciate the value of caring and nurturing provided by women who do choose to stay at home while their children are growing up, and the value of the unpaid work they carry out both in the household and in the community.

That is why we have introduced the Home Care Child Allowance for supporting parents caring for their children full time at home.

By paying the allowance directly to the caring parent, usually the mother, we have provided many women at home with a source of independent income which otherwise they would not have."

(<http://pmtranscripts.dpmc.gov.au/browse.php?did=9071>, emphasis added)

100. The legislation was enacted in 1994. In July 1995 the HCCA was amalgamated with the Partner Allowance to become the Parenting Allowance. In May 1998, the Howard Government rolled the Parenting Allowance into the Parenting Payment. FTB B emerged from the Parenting Payment as part of the reforms associated with the introduction of the Goods and Services Tax (GST) in 2000. FTB B was the successor to the HCCA and the earlier dependent spouse with children rebate, and extended to sole parents.
101. The bi-partisan commitment to the policy underlying FTB B is evident in the circumstances leading to the introduction of the FTB B annual supplement. In his 2004 election policy speech on 26 September 2004, Prime Minister Howard said:
- “We have brought the principle of choice to all of our policies and importantly, I bring a new dimension to our policies today in relation to childcare. We have spent more than \$8 billion on childcare in the six years from 1996 to 2002, more than double that in the last six years of the Labor Government.
At the same time, to ensure complete fairness of treatment for families where one parent makes the choice to stay at home full time, we will provide an appropriate increase in the rate of Family Tax Benefit B. That is the benefit paid to parents who are at home full time caring for their children.”
(<http://electionspeeches.moadoph.gov.au/speeches/2004-john-howard>.)
102. On 9 February 2005 the Minister for Families and Community Services, Senator Hon Kay Patterson, addressed a conference held by the Australian Institute of Family Studies Conference on, among other topics, the FTB B annual payment:
- “One of the elements of our approach that is central to our philosophy and common across a range of policy areas is our desire as a Government to help families exercise choice in how they live their lives.
As the Prime Minister has said, choice is the golden thread that flows through many of our policies. Choice about whether to stay at home and care for the children or return to work; choice about childcare; choice about schooling, and choice about healthcare.
As our families become more diverse, it will be important that we ensure our responses continue to support and strengthen families, providing them with the choices that promote wellbeing and encourage self-reliance.
Increasing this payment for stay at home parents, usually mothers, is just another example of how the Howard Government seeks to improve the choices available to families in how they arrange their lives according to their personal circumstances.
We know that many parents choose to stay at home and we want to support that choice as far as possible. Similarly many other parents want to remain engaged in the workforce, sometimes for more than just monetary reasons. As a government we want to support that choice as well. Hence our heavy investment in child care.”
(<http://www.formerministers.dss.gov.au/2927/australian-institute-of-family-studies-conference-families-matter/>, emphasis added.)

103. Mr Howard later wrote that “it is sound public policy to ensure that taxpayers who carry heavier family responsibilities than other taxpayers, at the same level of income, should receive some support through the taxation system for carrying those responsibilities.... Surely it is in the national interest to encourage childbearing, to help with the cost of raising children and also to recognise the contribution made to society by those who care and provide for others out of their income?” (*Lazarus Rising*, 2010, pages 492-493). The point made here concerns horizontal equity within the taxation system.
104. FTB B has a hybrid character. Its origins are within the taxation system, where it was a negative tax recognising the social value of the support given by the taxpayer to his or her family. It is also a payment made to the primary carers of children in recognition of the social value of the work they perform and to enhance the choices that parents have about balancing their work and family responsibilities. These factors have taken the payment beyond its taxation character and made it available to families who would have insufficient income to generate a tax liability. The extension of the payment to low income families who pay little or no income tax has strengthened the social safety net. For low income families it is a means of providing income support to alleviate poverty. For higher income families it is a payment that recognises the need for horizontal equity in the tax system and recognises the social contribution by those who use their incomes to support others. For all families it recognises the value of the care given by those who stay out of the paid workforce to care for their children and it recognises the need to help parents make a choice as to how they will exercise their family responsibilities.
105. A review of the history of FTB B shows that it was common ground between successive governments that parents should be assisted through family payments to exercise a choice as to how they will care for their children. It was common ground that the work of parents in the fulltime care of their children was of value to them, their children and the community as a whole. Any desire for increased workforce participation was subject to those fundamental values and principles concerning the exercise of family responsibilities and the care for children.
106. It should be stressed that the principle which underpins these policies and the terms of the legislation do not raise any gender-specific issue. The principle applies whether the breadwinner, or principal breadwinner, is male or female. Parents in couple parent families 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. 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 childcare. 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.

The FTB B amendments are in breach of established Human Rights

107. The Bill that eventually became the Act which removed the eligibility of couple parent families to receive FTB B once their youngest child turns 13 was introduced into the House of Representatives in October 2015. At that stage it included all of the Government's proposed changes which are in the Bill currently before the Senate. In accordance with the *Human Rights (Parliamentary Scrutiny) Act*, the *Explanatory Memorandum* accompanying the Bill contained a review of the compatibility of its various terms with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the legislation. Section 3 includes the *International Covenant on Economic, Social and Cultural Rights* (Covenant) and the *Convention on the Rights of the Child* (Convention).
108. The Parliamentary Joint Committee on Human Rights (Human Rights Committee), which is established under the legislation, delivered its report on the provisions of the Bill in its original form on 10 November 2015; see *Thirtieth Report of the 44th Parliament*, at pages 53-60. The Human Rights Committee considered the terms of the Bill under two headings: the reduced rate of FTB B, including its removal of benefits from couple families, at paragraphs 1.260 to 1.279; and the removal of family tax benefit supplements, at paragraphs 1.280 to 1.297. Both sections consider the matters in relation to the terms of the Covenant and do not include a consideration of the terms of the Convention.
109. The Human Rights Committee identified serious shortcomings in the statement of compatibility with human rights included in the *Explanatory Memorandum*. In regard to FTB B, the Committee considered the application of the terms of articles 2(1), 9 and 11(1) of the Covenant. Included in article 2(1) is the obligation to ensure that the right to social security is "made available in a non-discriminatory way" (paragraph 1.264). The substantive right to social security is found in article 9. Article 11 concerns "the

right of everyone to an adequate standard of living for himself and his family". The committee formed a view:

"The committee considers that these changes to FTB Part B engages and limits the right to social security and right to an adequate standard of living." (Paragraph 1.261)

110. The Human Rights Committee sought a response from the Minister, but no response was made.
111. In a subsequent review of the legislation by the Senate Community Affairs legislation Committee, ACCER made submissions on the terms of various provisions of the Convention, and the matters concerning the Covenant in the Human Rights Committee's report. ACCER's submission concerning the breach of the right to social security and the right to an adequate standard of living included substantial material on the current and prospective living standards of low income single breadwinner couple families. The Senate Committee's report of 30 November 2015 merely noted the earlier report on human rights and that there had been no response from the Government. It did not consider the human rights aspects and recommended, by a majority, that the Bill, in its amended form, be passed.
112. The Bill originally introduced into the House of Representatives in October 2015 was amended on 26 November 2015 by the withdrawal of the provisions other than those which were eventually passed into law. It was passed in the House of Representatives with the support of the Australian Labor Party, which had announced in early November 2015 that it would support the FTB B proposals in respect of couple parents. The withdrawn provisions of the first Bill were then incorporated into a new Bill, entitled *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill (No.2) 2015* (mentioned earlier) and introduced into the House of Representatives.
113. The Bill, as amended by the House of Representatives, went to the Senate on 30 November 2015 where it was agreed to, with a second reading vote of 35 to 11; see *Hansard*, Senate, pages 9301-20. Not all Senators participated in the vote. The Australian Greens and several cross-benchers voted against it. Had it not been for Labor's support, the amended Bill would have been defeated.
114. The debate in the House of Representatives on 26 November 2015 and the Senate on 30 November 2015 proceeded as if there were no human rights issues and a process to be observed under Parliament's own legislation. The failure of the Government to respond to the Human Rights Committee is a matter of great concern because it has frustrated

the parliamentary oversight of the Commonwealth's protection of human rights. The procedures adopted by the Government *and* the Opposition made a farce of the process for the scrutiny of Bills introduced by *Human Rights (Parliamentary Scrutiny) Act* and showed disregard for the function and work of the Parliament's own Human Rights Committee.

115. The Human Rights Committee also has the power under the *Human Rights (Parliamentary Scrutiny) Act* to examine Acts of the Parliament in order to assess their compliance with relevant human rights. On 14 March 2016 ACCER lodged a request with the Human Rights Committee for it to examine the legislation limiting the entitlement couples to receive FTB B.

Conclusion: substantial issues for wages and welfare policies

116. The *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Act 2015* did a number of unacceptable things in changing the eligibility for FTB B: it minimised the importance of the work that parents do in the caring for their own children, it compromised the principle that parents should have a choice in deciding how they exercise their parental responsibilities, it elevated claimed paid work disincentives to a guiding consideration in the framing of family policy and it sought to deprive one group of children living in poverty by reference to the marital status or relationship of their parents and without regard to their financial circumstances.
117. The changes already made to FTB B eligibility raise a vitally important question in regard to family policies. How should public policy be framed in regard a couple who decide that one of them should stay at home and not seek employment in order to care for their children? It is a matter of great importance, both in regard to the eligibility for family payments and the basis upon which wages might be set when having regard to the circumstances of single breadwinner couple families. 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. Nor should the wages of a sole parent be based on the assumption that the sole parent is in full time employment and that the costs of childcare are not significant.
118. There is a similar question in regard to sole parents who do not have the support of a spouse or partner to carry out their parental responsibilities. Are family payments to be predicated on the expectation that they will be working fulltime? When the position of sole parents with parental responsibilities is considered in wage setting decisions,

should the consideration be based on them working full time? If so, what assessment is to be made of the costs of good and sufficient childcare? Alternatively, if the costs of childcare are to be left out of the assessment, what number of hours per week would be reasonable during the pre-school and school-age years?

F. WAGES AND GLOBALISATION

119. A decent standard of living for workers with family responsibilities cannot be supplied by wages alone in the contemporary globalised economy. Families must also be supported by strong social safety nets through government services and family payments. A feature of all economically advanced economies in the second half of the twentieth century was the development of social safety nets and a range of family payments and/or tax concessions. The driving force of these changes may have been social and political, but they had an economic dimension: they have limited the demands on the wage packet to support workers with family responsibilities.
120. Yet at the very time that Australia is being increasingly exposed to globalised trading, the social safety net is being weakened, exposing more low paid Australian workers and their families to poverty. Recent policy changes have reversed the trend towards stronger social safety nets over the past four decades. This trend is illustrated by the increase in family payments received by an NMW-dependent family of a couple and two children over the period August 1973 to January 2016, which was discussed in section A of this chapter: from 7.7% to 39.5% of the family's total disposable income. Wage growth has been constrained by these developments, but the reversal in family support will require significant adjustments in wage rates if a fall in living standards is to be avoided.
121. There is an economic case in support of an increase in family transfers. It keeps down the costs of employment and promotes employment to the extent that employment is responsive to wage costs. Absent family transfers, the costs of family support are imposed on the community through the wages system, with its consequential impact on the price of goods and services and/or, if the wage and price increases have a net deleterious impact on employment levels, on individuals and society through the personal and financial costs of unemployment.
122. In an economy protected by a tariff system, such as Australia had a century ago (and where the wage packet was not supplemented by public funding), financial support for families through the wages system might occur without undue impact on employment

levels. Where an economy is globalised, to some extent or another, wage costs might affect the capacity of firms to operate and employ the numbers needed to achieve the nation's full employment objective. In these circumstances, there is good reason to transfer some of the costs of family support to the community as a whole through the taxes and transfers systems.

123. We are not in a situation where wage levels and the costs of employing labour interact in a vacuum. There is an inconsistency between neoclassical economic theory and real world labour markets. This economic theory on the supply and demand for labour is too simplistic for the modern world, where labour-related costs for businesses cover much more than wages and where wages are not the only source of income for workers and their families. The price of labour is not the result of the benefits and costs received and given by the parties to the employment agreement. A modern State has to, and does, intervene to some extent in employment agreements and does so in a variety of ways. The capacity for, and practice of, a modern State to intervene in positive and negative ways on both sides of the employment transaction are of central importance in shaping market forces.
124. This is not an ideological issue. People from very different parts of the ideological spectrum would prefer a system which puts the income needed for the support of workers and their families through the pay packets of workers, but they accept that transfer payments from governments are essential if jobs are to be created and supported and workers and their families are to lead decent lives according to the standards of their own society. Given the need for a mix, many would prefer to maximise the wage packet as much as reasonably possible. Whatever the mix, substantial taxes have to be levied for this purpose.
125. The economic policies and economic forces that have driven greater globalisation support and reflect the economic law of comparative advantage. The terms of free trade agreements reflect this economic force (and the bargaining capacities and priorities of negotiating governments), but to some extent we have a choice about the extent to which the economy globalises. If we are to adopt a system of trading relations, shaped by government policy and its bargains with other governments, then fairness requires that there be measures to ease the economic burdens on businesses and workers in those sectors to be weakened in return for the advantages contained in these agreements. If these agreements place downward pressure on wages, especially on the most vulnerable, and threaten to increase unemployment, then the whole community

has an obligation to address those consequences through government taxes and expenditures.

126. Of course, the impact of current and prospective trade agreements is a matter of some public debate. Proponents of freer international trade argue that free trade agreements will raise wages, not reduce them. In a speech in 2014, Martin Parkinson, then Secretary to the Treasury and now the Secretary of the Department of Prime Minister and Cabinet, 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.

Improving Australia’s competitiveness in global markets means a few different things. It means investing in the skills of our workforce so that Australians have the opportunity to move into sustainably higher paid jobs. It means investing in infrastructure that has a high economic return. It means ensuring that firms and their employees are freed from unnecessary regulatory burdens. And it means having the right incentives in place to encourage innovation and competition.

In other words, it means raising Australia’s productivity growth performance.”
(*Fiscal sustainability & living standards - the decade ahead*, speech to The Sydney Institute, 2 April 2014.)

127. Investments in education and skills training will become more important. The development of these skills and efficiencies is needed to promote exports and to compete against high value imports. To the extent that this high value strategy depends on wage costs, the level of the NMW and the base award rate for cleaners, for example, will not play a significant role. As one of the wealthiest countries in the world we would expect a high NMW. We are not trying to sell low-priced cotton shirts into Asia.
128. The high value strategy requires, and results in, high wages in the appropriate sectors of the economy, but this should not come at the expense of those in lower paid occupations who are not part of those sectors. They are entitled to share in any growth in Australia’s prosperity as a result of increasing globalisation and should not be the victims of increasing social inequality and social exclusion. This protection is to be supplied by safety net wages and the social safety net. The respective contributions of these two in the changing economic environment are barely discussed. The negative consequences of increased globalisation may not appear, but if they do we should recognise the consequences for public policy. The economic law of comparative advantage comes with some moral consequences and obligations.

International comparisons

129. The two common purposes for international comparisons of national minimum wage levels are to shed some initial light on the capacity of countries to trade and compete

internationally and to form a basis for comparing social equity across and within nations. Gross wages are only the starting point for comparisons. For both purposes it is necessary to go beyond gross wage rates, whether compared on current exchange rates or on a purchasing power parity basis. We also need to go beyond simplistic international comparisons of “minimum wage bites”, which compare minimum wages with the national minimum wage and mean average or median wages.

130. International comparisons of wages say little about the social equity in the countries being compared. Within a particular country there may be a very substantial difference in the degree of social equity and inequality between gross wages and disposable incomes after taxes and transfers are taken into account. A relatively high minimum wage may be accompanied by high poverty rates and a relatively low minimum wage may be accompanied by low poverty rates. The relationship between minimum wage levels and poverty levels will reflect the way in which the nation wishes to balance various economic, social and political values and objectives. Some nations do it better than others. Despite having one of the highest minimum wage rates, Australia had a middling outcome in relevant international comparisons of relative poverty rates; see the international comparisons in Chapter 8G.
131. Comparisons of minimum wages, based on exchange rates or purchasing power parity or on minimum wage bites, also say little about international trading capacities, which are more affected by average wage levels or by the trading strategy of the country in question. Leaving aside countries whose trading policies are based on low wage exports, average wage levels are more important in shaping international competitiveness. Average wage levels in advanced economies are set by market forces, with legal minimum wage levels having limited impact on this process.
132. Governments need to promote and protect employment by carefully scrutinising the non-wage costs of businesses that are imposed by governmental policies and they need to provide general or targeted measures that will have the effect of reducing the costs of employment. This means that substantial costs will fall on the community as a whole through a combination of taxes and spending by governments. These functions of government should be based on a fair tax system where burdens and benefits are shared according to capacities and needs.
133. The costs of job creation are costs that should be carried by the community as a whole, not the poorest sections of it. A morally acceptable and economically sustainable wages policy depends on a morally acceptable national budget, with the burdens and benefits

being shared according to needs and capacities. To reduce wages to unacceptable levels in the hope of creating and maintaining jobs is morally unacceptable because there are other ways in which employment can be promoted and protected.

134. A good place to start in the search for policies that impact on employment is income taxation on low incomes. It is the NMW net of tax, rather than before tax, which determines its level if it is set to provide for the needs of workers. The imposition of income tax on a worker receiving the NMW, currently \$63.15 per week, or 9.6% of the minimum wage rate, operates as a tax on employment. For a given standard of living, the costs of employment will be lower if no income tax is payable. The progressive reduction of income tax on the NMW would move the costs of job creation to the community as a whole, where it belongs, rather than leaving it on the backs of the poor. There are other options available; for example, rather than cutting the corporate tax rate, which is claimed to promote employment, a rebate on the superannuation contributions that employers are required to make on top of wages, now at 9.5% of wages, would be a more targeted and effective means of promoting employment.
135. Australia's national wage setting system is essentially based on a safety net of fair minimum wages and other terms of employment and a bargaining system that protects the level of safety net protection. If any wages are too high and moderation is called for, we need to draw a distinction between safety net wages and the wages set in the bargaining sector. The bargaining sector has delivered wage increases far in excess of the increases in safety net wages. Over the period January 2001 to January 2016, average weekly ordinary time earnings increased by 87.7%, compared to an increase of 64.1% in the NMW and an increase of 55.4% in the C10 award rate for trade-qualified workers. If the bargaining sector, with its wide variety of collective and individual circumstances and processes is not able to respond to any reasonable call for moderation, the burden should not fall on safety net-dependent workers.

CHAPTER 2

THE AUSTRALIAN WAGE SETTING FRAMEWORK

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A. INTRODUCTION

Key features of the Australian system of wage setting

136. As early as the 1890s legally enforceable minimum wage rates were set in the Australian colonies on an *ad hoc* basis in various occupations and industries. The reasons for this new regulation were the frequency of “sweating” and industrial disputation over wages. It was the frequency of industrial disputation that led to the inclusion in the *Australian Constitution* of a federal power to make laws for with respect to “Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State” (section 51(xxxv)). From the first legislation under this power in 1903 until 2005, the conciliation and arbitration power was the principal basis upon which wages were set by the successive national tribunals.
137. Since the enactment of the *Fair Work Act 2009* the conciliation and arbitration power has not been used as the basis for national regulation, having been replaced by the constitutional power to make laws with respect to trading and financial corporations (under section 35(xx) of the *Australian Constitution*) and, to cover employment by non-corporate employers, the referral by the States (other than Western Australia) of their constitutional power to regulate this kind of employment. The setting of minimum wages can now be regarded as supporting the broad social safety net, unconnected to industrial disputation.
138. Under the current system the lowest minimum wage is the National Minimum Wage (NMW), but the vast majority of Australian workers are covered by a minimum wage set by one of the 122 national industrial awards. The NMW is currently \$656.90 per week, based on the standard working week of 38 hours. Some awards have a base wage rate at the NMW rate, but many awards have base rates considerably more than

the NMW; for example, the minimum rate for the entry level retail worker is \$721.50 per week and the minimum rate for a shop manager is \$807.90 per week. Of those to whom a minimum wage rate applies, less than 5% would be covered by the NMW, but many of these would be paid in excess of that rate.

139. The NMW is set by the *National Minimum Wage Order* following each Annual Wage Review. The order includes special rates, based on the NMW, for junior employees, employees to whom a training agreement applies and employees with disabilities. The rates set for junior employees range from 36.8% of the adult rate (for those under 16 years) to 97.7% of the adult rate (at 20 years). The rate at 18 years of age is 68.3%. The order also provides for a 25% loading where an employee is employed as a casual. Most of this loading is in lieu of benefits, such as annual leave, that are paid to full and part time employees.
140. The minimum wages are called “safety net” wages. The national legislation sets up a regulatory system that encourages collective bargaining, but provides that outcomes must not have the overall result of reducing the standard set by the minimum wage safety net and the other minimum terms and conditions in awards. The result of these processes and of individual arrangements (largely based on market conditions) is that most Australian workers receive a wage that is in excess of the applicable minimum rate. Only about one in five workers is paid the prescribed minimum wage rate.
141. From the early days minimum wage rates (and an increasingly wider range of other terms and conditions of employment) were set by bodies comprised of employer, union and government appointed members, by independent statutory tribunals or by courts. Since the mid-1950s wages and a wide range of employment-related matters prescribed under national legislation have been established and regulated by independent statutory tribunals. The current national tribunal is the Fair Work Commission (FWC). While the members of the FWC are appointed by the Government of the day, they have tenure, subject to removal by Parliament, and their decisions are only subject to judicial control by the national courts on jurisdictional grounds. Their decisions take effect without the need for any approval by the Government.
142. Australian minimum wage rates have to be reviewed each year and it must be done by an open and transparent process in which any interested party can file submissions and, if it wishes, seek leave to appear in the FWC’s public consultations. The FWC is obliged to operate fairly in both substance and form. 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..."

Harvester

143. The most significant case in the early years of Federal 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 remuneration at the business in question was fair and reasonable. He made a ruling as to what was a fair and reasonable wage. In the following year the *Harvester* ruling was adopted by the Australian Court of Conciliation and Arbitration in settlement of an industrial dispute.
144. Although the term "living wage" was not used in the *Harvester* judgment, the wage which 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). *Harvester* determined the course of wage decisions in the Commonwealth's new industrial court as well as decisions of State tribunals.
145. The *Harvester* living wage ruling 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.
146. Over the years the industrial awards came to provide for the further payment of "margins" to reflect the extra value of skilled work in a range of prescribed work classifications. The *Harvester*-derived wage came to be known as the Basic Wage and was adjusted across all awards through joint applications in the national tribunal. For decades the Basic Wage and the margins were adjusted separately. In 1965 a decision

was made by the national tribunal 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 the award classifications that recognise changes in skill, responsibilities and work value distinguish Australian wage setting from other national systems.

The living wage

147. 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 and to provide for their families. 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.
148. 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.
149. 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 Debating and Literary 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".

150. 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*.
151. 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."
152. 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 Australian 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.
153. 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.
154. In Chapter 1C we showed how the living wage principle made a significant contribution to the understanding and declaration of human rights. The *Universal Declaration of Human Rights* 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)): 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)). Consistent with these formulations of a basic human right, the term living wage still resonates throughout the world as a right and a goal to be achieved.

The expansion of Federal power over industrial relations

155. For the first century or so after Federation, national legislation based on the 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 provided an effective means of attracting unions and employers into national regulation. 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, often 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.
156. 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 *Fair Work Act 2009*. Each changed the institutional structure and criteria for wage setting, among many other matters.
157. Since 2005, with the enactment of the *Work Choices* legislation, 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 to the Commonwealth a wide range of employment regulating powers in respect of non-corporate employers. Since the enactment of the *Fair Work Act 2009* the Commonwealth has not relied on the conciliation and arbitration power to regulate employment relations. Even before those changes took place the

Commonwealth tribunal, then the Australian Industrial Relations Commission (AIRC) was the pre-eminent tribunal; and it and its predecessors had been so for decades.

Work Choices

158. The *Work Choices* legislation was amending legislation, entitled *Workplace Relations Amendment (Work Choices) Act 2005*, which amended the *Industrial Relations Act 1988* and renamed it the *Workplace Relations Act 1996*. The *Work Choices* amendments transferred the wage setting functions of the AIRC to the Australian Fair Pay Commission (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.
159. The *Work Choices* legislation was controversial and in 2007 the newly-elected Labor Government set about replacing it. Indeed, *Work Choices* was a major reason for the Australian Labor Party'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. With a name change in 2013, FWA became the FWC.

The Fair Work Reforms

160. 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)
161. 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..."
162. *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. This was one of the reasons why its passage through Parliament was controversial.

163. 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."

164. The significance of the AFPC's charter was discussed 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.)

165. The reformed system that Professor Harper described did not come as a surprise. There was a lot of community debate before the *Fair Work Act* was enacted in 2009.
166. 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.)

167. This was very welcome and the legislation that was enacted was consistent with the position taken by the bishops in 2005. We can see from the earlier paragraphs in section A of this chapter on *Harvester* and the living wage that the speech claimed too much for *Harvester* and, in doing so, failed to take into account the universality of the living wage principle. The living wage principle, with its intrinsic notion of fairness and a desire for a decent standard of living, had been advocated in Australia and elsewhere for some years before *Harvester*. Nevertheless, the words used correctly highlight ingrained values both in the current legislation and across the Australian community.

B. THE LEGISLATIVE FRAMEWORK FOR WAGE SETTING

168. The object of the *Fair Work Act* is set out in section 3, which contains two principal objects and various means and supplementary objects by which the principal objects are be pursued.

"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; and
- (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
- (f) achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action....." (Emphasis added.)

Social inclusion

169. One of the two principal objects of the *Fair Work Act* is social inclusion. The term is not defined. In Chapter 7 we discuss the connection between social inclusion, social exclusion, poverty and disadvantaged. Included in that discussion are the following two commentaries on social inclusion and exclusion. In 2010 Fair Work Australia published a research paper on social inclusion, entitled *Research Report 2/2010 - Literature review on social inclusion and its relationship to minimum wages and workforce participation*. It includes the following commentary on the meaning of the term:

“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.” (Executive Summary)

170. The opposite of social inclusion is social exclusion, which may have greater utility in highlighting what is needed for social inclusion. The research report notes a useful definition:

“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.” (*Tackling Social Inclusion*, John Pierson, Routledge, London, 2002):

171. The legislation also refers to social inclusion in the list of matters that the FWC is to take into account when setting minimum wages. The FWC is required 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). The FWC responded to the competing approaches in its June 2013 decision:

"[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*)

The safety net

172. 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".
173. The term "safety net", which appears in various sections of the *Fair Work Act*, is not defined. The term was introduced into national wage setting provisions in the 1996 amendments to the *Industrial Relations Act 1988*, which was later renamed the *Workplace Relations Act 1996*. A surprising feature of the history of wage regulation under the *Fair Work Act* has been the limited consideration of the nature and purpose of a safety net and how that is to be applied to the varying circumstances in which workers and their families live.
174. ACCER has argued that the term safety net must be given its ordinary meaning, informed by the minimum wages objective and the general objects of the Act. The purpose of a safety net of fair minimum wages is to promote social inclusion of all Australians and to support and protect those workers who need its protection. As a general statutory right it has to be applied in a reasonable and proportionate way, which means that decisions do not have to cover unusual or exceptional cases, but they must cover ordinary and expected circumstances. In setting a safety net, the FWC has to set a wage that is sufficient to support workers with family responsibilities, but it would not be required to set a wage by reference to the needs of a worker with nine children.
175. The ordinary and expected circumstances will include, and not be limited to, 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.

176. A necessary part of the provision of a safety net is the identification of the measure or standard of the safety net. A safety net that is devoid of a measure or standard is devoid of meaning. In its *Annual Wage Review 2014-15, Decision* (June 2015 decision) the FWC stated 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 that those in “those in full-time employment can reasonably expect a standard of living that exceeds poverty levels” (paragraph 383).
177. Although the FWC does not frame these goals in terms of the requirements of the wage safety net, ACCER argues that the safety net that the FWC is obliged to provide, in the ordinary and expected circumstances, a wage safety net that enables workers to purchase the essentials for a ‘decent standard of living’ and to engage in community life, assessed in the context of contemporary norms, and to achieve a standard of living that exceeds poverty levels. These are not merely aspirations.
178. A critical point about the FWC’s formulations is that they can only have meaning when the beneficiaries are specified. The FWC has not identified those workers for whom the safety net is intended to provide the income to purchase the essentials for a ‘decent standard of living’ and to engage in community life, assessed in the context of contemporary norms and to achieve a standard of living that exceeds poverty levels. It is a fact that many Australian workers with family responsibilities are not able to achieve the standard of living identified by the FWC. A wage setting system needs to identify the workers who are the beneficiaries of the wages safety net and provide a rationale for not assisting those who are not beneficiaries of the wages safety net. If there are economic or other factors prevent it from providing this kind of support and protection to some or all of the workers who fall within the ordinary and expected circumstances, the reasons should be evident.

179. We are entitled to ask, which workers with family responsibilities and employed on a safety net wage 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?

Australia’s international labour obligations

180. Section 3(a) of the *Fair Work Act* sets out a number of particular objects of the legislation, including that its provisions take into account "Australia's international labour obligations". The category is not defined, but in its ordinary meaning would cover labour matters within general conventions which have been ratified by Australia and labour-related conventions, such as those promulgated by the International Labour Organisation (ILO), and ratified by Australia. These instruments include the *International Covenant on Economic, Social and Cultural Rights* and the ILO’s *Minimum Wage Fixing Convention 1970*. The terms and relevance of these are set out in Chapter 1C.
181. These international obligations are meant to be acted on through the introduction of domestic laws and through the decisions that are made pursuant to those domestic laws. The introduction of an international obligation into domestic law should be reasonable and proportionate and the exercise of any discretion under that domestic law should take account the terms of the international obligation. When the FWC exercises its statutory power to set minimum wages it should be cognisant of the human right that is recognised in the *International Covenant on Economic, Social and Cultural Rights* in regard to wages: the 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)).

Modern awards

182. The FWC now sets terms and conditions of employment for Australian workers, with only minor exceptions, through 122 awards (called "modern awards") covering defined industries and/or occupations. 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 across the jurisdictions for the same kind of work. 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.

183. 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 various work classifications and 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, a point which is illustrated in Table 6 in Chapter 3.
184. Not all employment rights are contained in awards. Some of the most important and general rights (e.g. 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

185. The *Fair Work Act* establishes a system of collective bargaining based on the wage and award 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, i.e. market forces can be recognised and accommodated.
186. 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.
187. 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

188. 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.

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

189. 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). The FMW was first set in 1997 by a decision in the AIRC's *Safety Net Review –Wages- April 1997* case (Safety Net Review Case 1997) "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.
190. 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. It was a transitional rate. Since 1997 the FMW and the NMW have increased at the same rate (by 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. The NMW/FMW has been increased in lockstep

with lower paid award classifications. Decisions were made about award wage increases and were then applied to the NMW.

191. The *Fair Work Act* provides a very different process for the setting of the NMW. The legislation establishes the NMW as a right independent of the award system, but operating on the award system and on agreements made under the legislation. 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 must 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.

192. Despite these new provisions introduced in 2010, the earlier decisions under the *Fair Work Act* shows that the earlier practice continued and the NMW was treated as ancillary to, or dependent upon, award rates of pay and the relativities within the awards; for example, the FWC has stated:

"[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." (*Annual Wage Review 2011-12, Decision.*)

"[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." (*Annual Wage Review 2012-13, Decision.*)

193. The proper process under the *Fair Work Act* had been reversed, with the effect that the adequacy of the NMW was not subjected to scrutiny.

194. ACCER raised this matter as an issue of law in the Annual Wage Reviews of 2013-14 and 2014-15 and each time made submissions based on the material that is set out in the following paragraphs. The FWC did not respond to the submissions in its June 2014 decision, but did so in its June 2015 decision. 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." (June 2015 decision, paragraph 137)

195. 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.

196. 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).
197. 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)
198. 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).
199. 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 a wider range of matters to be taken into account:
- “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:
 - (e) employees working overtime; or
 - (f) employees working unsocial, irregular or unpredictable hours; or
 - (g) employees working on weekends or public holidays; or
 - (h) employees working shifts; and

- (i) the principle of equal remuneration for work of equal or comparable value; and
- (j) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (k) 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
- (l) 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)

200. 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;"

201. Section 285(2) and (3) deal with the annual wage review:

"(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."

202. Therefore, before setting award rates of pay the FWC has to have decided on the amount that it proposes to set for the NMW. The minimum wage order is the fundamental instrument in the new scheme. 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."

203. This means that the NMW is to be a base upon which minimum award wages are to be set. The legislation does not specifically say that no award rate may be less than the NMW, but it is inconceivable that an award rate could be set at less than the NMW given these provisions.

204. 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.
205. 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.
206. The proper application of the new scheme for the setting of the NMW has consequences for the setting of award wage rates. ACCER's consistent argument has been that, in the transition to a fair and sufficient NMW, annual increases in the NMW should be greater than those set for award classifications. In some awards there are classifications and wage rates that are equal to or close to the NMW, so that, unless the increases in low paid award rates are the same as the increase in the NMW, those award rates would be overtaken or their margins over the NMW reduced. This would be a matter to be considered by the FWC once it had decided on the increase in the NMW. ACCER's preference would be for the consequential adjustments of award rates, rather than lower paid work classifications being made redundant

D. THE SUPPORT FOR FAMILIES IN MINIMUM WAGE DECISIONS

207. 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] FWCFB 3500 (June 2014 decision), at paragraphs 38, 365 and 373.
208. 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. It was a decision that was inconsistent with the living wage principle and recognised human rights. For more than a century Australian minimum wage decisions have taken into account the circumstances of workers with family responsibilities, even though economic circumstances have sometimes frustrated the fulfilment of that objective.

209. The first of the three paragraphs in the June 2014 decision 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.”

210. 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. We have described the changes proposed by the May 2014 Budget in Chapter 1E. The FWC was saying that, despite their potential impact, they were not relevant because wages were being set on the basis of the single person household.

211. In the third passage concerning the single person criterion, 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."

212. 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.)

213. The single person benchmark proposed by ACOSS is qualified by the requirement that families not be left in poverty. This is very different to the recitation appearing in the submission.

214. The ACOSS submission has its origins in the *Safety Net Review-Wages-April 1997* (*Safety Net Review Case 1997*), (1997) 70 IR 1, where ACOSS had put similar

submissions and Vice President Ross (as he then was) adopted them in his dissenting decision. However, the single person criterion adopted by the FWC in 2014 was not qualified by the protection of families from poverty.

215. In 2015 ACCER argued that the single person criterion is contrary to law and that the FWC is required to take into account the relative living standards and needs of workers with family responsibilities. ACCER's submissions in 2015 are reproduced at section E of this chapter.
216. ACCER's submissions on the single person benchmark were successful, but were not the subject of any analysis of the issues by the FWC and there was no explanation of the basis for the statements made in 2014. After referring to ACCER's submissions the FWC simply stated that it "... is bound to take into account relative living standards and the needs of the low paid without limitation"; see June 2015 decision, paragraphs 140 to 143. This effectively disposed of the single person household benchmark that was 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.
217. The FWC did, however, find that the single person household had utility as the "starting point" for wage reviews. It was a different approach to that taken in 2014:

"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. The footnote reads "See for example tables 8.2 and 8.3 of the Statistical Report". The FWC describes itself as the Panel when referring to its minimum wage cases.)
218. The reasons given by ACOSS, which are referred to in the first sentence, are reproduced in paragraph 338 of the decision and are the basis of the ACOSS support for the qualified single person benchmark. The reasons are referred to in ACCER's March 2016 submission, which is now at Chapter 9 of this book.

219. The important issue arising from paragraphs 337 and 338 of the June 2015 decision is whether the attention that the FWC proposes to give to the single person household is operational, to assist in the broader investigatory processes, or it is the basis of the kind of the qualified single person wage setting proposal advanced by ACOSS. Has the FWC moved from an unqualified to a qualified single person benchmark? To explain this issue we need to return to the Safety Net Review Case 1997.

The Safety Net Review Case, 1997

220. In section C of this chapter we referred to the introduction of the FMW in the Safety Net Review Case, 1997, which was the first wage review following substantial changes to the national employment legislation. In 1996 the *Industrial Relations Act 1988* was amended in a variety of ways and renamed the *Workplace Relations Act 1996*. The most contentious of these changes was the introduction of detailed collective and individual bargaining provisions which enabled employers and their workers to modify, subject to limits, prescribed award conditions. There was also a significant change in the regulation of the minimum wage setting process, although it was broadly consistent with custom and practice.
221. The new bargaining system operated on a “safety net” of award provisions. The new wage setting provisions were similar to those now in the *Fair Work Act 2009*. Section 88B(2) then 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:
- (a) the need to provide fair minimum standards for employees in the context of 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.”
222. The Safety Net Review Case 1997 introduced the FMW, although it was not required by, or even mentioned in, the legislation. The members of the AIRC were agreed in their decision to introduce the FMW, but were not unanimous on how it should be set and the level at which it should be set.
223. There was substantial discussion in the majority and dissenting decisions regarding the submissions on behalf of 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 in (1997) 70 IR, 1, at 46, emphasis in the original)

The majority decision in 1997

224. 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 for the setting of wage rates (page 52). The majority held that the legislation's reference to "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

225. Vice President Ross's dissent included a lengthy consideration of the ACOSS submissions. For present purposes the consideration falls into two parts.
226. 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. He 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)

227. 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)

228. 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. The current difference between the two award rates, which are now in the *Manufacturing and Associated Industries and Occupations Award*, is \$177.70 per week. Any adjustment to the FMW as a result of a re-evaluation of needs would require either the adjustment of award rates in order to maintain established relativities or some low paid award classifications being overtaken and made redundant by the adjusted FMW. The proposal for implementation over time, with consequential changes in award rates, is significant. This is the same kind of process that is now raised by ACCER’s claim for an increase in the NMW to address poverty in wage-dependent families.

229. 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)

230. 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.

231. 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)

232. 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. It is evident in the passage quoted earlier, which included “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”. It is also 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)

233. These three paragraphs show that it was intended that the qualified 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 and the need to protect them against poverty.

234. We agree with the views expressed by Ross VP in these paragraphs. Unfortunately for the low paid, his fears have been realised:

- living standards have drifted below community standards;
- there are no clear objectives in recent wage decisions;
- inequality has increased; and
- childhood poverty, with all its damage to personal development and future prospects, has increased.

235. With those considerations for a the operation of a wage setting system that protects families against poverty, we turn to a review of the national wage setting cases up to the commencement of the *Fair Work Act 2009*.

AIRC cases 1998 to 2005

236. 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.

237. The Safety Net Review Case 1998, 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 [suggested by ACOSS] to develop a benchmark of wage adequacy” (Print Q1998 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 of its decision, entitled “Needs and the low paid”. The living costs of the low paid were treated as needs of the low paid.

238. It should be noted that the term "benchmarks" was used in two ways: as a defined household, such as a single person or “family of four” benchmark, and as

a benchmark of wage adequacy, such as the poverty line.

239. 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)

240. In 2003 ACOSS and ACCER asked the AIRC to establish an inquiry into the needs of the low paid. (ACOSS had made similar requests in the past without any success.) The proposal was 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)

241. 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.)

242. In the Safety Net Review case of 2004 submissions had a more specific focus on needs because the Australian Council of Trade Unions (ACTU) had commissioned substantial budget standards research from the Social Policy Research Centre (SPRC) at the University of New South Wales regarding the living costs of low paid workers and their families. 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)

243. 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)

244. In the *Safety Net Review Case 2005*, there was a continuation of the consideration of families, again without any benchmark family or families, and account taken of changes in the income tax and tax transfer system:

"[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)

Work Choices and the AFPC, 2006-2009

245. 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)).

246. 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.)

247. That conclusion was partly based on a calculation that, at July 2006, the single breadwinner family of four was 31% above the Henderson Poverty (HPL for that kind of family. 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.)

248. 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.

249. 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 he or she 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.
250. 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 the 2008 decision: *Wage setting Decision and Reasons for Decision, July 2008*, Table 4.4. 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 in income (including the Newstart allowance) from July 2006, from 31% to 22%, was unremarked.
251. The optimistic assessments by the AFPC 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 HPL; *Wage setting Decision and Reasons for Decision, July 2009*, Table 6. This contrasted with the 31% assessment for July 2006. Excluding the Newstart allowance, the family was only 2% above the HPL at December 2008 according to the 2009 decision.
252. In 2008 the AFPC introduced the 60% relative poverty lines into its consideration of living standards. It showed that in December 2007 the family of four with Newstart was 5% above the poverty line, but without Newstart it 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

253. 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.)

254. 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.

255. This quoted passage from the AFPC’s 2008 decision regarding the reasonableness of the single person’s living standard suggested a single person criterion for wage setting.

256. 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)

257. 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).

258. 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.
259. Despite the AFPC’s references to families, it had failed to address the declining real and relative living standards of Australian families, especially those living in poverty.

Conclusion

260. To the great detriment of many Australian workers and their families, the matters of concern expressed in the Safety Net Review Case 1997 were apparent on the eve of the transition to the *Fair Work Act* and are even more troubling after six years of the new wage setting system:
- The living standards of those who relied on the wage safety net have continued to drift below community standards;
 - there are no clear objectives in wage decisions;
 - inequality has increased: and
 - childhood poverty, with all its damage to personal development and future prospects, had increased.

E. THE CASE AGAINST THE SINGLE PERSON BENCHMARK

261. In this section we set out ACCER’s submissions in March 2015 in support of its contentions that the single person criterion 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
262. 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).
263. 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.
264. 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.

265. 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.

266. 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.

267. 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.)

268. 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.

269. 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"

270. 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.

271. 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.

272. 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.

273. 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)

274. *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)

275. 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.

276. 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 of *Working Australia, 2015: wages, families and poverty*]. 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.

277. 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.

CHAPTER 3

SAFETY NET WORKERS HAVE SUFFERED REAL WAGE CUTS

Paragraph

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A. REAL WAGE CHANGES 1997 - 2016

278. 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 48.3%. 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 2016**
(\$ 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
2016	656.90	713.80	764.90	777.80	831.30	885.50	937.00	992.40	108.4
\$ Increase	256.50	263.80	272.70	277.80	281.30	285.50	287.00	292.40	-
% Increase	64.1%	58.6%	55.4%	55.6%	51.1%	47.6%	44.2%	41.8%	48.3%

The figures are at 1 January of each year, save that the CPI figures for each January are those for the immediately preceding December. The CPI figures are taken from *Consumer Price Index, Australia, December 2015*, cat. no. 6401.0, Table 1 (A2325846C). 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 \$918.40 in January 2016. 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 2011 to 2016 figures for the other columns are also rounded to the nearest 10 cents, consistent with award practice.

279. 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, the same money amount to all classifications in 2008 and, as a result of a wage freeze, nothing at all in 2009. The six decisions under the *Fair Work Act 2009* from 2010 have awarded \$26.00 per week, 3.4%, 2.9%, 2.6%, 3.0% and 2.5%, 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.
280. The increases in Table 1 have been within a narrow band: from \$256.50 to \$292.40 per week, which has produced sharply contrasting percentage and real wage outcomes across the classifications. This has been to the relative benefit to the lower paid and the detriment of the higher paid, but it stopped in 2011 with the awarding of percentage increases.
281. There have been real increases in the NMW and in most 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 \$885.50 per week, has had a real wage cut of \$4.30 per week since 2001.
282. From January 2001 to January 2016 real wages were reduced for safety net rates that are now paying \$875.00 or more per week. This means that no productivity increases

have been distributed to wage classifications that now pay \$875.00 or more per week. We return to this aspect in Chapter 4.

283. 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, childcare costs, which have risen substantially in recent years, are much more important to working sole parent 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 1997-2015

284. 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)).
285. The AIRC introduced the FMW in its first wage review after the enactment of the 1996 amendments. That review is covered 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.

286. In Tables 2 to 5 we show how wage increases have varied, relative to the CPI, over the period 1997 to 2015 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 2015. We have used July in these and other years to provide a better explanation of the changes that have taken place. As the July 2015 rates include the most recent increases awarded in June 2015, they are also the rates that applied in January 2016.
287. 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 2015
(\$ per week, unless otherwise indicated)

	July 1997	July 2015	Increase
Federal/National Minimum Wage	359.40	656.90	82.8%
C10 classification	451.20	764.90	69.5%
C4 classification	597.20	918.80	53.9%
CPI	67.1	106.8	59.2%

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 2015 decision was for the March Quarter 2015. The CPI numbers are those in *Consumer Price Index, Australia, December 2015*, cat. no. 6401.0, Table 1 (A2325846C).

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%
CPI	67.1	82.1	22.4%

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

288. 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

289. 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%
CPI	82.1	92.5	12.7%

The CPI numbers are for March 2005 and March 2009; see *Consumer Price Index, Australia, December 2015*, cat. no. 6401.0, Table 1.

290. 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.

291. 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 of up to \$700 per week by \$27.36 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.

292. 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. 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.
293. 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.)
294. 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

295. 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"

"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)

296. 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. The media release also made the point that minimum wage setting was being used as a macroeconomic regulator of wages, which prompts questions about the effectiveness and fairness of placing such a significant burden on safety net-dependent workers and their families.
297. 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.

298. 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 18.3% for the period March 2008 (the most recently published CPI prior to the last wage increase by the AFPC) to March 2015 (the most recent before the FWC's June 2015 decision). The figure from March 2009, 15.5% presents a different picture and illustrates the importance of identifying the proper 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.
299. Table 5 shows that the decisions in 2010 to 2015 can be said to have overcome the real wage effects of the AFPC's wage freeze in 2009 for lower paid workers. 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.

Table 5
Increases in safety net wages and the CPI
Post-Work Choices
June 2010 – July 2015
(\$ per week, unless otherwise indicated)

	June 2010	July 2015	Increase
NMW	543.78	656.90	20.8%
C10 classification	637.48	764.90	20.0%
C4 classification	771.40	918.80	19.1%
CPI			
From March 2008	90.3	106.8	18.3%
From March 2009	92.5	106.8	15.5%

See notes to Table 2

300. 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.
301. This assessment leaves out of consideration the increases in productivity and community-wide wage movements; and the earlier deterioration in the position of low

income wage earners from 2001 to 2009. We will deal with these aspects in Chapters 4 and 5, but we note at this stage a pertinent comparison in respect of the period covered by Table 5.

302. The NMW increase from the July 2008 decision to July 2015 of 20.8% was substantially less than the AWOTE increase over a similar period. Over the period November 2007 to November 2014 (the latest available figures at the time of the 2008 and 2015 wage decisions) went from \$1,100.70 to \$1,474.50 per week, a 34.0% increase; see Table 10, below. 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 safety net workers whose real wages had barely moved or fallen over the same period.

Uniform percentage increases introduced

303. The percentage increases awarded in the last five 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 re-allocation 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 53.9% from July 1997 to July 2015, during which time the CPI increased by 59.2%. This is a real wage cut of \$31.94 per week.
304. 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 uniform 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. Since 2011 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 increase in the NMW.

B. WINNERS, LOSERS AND THE AVERAGE OUTCOME

305. What has been the net effect of the re-allocation of compensation for price increases? We know that from January 2001 to January 2016 real wages were reduced for safety net rates that are now paying \$875.00 or more per week. If this is more than the overall

average for those workers employed on safety net wages, then those workers have had real wage increases; and if it is less than the average they have had real wage cuts.

306. There are several matters that need to be considered in regard to this issue: 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 have influenced collective and individual wage agreements across the broader workforce. These questions have not been the subject of close analysis over the years. It is not our intention to do so.
307. Our objectives of this section are limited: to find a wage level that is a better measure of the impact of changes than is the NMW and to provide some broad estimate of the overall impact of the real wage increases and decreases of the last 15 years.

ACCI's Effective Minimum Wage

308. 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.
309. 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

310. Table 6 sets out a cross section of entry level rates of pay in January 2016. They 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. It 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 \$721.50 per week (the minimum wage for a shop assistant) has been increased by \$264.80 per week, or 58.0%, since January 2001. A wage at the cleaner's base rate, now \$701.60 per week, has increased by \$262.60, or 59.8%, over that time. These increases for two significant groups of low paid workers are substantially less than the 64.1% increase in the NMW over the same period.

Table 6
Lowest classification rates in various awards, January 2016
(\$ per week)

Award	Introductory Rate	Lowest Classification Rate
Miscellaneous	\$656.90	\$701.80
Clerks - Private Sector		\$698.40
Car Parking		\$692.00
General Retail Industry		\$721.50
Cleaning Services Industry		\$701.60
Hair and Beauty Industry		\$721.50
Restaurant Industry	\$656.90	\$675.90
Hospitality Industry (General)	\$656.90	\$675.90
Fast Food Industry		\$721.50
Aged Care		\$698.40
Higher Education Industry - General Staff		\$703.40
Waste Management		\$695.70
Local Government Industry		\$702.30
Manufacturing and Associated Industries and Occupations	\$656.90	\$675.90
Storage Services and Wholesale	\$701.80	\$710.60
Rail Industry - Operations		\$656.90

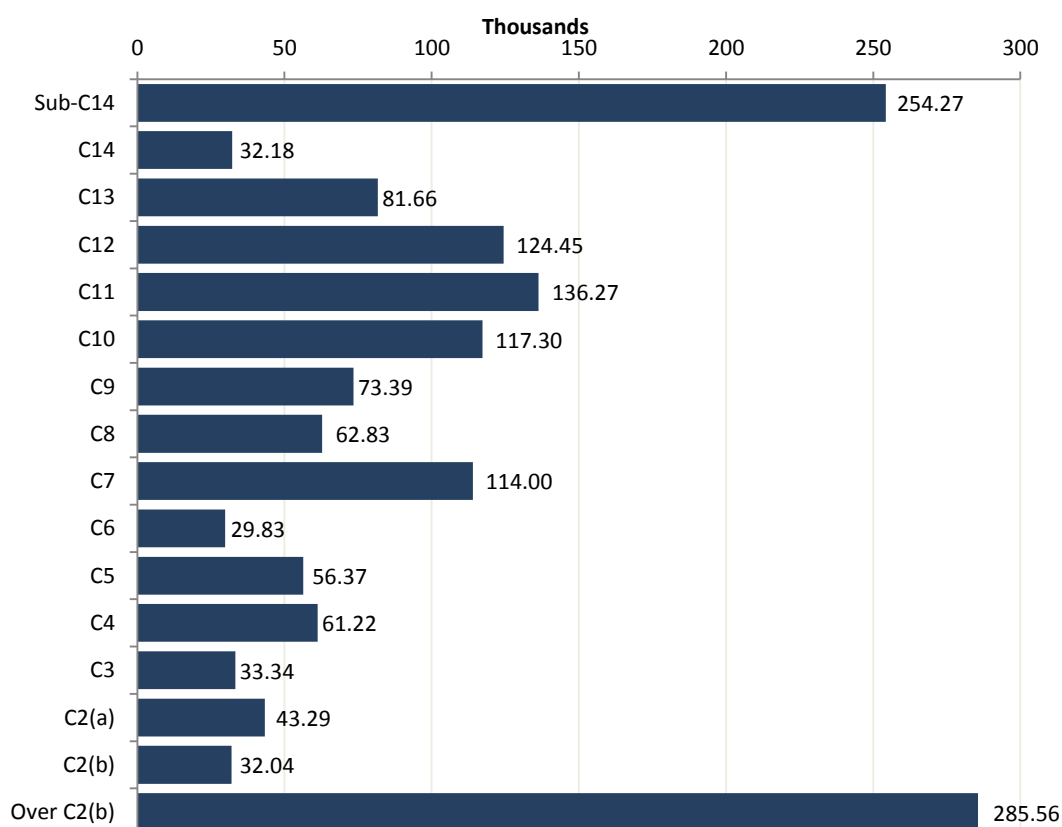
Where the award specifies an annual rate it has been divided by 52.18. In awards where annual or other time increments are provided in the lowest non-introductory classification, the lowest annual rate is specified. The introductory rates in this table apply to the first three months of employment.

The distribution of safety net workers across wage classifications

311. Table 6 demonstrates 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.
312. Table 6 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. It shows a number of awards covering, among others, low skilled work having minimum wage rates substantially greater than the NMW. The NMW is a transitional rate in several awards. The *Miscellaneous Award*, which picks up a wide variety of jobs not covered by other awards, has a wage rate that is \$44.90 more than the NMW after the first three months of employment. The other awards have an increase of \$19.00 per week after the transitional period. Why should the NMW be based on a transitional rate? A first step in improving the NMW safety net would be to remove the connection to transitional rates.
313. In order to form a view about the numbers of workers who had real wage cuts or real wage increases and the overall cost or benefit of those changes we need data regarding the distribution of workers across the range of work classifications. This is a difficult task and relies on the use of data that has been collected for other purposes, with inevitable shortcomings.
314. The principal kind of data on this matter concerns the number of "award only" workers. Information on these matters can be drawn from material considered by the FWC in 2013; *Annual Wage Review 2012–13, Decision* (June 2013 decision) The ACTU had produced some previously unpublished data from the survey material gathered by the ABS for *Employee Earnings and Hours, Australia, May 2012*, 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 wage rate would not be covered by this definition, even if his or her wage was adjusted as a result of award increases.

315. The distribution of award only workers is shown in Figure 1, which is copied from Chart 6.1 of the June 2013 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 the C13 classification). (Since the May 2012 survey award rates have increased by 2.9%, 2.6%, 3.0% and 2.5%.)

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."

316. 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.
317. Another striking feature of the chart is the high number of income earners on minimum award rates that are in excess of the top rate in the manufacturing ward. The ACTU submission explained that "... workers were assigned to the C2(b) classification if they had hourly earnings between \$24.42 and \$25.42 per hour. Those over C2(b) therefore had earnings higher than \$25.42 per hour." This equated to a minimum 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.)
318. We considered this material in *Working Australia, 2015; wages, families and poverty* and concluded that, based on the wage increases to July 2014, the median worker had had a real wage increase, as had some in the higher paid half of the award only population. Since then, with the real wage increase of 2015, there would be a larger number with a real wage increase.
319. The difficult task of identifying the proportion of workers who have had a real wage increase is followed by another difficult task: estimating the *average* outcomes for award only workers. In Table 7 of *Working Australia 2015: wages, families and poverty* and the associated commentary we presented a detailed analysis of the real gains and losses for award only employees, by reference to manufacturing award classifications, over the period January 2001 to January 2015. In order to do so it was necessary to make assumptions about the number of hours worked by the different cohorts because the data did not disclose how many hours were worked each week by

the workers in each of the categories. To assist our analysis, we assumed, at first, that all workers were employed full time. It is unnecessary to repeat or update Table 7, but we concluded that, on average, there was a real wage increase of \$3.56 per week, based on full time employment. After making assumptions about the average number of hours worked, we estimated an average real wage increase of \$1.87 per week. They are very small figures given the wage rates concerned.

320. We conceded that the figures involve a degree of informed guess work because of the absence of relevant data, but concluded that, the material supported the proposition that there has been, on average, a real wage cut in the classifications in which award only workers are employed and that there was, at the least, no persuasive evidence that, on average, award only workers are employed in wage classifications that had received real wage increases since January 2001.
321. We now have to modify that conclusion in order to take into account the fact that the June 2015 decision delivered a real wage increase. The 2.5% increase in the NMW and award rates was above the CPI increase of 1.7%. We can conclude that this increase has resulted in a real increase in the average wage paid to safety net workers over the period January 2001 to January 2016. Wage increases have been, on average, greater than the 48.3% CPI increase over that period, but only by small margin.
322. We should note that 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). How the decisions on minimum wage rates impacted on wage decisions in this part of the labour market is another unknown variable in the estimation of the impact on wage decisions on average real wage outcomes.

Conclusion

323. This section has been concerned with two issues.
324. First, 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? Second, the utility of NMW as an indicator of the changes that have occurred in minimum wage rates over the past 15 years.

325. 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. 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. Our conclusion is that wage increases have been, on average, greater than the 48.3% CPI increase over that period, but only by a small margin.
326. The second issue concerns the use of the NMW as an indicator of how low paid work rates have changed over time. 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. 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.
327. 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 the NMW-dependent group. Attention must also be given to 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.

CHAPTER 4

SAFETY NET WORKERS HAVE NOT RECEIVED PRODUCTIVITY INCREASES

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A. PRODUCTIVITY AND REAL WAGES

328. 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.
329. Productivity is one of the matters that the Fair Work Commission (FWC) has to take into account when setting minimum wages. 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).
330. 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.
331. 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.
332. 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.

333. We concluded in Chapter 3 that, taken as a whole, safety net-dependent workers have had a real wage increase since January 2001, but only by a small margin. It is only when an average real wage increase is achieved that we can say that the benefits of productivity are being distributed. The quantification of that average is a difficult task because it depends on the distribution of workers across the wage classifications, the wage rates within those classifications and the hours worked by safety net-dependent workers.
334. What we do know from Chapter 3 is that over the period January 2001 to January 2016 real wages were increased for lower paid workers, but reduced for higher paid workers. The point separating the two over this period was \$875.00 per week. Workers now on a minimum wage rate that is \$875.00 per week or more are employed in a classification that has had a real wage cut over the 15 years and, therefore, have had no benefit from increases in labour productivity over those years.
335. The NMW increased by 64.1% over the 15 years, substantially in excess of the CPI increase of 48.3%. This means that NMW-dependent workers have had some return for the productivity increases over that time. The benefit from productivity improvements across the wage classifications decreases between the NMW, now at \$656.90 per week, until it is zero at a wage classification that now pays \$875.00 per week or more.
336. Because there was such a small increase in average real wage growth, it can be said that almost all of the productivity based increases received by lower paid safety net-dependent workers came at as a result of the real wage cuts suffered by those employed on the minimum rates in higher paid classifications. The different outcomes across the classifications reflected the granting of dollar wage increases, rather than percentage increases, over most of the 15 years. This was a practice designed to give relatively more assistance to lower paid workers. It was a practice that re-allocated the compensation for price increases; and, to the extent that there was an increase in average real wages, the practice could be regarded as a means of distributing the benefits of increased productivity to lower paid workers. Save for a uniform increase of \$26.00 per week in 2010, all of the increases awarded under the *Fair Work Act 2009* have been uniform percentage increases.
337. Although the lower paid safety net workers can be regarded as having received productivity-based increases (at the expense of higher paid safety net workers) the relevant data shows that those classifications which have received real wage increases

over the 15 years have not received increases that reflect the increases in labour productivity over this period.

338. The substantial increases in labour productivity since 2001 are shown in Tables 7 and 8 by way of changes in the indexes of Gross Domestic Product (GDP) per hour worked and Gross Value Added (GVA) per hour worked in the market sector published by the Australian Bureau of Statistics (ABS). The figures are at December in each year, starting from December 2000
339. Table 7 shows that GDP per hour worked increased by 24.2%_over the 15 year period December 2000 to December 2015, averaging over 1.5% per year.

Table 7
Gross Domestic Product per hour worked
December 2000 – December 2015

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
81.8	85.2	86.0	87.8	88.7	89.4	89.9	91.0	90.7	93.7	92.9	94.6	98.1	99.8	101.2	101.6

Source: *Australian National Accounts: National Income, Expenditure and Product, Dec 2015*, cat. no. 5206.0, Table 1, A2304364W (GDP per hour worked, trend)

340. Table 8 shows that Gross value added per hour worked in the market sector increased by 34.7% over the same period, averaging over 2.0% per year.

Table 8
Gross Value Added per hour worked - Market sector
December 2000 – December 2015

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
75.9	79.8	81.3	83.3	83.9	85.5	86.2	87.4	87.8	91.0	90.7	93.9	97.6	99.9	100.6	102.2

Source: *Australian National Accounts: National Income, Expenditure and Product, Dec 2015*, cat. no. 5206.0, Table 1, A3606050F (GVA per hour worked – market sector, trend).

341. Over the past 15 years the NMW has increased by 64.1%, the Consumer Price Index by 48.3% (Chapter 3, Table 1) and labour productivity has increased 24.2%, by GDP per hour worked, and 34.7%, by GVA per hour worked in the market sector. The distribution of productivity falls away until it is zero at the safety net wage of \$875.00 per week.
342. 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 had 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).

343. The AIRC did distribute some of the productivity growth over the period from when the predecessor to the NMW, the Federal Minimum Wage, was first set in 1997 to its last wage decision in 2005. In Chapter 3A we saw how safety net wages 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, and therefore received no benefit from productivity increases. Over this period there were considerable productivity increases: from March 1997 to March 2005 GDP per hour worked increased by 17.4% (*Australian National Accounts: National Income, Expenditure and Product, Dec 2015*, cat. no. 5206.0, Table 1, A2304364W). Clearly, a large part of the productivity increases were not distributed to safety net workers.
344. 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. The AFPC reduced the real wages of *all* safety net-dependent workers, with the result that all of the gains in labour productivity were transferred to their employers. The wage freeze in 2009 was a significant contributor to this outcome. The AFPC’s decisions 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. All safety net workers were substantially worse off relative to the rest of the community at the end of those four years.
345. 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 its decisions since 2010, but as the successor to the AIRC and the AFPC it has a legacy that must be addressed.
346. Taken in isolation, without regard to the real wage deficit and the disconnection between safety net wages and community standards, the six decisions of the FWC since 2010 have delivered real wage increases, as at January 2016. In Table 5 in Chapter 3 we show that the FWC has delivered real wage increases since its first decision in 2010.

The discussion associated with that table includes the selection of a starting date for the calculation of price increases. We argue that the starting date is March 2008, which was the latest time for which there was a published CPI movement prior to the AFPC's decision in July 2008. That was the last time it awarded a wage increase because in the following year it imposed a wage freeze by not adjusting any wage rates. Using the March 2008 commencement date the CPI increase was 18.3% up to March 2015, the most recent time for which there was published data prior to the FWC's June 2015 decision. Because of the uniform increase of \$26.00 per week in 2010 and percentage increases since then, higher paid classifications have received slightly less in percentage terms from the FWC's decisions; for example the C4 classification, now at \$918.80 per week, has had an increase of 19.1%. This means that very little of the increase in labour productivity was distributed. If we focus on just the four years to December 2014, GDP per hour worked increased by 9.8% and GVA per hour worked has increased by 10.9%; see Tables 7 and 8.

Productivity and minimum wage setting

347. 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 various decisions of the FWC present limited consideration of the issues around this important topic; for example the June 2015 decision contains less than four pages on productivity; *Annual Wage Review 2014-15, Decision* [2015] FWCFB 3500, paragraphs 182 to 196. The FWC has had more to say on these matters over the years and a full appreciation of its views has to be gleaned from a number of decisions.
348. The recent decisions, however, do not address two important issues: how much of the increases in labour productivity should go to labour and how to rectify the past failures to award labour productivity increases. As we will see, these have been subsumed into a broader issue concerning the relationship between safety net rates and average income increases.
349. The first of these questions is particularly important in minimum wage setting in Australia and elsewhere. The contention that wage increases should reflect increases in on "prices and productivity" summarises two points: first, that workers should be compensated for price rises so as to maintain the real value of their wages; and, second, workers should have the benefit of the improvements in their own productivity. The question for wage setting is whether workers should have the benefit of *all* of the

improvements in labour productivity, whether measured as GDP per hour worked or as GVA per hour worked. We will return to this.

350. The second question has not been answered by the FWC, at least expressly, but it has shown a marked reluctance to revisit the sufficiency of earlier distributions of productivity increases, even though those decisions played a significant role in the disparity between safety net wages and average wages across the workforce. We return to this aspect when dealing with recent wage decisions.
351. An issue that has been answered by the FWC concerns the issue of whether national productivity increases should be distributed uniformly through national minimum wage decisions. This is an important issue, particularly in the context of a wage setting system that encourages collective bargaining in the expectation that bargaining will emphasise the need for productivity improvements and will result in the distribution of productivity gains at the level of the firm.
352. In regard to this issue the FWC's position, which has its origins in decisions of the AIRC, is that the distribution of productivity should be at the national level. The AIRC had to address this issue in the context of the new collective bargaining provisions introduced in 1996, provisions which were based on awards being safety net awards. In adopting this position the FWC, like the AIRC before it, had to address the question of whether productivity based increases in safety net rates would remove the incentive of parties to bargain and find ways in which productivity gains might be achieved.
353. The FWC has followed the earlier view that productivity gains should be distributed at a national level and reaffirmed an earlier view that this would not have a detrimental impact on collective bargaining and productivity growth in firms. The relevant conclusions in the June 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.’” (*Annual Wage Review 2013-14, Decision*, [2014] FWCFB 3500, footnote omitted)

354. The potential impact of safety net wage increases on the incentive to bargain was considered again in the June 2015 decision, with the FWC reaffirming its earlier view:

[472] The Panel’s previous conclusions as to the relationship between increases in minimum wages and collective bargaining remain valid, in particular:

- whilst the gap between minimum wages and bargained wages is likely to increase the incentive for employees to bargain, a large gap may be a disincentive for employers to bargain; and
- minimum wages are only one element of the incentive to bargain.

[473] The available evidence indicates that the level of increases in minimum award wages over the past decade or so have been compatible with the encouragement of collective bargaining. We are satisfied that the increase awarded in this Review is also compatible with the need to encourage collective bargaining.” (*Annual Wage Review 2014-15, Decision* [2015] FWCFB 3500, footnote omitted.)

B. PRODUCTIVITY, THE TERMS OF TRADE AND WAGES

355. Over the past 15 years the AWOTE measure of average weekly earnings has increased by 87.7% (see Chapter 6, Table 10), while prices, as measured by the CPI have increased by only 48.3% (see Chapter 3, 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, 39.4 percentage points, shows a very large increase in real wages that is not explained by the substantial increase in labour productivity over the past 15 years: 24.2%, as measured by Gross Domestic Product per hour worked, and 34.7% in the market sector, as measured by Gross Value Added per hour worked.

356. Why have prices 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, wage increases that have been substantially greater than the increases in prices and productivity. While the

terms of trade have moved against Australia in the last few years, the current position is still relatively favourable.

357. The impact of changing terms of trade over the past 15 years can be seen in Table 9. The index figures are at December of each of the years from 2000 to 2015. The terms of trade were flat prior to 2000; for example in December 1996 the Terms of Trade index was 60.6, slightly higher than the December 2000 figure of 60.0. December 2003 was followed by a steady improvement until 2008. Apart from 2009, the improvement was sustained until 2014, when the index fell back to within the 2005-2008 range. In December 2015 the index was considerably above the 1996 to 2003 level.

Table 9
Terms of Trade
December 2000 – December 2015

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
60.0	60.9	61.8	65.6	71.6	80.3	86.6	89.1	103.8	89.9	113.9	118.0	103.8	101.4	91.4	80.5

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

358. 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 June 2013 decision, with particular reference to changes in the terms of trade and the declining labour share of national income; see *Annual Wage Review 2012-13, Decision*, [2013] FWCFB 4000, at paragraphs 138 to 175. The FWC returned to these matters in its 2014 decision. Much of that discussion relates to the following observation in the June 2013 decision 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)

359. 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 demonstrated that, since 2000, labour's share of real hourly labour income had not kept pace with labour productivity. It argued that in recent years

the share of national income going to labour had 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”.

360. 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: *Annual Wage Review 2014-15, Decision* [2014] FWCFB 3500, (June 2014 decision), 160)

361. 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.” (June 2014 decision, paragraph 166)

362. 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”; June 2014 decision, paragraph 163.

363. Mr Parham and these parties were concerned with *aggregate* real wage growth across the workforce. The position of safety net workers and the level of safety net wages are not addressed by the general discussion.

364. 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 have benefited capital disproportionately to labour. (June 2014 decision, paragraph 167, emphasis added.)

365. 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.)

366. 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. This is a matter of great importance for a tribunal that is setting minimum wage rates. The passage contains 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. These matters attracted little attention in the June 2015 decision.
367. The coverage of productivity in the June 2015 decision is short, with most of it reciting statistics at industry and national levels, and re-affirming its earlier view that minimum wage increases had not been a disincentive to collective bargaining. The FWC's discussion of productivity is introduced with the advice that the decision on the Annual Wage Review 2012-13 "sets out why productivity and related measures require consideration in minimum wage fixation" (June 2015 decision, paragraph 182).
368. The FWC referred to the substantial issues raised by the ACTU and ACCER concerning the failure to distribute productivity increases.

[189] The ACTU and ACCER have again drawn our attention to the real value of the NMW lagging behind productivity growth over the past decade and a falling labour share of income over that period. Whilst recognising that the 2013–14 Review decision meant that low-paid workers did share in productivity growth over the past year, the ACTU submitted that the increase it proposed was necessary to "ensure that some of this lost ground is restored". The Panel considered the longer term decline in the labour share of income in its 2013–14 Review decision, concluding that:

"[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."

[190] Nothing put to us in the current Review persuades us to depart from that assessment and the conclusions drawn." (Footnotes omitted)

369. This failed to deal with the substance of the issue raised. The FWC had evidence of prolonged increases in productivity. There were "sustained" improvements in labour productivity, but there had not been compensation for them. Short term variations could not hide that fact. There was a "firmer basis" for wage increases in those figures. Despite this, there was no acknowledgment of the implications of the sustained productivity improvements, albeit that there were cyclical factors in operation.

370. The last sentence of the passage in the June 2013 decision which was affirmed in the June 2014 decision and quoted again in paragraph 189 of the June 2015 decision shows that the reward for productivity growth is subject to an assessment of the labour share of national income. The reference in the third sentence to the relevance of the labour share of national income to the “assessments of the fairness of, and relative standard of living provided by, minimum wages” is intended to have some significance. It means that the increases in safety net rates on account of productivity increases is constrained in some unspecified way by the share of national income going to labour as a result movements in all wages, whether set by the safety net provisions of the legislation or bargained individually or collectively.
371. The FWC’s consideration of productivity was followed by a section on business competitiveness and viability, the opening paragraph of which was:
- “[197] After falling sharply in the GFC, the wages share steadily recovered until 2011 and has since been relatively flat. The profits share has fallen back in recent years after climbing sharply in the GFC and its aftermath. In 2014 it was at a lower level than in most years since 2010.” (The passage was repeated at paragraph 297)
372. Paragraph 197 was followed by a graph (Chart 4.2) which showed the wages share of total factor income at about 20%, save for the GFC period when it fell significantly (and the profit share increased accordingly). It would be wrong if these macro outcomes, largely driven by the wages of workers who do not rely on safety net wages, were to compromise the setting of a fair safety net wages. That appears to have happened.

C. PRODUCTIVITY BENEFITS LOST THROUGH WAGE DECISIONS

373. 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 very little 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-fifth of the workforce wage increases based on the substantial productivity increases over the past 15 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.

374. In the June 2013 decision (at paragraph 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." (June 2013 decision, paragraph 17, footnote omitted)

375. 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." (June 2013 decision, paragraph 61)

376. The last sentence in paragraph 61 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.

377. 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)

378. 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 by 1.0% and it increased by 0.8% over the next 12 months (see Table 7). The problem of short term variations and initial misreporting of changes could be addressed through the adoption of a moving average.

379. The uncertainty raised by the last sentence in paragraph 61 and its repetition in paragraphs 323 and 428 is whether the FWC had accepted that there was a pool of undistributed productivity that it would be prepared to distribute over subsequent years. What did 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).

380. This passage, while holding out a prospect of improved living standards, provided no confidence that the situation would improve. The crucial point is that there have been substantial and sustained productivity improvements over the past 15 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.

381. 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 paragraph 149). At paragraph 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.

382. 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 was 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".
383. The uniform increase of 2.5% in the June 2015 decision has similar features, although the CPI increase was 1.7%. The difference between the two can be regarded as a return on productivity increases, but the FWC noted that GDP per hour had risen by 1.6% over the 12 months to December 2014 (paragraph 184). The margin between the 1.7% increase in the CPI and the 2.5 % increase for all minimum rates does not reflect the increase in labour productivity.

Capital deepening

384. 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 labour productivity had risen by 9.9% and commented:

"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])

385. Clearly, this is an important issue in the measurement of changes in labour productivity and the fairness of decisions regarding the distribution of those gains, yet it was not covered in the published reasons. 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

386. 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. Substantial productivity increases should be taken into account in a meaningful way and the decisions should be transparent and explain how productivity increases have been taken into account. There is, however, a way of

avoiding the issue: the FWC is obliged to take into account relative living standards when setting safety net wage rates. Living standards improve 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.

387. The FWC adverted to this kind of point in its June 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." (Paragraph 144, footnote omitted)

388. 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 would be necessary for the FWC to acknowledge and explain the past shortcomings in the setting of safety net wages.

CHAPTER 5

SAFETY NET WAGES HAVE FALLEN BEHIND GENERAL WAGE LEVELS

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A. GENERAL INDICATORS OF INCREASING COMMUNITY INCOMES

389. 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 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
2001-2016
(\$ 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		415.63	
2002	3.3%	3.0%	3.4%	843.10	5.5%	457.38	10.0%
2003	7.7%	6.7%	6.9%	882.20	10.4%	454.51	9.4%
2004	11.9%	10.2%	10.8%	929.60	16.4%	481.03	15.7%
2005	16.7%	14.0%	14.9%	964.90	20.8%	517.24	24.4%
2006	20.9%	17.5%	19.6%	1014.50	27.0%	536.66	29.1%
2007	27.8%	23.0%	24.5%	1045.40	30.9%	576.92	38.8%
2008	30.4%	25.1%	29.5%	1100.70	37.8%	627.52	51.0%
2009	35.8%	29.5%	35.0%	1158.50	45.0%	692.04	66.5%
2010	35.8%	29.5%	39.0%	1225.20	53.4%	688.82	65.7%
2011	42.3%	34.8%	44.3%	1274.10	59.5%	731.61	76.0%
2012	47.2%	39.4%	49.6%	1333.40	66.9%	765.09	84.1%
2013	51.4%	43.3%	54.7%	1392.80	74.4%	775.90	86.7%
2014	55.4%	47.2%	58.6%	1437.20	80.0%	800.87	92.7%
2015	60.1%	51.6%	62.7%	1474.50	84.6%	816.62	96.5%
2016	64.1%	55.4%	66.3%	1499.30	87.7%	830.16	99.7%

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 2015*, cat. no. 6302.0 and earlier publications in this series. Wage Price Index figures are from *Wage Price Index, December 2015*, cat. no. 6345.0 (Trend, A2603040A). Household Disposable Income figures are taken from the Melbourne Institute's *Poverty Lines: Australia September Quarter 2015* and are in respect of December of the preceding year, save that the figure for September 2015 (the latest available) is used for January 2016.

390. 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 in Chapter 3. 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

391. 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.
392. The figures show that safety net wage rates have fallen substantially against AWOTE, which increased by 87.7% over the past 15 years. The NMW increase of 64.1% compares unfavourably with the increase in AWOTE. The NMW fell from 50.1% to 43.8% of AWOTE over the 15 years to January 2016. 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 41.8% over the same period. In 2001 it was 87.6% of AWOTE and in January 2015 it was 66.2% of AWOTE.
393. If the NMW had increased at the same rate as AWOTE, the NMW would now be \$751.55 per week, \$94.65 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 \$321.50 per week. These are startling comparisons
394. The past 15 years is a valid reference period for comparisons of changes in minimum wages and average wages. Concentrating on more recent changes will not give a true picture of the changes under national regulation that have impacted on low paid workers and their families. The Fair Work Commission (FWC) frequently refers to shorter time periods, which are within the period of its existence since January 2010 (when it was the named Fair Work Australia); for example:

"The divergence between minimum wage rates and average wages has slowed or narrowed over 2013 and 2014, reflecting reduced growth in average wages. The NMW has fallen from 44.3 per cent to 43.4 per cent of AWOTE over the five year period from November 2009 to November 2014, with somewhat larger falls for the higher modern award minimum rates." (*Annual Wage Review 2014-15, Decision*, (June 2015 decision), paragraphs 43-44.)

395. Table 10 shows that, at the time of the FWC's decision in June 2015, the published AWOTE figures recorded a 27.3% increase over the six year period, November 2008 to November 2014. Over the six years January 2009 to January 2015 the NMW increased by only 17.9%. The 2015 decision left minimum wage rates well behind the increase in those average earnings. Extending the comparison to January 2016, AWOTE has increased by 29.4% (November 2008 to November 2015) and the NMW has increased by 20.8% (January 2009 to January 2016). The gap between the increases in AWOTE and the NMW fell a little over the year: from 9.4 percentage points to 8.6 percentage points. In fact, the increases in the NMW from January 2014 to January 2016 have outstripped the increase in AWOTE: the NMW increased from \$622.20 to \$656.90 per week, an increase of 5.6% and AWOTE increased from \$1437.20 to \$1,499.30, an increase of 4.3%. So while real wages have recovered from the 2009 wage freeze, relative wages have outstripped minimum wage growth by a substantial degree, notwithstanding the small turnaround in the two most recent years.
396. The substantive point to be made is that over the past 15 years the divergence between safety net rates and AWOTE has been very damaging to the interests of safety net-dependent workers and the slight reversal of that trend in the last couple of years does not address the losses of previous years.
397. 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.
398. It is important to note that AWOTE understates the increases received by non-safety net workers. Because AWOTE covers the population as a whole, including safety net workers who comprise about one-fifth of the workforce, 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. This would present a greater contrast than the figures used in Table 10. Simply put, if one-fifth 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 four-fifths who are able to bargain (formally or informally) for higher wages will have had an increase of about 67.5%, i.e. more than 10.0% above the aggregate figure.

Wage Price Index

399. The Wage Price Index (WPI) increased by 66.3% over the 15 years to January 2016, rather less than AWOTE, but rather more than the 48.3% increase in the CPI. 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. In making comparisons between the two we should keep in mind the fact that the WPI figures used in the table are recorded after the relevant wage movements.
400. 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 2015*, 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.
401. 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 FWC as a comparator for wage rate adjustments.
402. 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*, (June 2012 decision), paragraph 15, emphasis added.)

403. In section D of this chapter we deal with the claim in the last two sentences that rising inequality was caused by the workforce rising into higher paid jobs over time. The substance of the section is that the change in workforce composition does not explain the divergence between minimum wage rates and the WPI.

404. The claim in the June 2012 decision that “national minimum wage has risen over the past decade at about the same rate as the WPI” has been echoed in subsequent decisions. 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, Decision*, (June 2013 decision), at paragraph 392. In its 2014 decision the FWC compared the NMW/C14 and C10 rates and general measures of wage increases, including the WPI:

"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." (*Annual Wage Review 2013-14, Decision*, (June 2014 decision), paragraph 340)

405. In its June 2015 decision the FWC said:

"The NMW and modern award minimum rates have grown more slowly over the past decade than have measures of average pay, although growth in the NMW has remained close to that of the WPI." (Paragraph 43)

406. The claims that the NMW has "remained close" to the WPI is contentious.

407. Table 10 demonstrates that from January 2001 to January 2009 the increases in the NMW were greater than the WPI, but the C10 rates lagged the WPI. The differential impact was the result of money increases in award rates of pay which barely favoured NMW-dependent workers, but took substantial wage growth away from higher paid classifications. The justification for money, rather than percentage increases, was the provision of support for those workers who were most in need of a wage increase, but the overall increase minimum wage-dependent workers was less than the WPI increases. In January 2007 the NMW was 3.3 percentage points ahead of the increase in the WPI, but in January 2016 it was 2.2 percentage points below the WPI increase.

- In January 2007 the C10 rate was 1.5 percentage points behind the increase in the WPI, but by January 2016 it was 9.9 percentage points behind. These are significant figures.
408. These shortcomings are part of the legacy of the national wage setting system and cannot be avoided by reason of the establishment of the FWC in 2010. The legacy has to be acknowledged, along with recent developments. The position of the NMW and award rates relative to the WPI has improved over the two years to January 2016. In that period the WPI increased by 4.9% compared to a 5.6% increase in safety net wages, but there is still some way to go in regard to correcting the errors of the past.
409. We have, therefore, a failure to set wage levels by the most conservative measure of national wages growth. The most needy, those on the NMW, have been disadvantaged. The most disadvantaged from our examples in Table 1 are the modestly paid minimum wage-dependent workers now on \$992.40 per week: compared to the 66.3% increase in the WPI since January 2001, the increase in their wage rate has been 41.8%. It cannot be said that any of this loss has been offset by some advantage received by the low paid. The passages from the successive wage decisions do not convey the real impact of the failure of wage increases to reflect the increases in the WPI.
410. 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 until 2010, the C10 rate lost substantial relativity to the WPI. By January 2016, the C10 rate had had increased by 55.4% compared to an increase of 66.3% in the WPI. Had the C10 followed the WPI it would have been \$818.50, \$53.60 per week higher than it was in January 2016. 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 \$1,054.70 per week, not \$918.40, per week, a shortfall of \$136.30 per week.
411. These comparisons raise the question of whether any classification should get any less than the WPI. On what basis should higher income classifications not get the WPI increases? 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.

More on the nature and relevance of the Wage Price Index

412. 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 that minimum wages across all levels should move by more than the WPI

413. 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.

414. 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)..."

415. 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 Australian Bureau of Statistics (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)

416. 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.
417. 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 15 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. 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.
418. 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

419. Table 10 shows changes in seasonally adjusted household disposable income per head (HDI) over the period 2001 to 2016. 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 latest HDIs are based on data in *National Accounts* (cat. no. 5206.0), September 2015 and *Australian Demographic Statistics* (cat. no. 3101.0), June Quarter 2015. HDIs for all quarters since September 1973 are published in Table 2 of the publication. The next issue, in respect of the December quarter 2015, is due by April 2016.

420. The 99.7% increase in HDI since January 2001 exceeds other income measures in Table 10. It is substantially greater than the 87.7% 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 and its measure of median equivalised disposable household income.

An overview of wages and family support 1973 to 2016

421. 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 2016. The wage rates used are the lowest minimum wage applicable at each time. The table enables a comparison of the kind of outcomes in the first 28 years and the last 15 years covered by the Melbourne Institute's research.

422. 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- 2016
\$ 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	415.63
January 2016	593.75	980.78	830.16
Ratio 2001-1973	6.41:1	8.60:1	7.88:1
Ratio 2016-1973	11.0:1	16.8:1	15.6:1
Ratio 2016-2001	1.7:1	1.9:1	2.0:1

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 2015 in *Poverty Lines Australia, September Quarter 2015*. That figure has been used for January 2016.

The disposable income figures for January 2001 and January 2016 are taken from Tables 15 and 19, below. Rental assistance, which was available in 2001 and 2016 for the family, is not included. Rental assistance was not paid in 1973.

423. 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 to 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 not necessarily unfair because it involves the removal of part of the single worker's "overcompensation" when wages are set to take account of the needs of workers with family responsibilities.

424. The changes between 1973 and 2001 are in sharp contrast to the changes between 2001 and 2016. Since 2001 families have had significantly smaller increases than those in the HDI and have reduced the progress made by families prior to that time. 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 behind 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. Since about the turn of the century the decline in wages relative to community income levels, as measured by the HDI, has prejudiced those who do not have the power to bargain for higher wage rates, whether they have family responsibilities or not.

The impact of changing Terms of Trade on average and minimum wages

425. Since the June 2012 decision the FWC discussed changes in real net national disposable income (RNNDI) and its connection to the changes in community wage rates and disposable incomes over the past decade or more. This period has seen the major impact that the changing Terms of Trade have had on Australian incomes. In the following paragraphs we discuss the relationship between average wages and minimum wage rates.
426. In its June 2015 decision the FWC referred to the recent fall in aggregate wages growth:

"[22] Each measure of wages reflects a continuing fall in aggregate wages growth over the past year, to historically low levels. This is contributing to the process of adjusting to the downturn in the terms of trade, as real net national disposable income (RNNDI) has increased by less than GDP from the second half of 2011.

[23] The very sharp rise in Australia's terms of trade from 2007 to 2011, followed by an almost equally large fall since then, has had substantial implications for the Australian economy and for wage earners. It has caused a disturbance in several economic relationships that are normally quite settled.

[24] One of these is the relationship between the growth in GDP and the growth in RNNDI. It is RNNDI that best captures the income that is available to distribute to labour and capital. As it grew faster than GDP, from 2007 until 2011, average wage growth accelerated as wage earners gained some of the benefits that came from the increase in the value (as distinct from the volume) of the products that Australia exports. The profit share of national income rose a little, but labour still gained some of the greater income. *Prior to the acceleration of RNNDI, the measures of average wages (average weekly ordinary time earnings (AWOTE) and average weekly earnings (AWE)), the Wage Price Index (WPI) and the NMW had all risen at about the same rate. Between 2007 and 2011, as RNNDI rose rapidly, the average wage measures rose substantially faster than did the WPI, the NMW and modern award minimum wages.* The gains to labour came in the form of higher utilisation of the labour force and a growth in higher paying jobs, with little of it flowing to the award-reliant workforce. One effect of the growth in nominal average wages was a growth in nominal unit labour costs (although not in real unit labour costs). These high nominal unit labour costs have made it harder for Australian firms outside the resources sector (which was receiving the high prices) to compete internationally.

[25] The subsequent fall in the terms of trade has reversed the relationship between GDP and RNNDI: while GDP has continued to rise, albeit at a somewhat slower pace, RNNDI has grown much more slowly. As mentioned earlier, RNNDI has increased at a slower rate than GDP from the second half of 2011. Between December 2012 and December 2014, GDP grew by 4.7 per cent while RNNDI grew by 2 per cent.

[26] The economy is now in a position where it must absorb the consequences of the slow growth of RNNDI, including the consequences for wages growth." (Emphasis added)

427. These passages would suggest that the underlying unfairness that we have pointed to (and have done so in the past) is the product of some short term disruption caused by a short term change in the Terms of Trade.
428. There are a number of points to be made about these paragraphs on the basis of the information in Table 10. First, the NMW had lagged AWOTE even before 2007. In January 2006, a relevant date for judging the decisions of the Australian Industrial Relations Commission (AIRC), which had just lost its wage-setting powers, the growth in the NMW was 20.9% and compared to 27.0% for AWOTE. The position of higher-paid award-dependent workers was worse. Second, the WPI had lagged by a considerable margin, which suggested, as we argue above, that the calculation of the WPI does not fully reflect increasing wage costs. Third, the NMW and award wages,

which lagged behind the increases in AWOTE did so by reason of decisions by the Australian Fair Pay Commission (AFPC), from its first decision at the end of 2006 to its last decision in 2009 (to impose a wage freeze), and the FWC from 2010. The FWC has had a specific statutory obligation to take into account relative living standards, which, we argue, would include average wage levels.

429. The fourth point about these paragraphs is that, while the FWC points to the impact of these changes on wages growth, it leaves aside the question of how this should impact on the NMW and award rates. The issue is whether safety net dependent workers, who missed out during the boom years when average wages outstripped minimum wage rates, will be protected when increases in average wages fall away. Fairness requires that, having been deprived of wage increases reflecting community wage movements, safety net increases should not now be determined by the expected declines in average wages. Consistency requires that, in these changed circumstances, minimum wage rates increase at a greater rate than average wages.

B. DIVERGING STATE AND FEDERAL WAGE SETTING DECISIONS

430. While the 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, and not percentages, has been significant, compounded federally by the AFPC awarding lower increases to higher paid workers.
431. 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. Following legislative changes in New South Wales in 2011 the NMW was adopted and State Wage cases were discontinued. 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, with their operation now being limited to the public sector.

432. 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 2016
(\$ per week)

	2009	2010	2011	2012	2013	2014	2015	2016
F/NMW	543.78	543.78	569.90	589.30	606.40	622.20	640.90	656.90
NSW	552.70	568.20	569.90	-	-	-	-	-
Qld.	552.00	568.20	588.20	610.20	630.70	646.50	668.80	688.00
W. Aust.	557.40	569.70	587.20	607.10	627.70	645.20	665.90	679.90
S. Aust.	546.65	560.65	580.30	600.00	617.40	633.50	652.50	668.80
Tas.	546.10	558.10	569.90	589.30	606.00	622.20	640.90	-

433. 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 and before the FWC's first wage decision under *the Fair Work Act 2009*, 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 NMW. In 2011, the minimum award rate in NSW was \$592.30, but the NMW was adopted for award free employees. That general rate no longer operates. In January 2016 the average of the three States which set their own rates was \$678.90 per week, \$22.00 per week more than the NMW. The difference remains a considerable amount in the budget of low income workers and

their families. Most of the difference is attributable to AFPC's wage freeze in 2009 and the refusal of other tribunals to follow it.

C. THE REGULATION OF COMMONWEALTH EMPLOYMENT

434. 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.
435. 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 2001 and 2014. The Tribunal decided that there would be no general increase in 2014 (see *Statement*, 12 May 2014) and it was not until January 2016 that a further increase came into operation (see *Statement*, 9 December 2015).
436. We have included the SES data in Table 13 because it provides a guide as to how the Commonwealth treats its own senior officers. 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 2015 are not yet available, which means that we are unable to insert figures for January 2016.
437. 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 \$1,616.30 in November 2015, an increase of 82.1%. The increase in the public sector AWOTE over the year to November 2015 was 2.9%. This public sector increase over the past 15 years is 5.6 percentage points less than the combined public and private sector AWOTE that we use in Table 10.

Table 13
Remuneration of Commonwealth officers and public sector employees
2000-2016
(\$ 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	238223	299720	389011	1570.50
2016	157487	359030				1616.30
% increase	71.2%	71.0%	>80.0%	>86.3%	>100.0%	82.1%

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% and 2.0% increases awarded in 2014 and December 2015, respectively.

The public sector AWOTE entries are trend figures taken from *Average Weekly Earnings, Australia, November 2015*, cat. no. 6302.0 (A84994886L), 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 2014, published in 2015.

438. 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 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 \$337,380 per year (base salary) and the salaries of Commissioners have risen from \$141,578 to \$266,870 per year (base salary); Tribunal Determinations 2000/13 and 2015/21. These increases are 66.8% and 88.5%, 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.

439. 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 82.1% while, for example, the trade-qualified rate increased by 55.4% over the same period. The contrast is even starker in, for example, classifications that now pay a modest wage of \$992.40 per week, much less than the public sector average ordinary time wage of \$1,616.30 per week. In those classifications the increase since 2001 was 41.8%, about half of the public sector increases of 82.1%.
440. These figures highlight a major inconsistency between the outcomes for the well-paid part of the public sector and low paid workers. 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 employees 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 became increasingly less equal and more unfair.
441. 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

442. 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. In

section E of this chapter we consider the FWC's discussion in the June 2014 decision of earnings inequality.

443. 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.” (June 2012 decision, paragraphs 15 and 183, emphasis added)

444. 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:

“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.

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.” (June 2013 decision, paragraphs 424-5, emphasis added)

445. 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.
446. In its June 2014 decision, the FWC appeared to qualify its earlier emphasis on changes in the skills mix:

"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." (*Annual Wage Review 2013-14, Decision*, (June 2014 decision), paragraph 345, footnote omitted.)

447. The FWC did not consider the question of the changing skills mix in its 2015 decision. Although this issue has disappeared from the FWC's analysis of the reasons for the divergence, it remains an important issue for wages policy. We expect that part of the reason for the FWC's changes was the material set out below, which was put by ACCER in its 2014 and 2015 submissions. We repeat that part of the submissions because it is important to understand the changes that are taking place in the Australian workforce and their impact on national inequality.

448. 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." (June 2013 decision, footnote in paragraph 391 omitted, emphasis added)

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

450. 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)

451. 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.”

452. 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)

453. 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”.

454. 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

455. 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.

456. 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. More recent data is now available, showing a continuing increase in the skills mix, but it is not necessary to consider it for present purposes.

457. 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.”

458. 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%).
459. 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.
460. 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 Table 1 in Chapter 3 and Table 10 in this chapter).

461. 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

462. 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

463. 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 7 in Chapter 4), 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

464. The review in the previous section concerned 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.
465. In a significant development, the FWC acknowledged in its June 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 in the June 2014 decision 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.)

466. 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. Paragraph 344 of the June 2014 decision provides a reason for the conclusion regarding inequality: there was “some direct contribution from annual wage review decisions to rising inequality of earnings”.
467. The claimed cause for rising inequality in 2013, changes in the skills mix, 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.

The extent of wage inequality

468. 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.” (Paragraph 402)

469. 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 3 and 4, because of the average real wage cut in the wage classifications in which safety net workers are employed, it is likely that very little of the productivity increases over the period since 2001 has been distributed to safety net workers.

470. In the FWC's 2015 decision we find a number of references to increasing inequality and more recent changes in that trend. The commentary in the June 2014 decision about growing inequality was qualified by a reference in the June 2015 decision to the changes since 2007-08.

"[46] The gradual increase in income inequality over the past two decades appears to have stabilised or even reversed from at least 2007–08, although income inequality remains at relatively high levels compared with the past. Annual wage review decisions have a role to play in ameliorating inequality but this role is limited by the statutory factors that we have to take into account and by the range of factors impacting on income inequality."

"[50] Our overall assessment is that the relative living standards of NMW and award-reliant employees has improved a little over the past year or two. Inequality among all employees has stabilised. Indicators of unmet need among the low paid, while substantially higher than for the higher paid, have if anything also improved."

471. Inequality *per se* is not within the statutory range of considerations that bind the FWC, but it is relevant to the FWC's obligation to take into account "relative living standards and the needs of the low paid" under section 284(1) of the *Fair Work Act*. In order to understand the conclusion about the changes in the relative living standards of NMW and award-dependent workers over the "past year or two", it will be necessary to look at factors other than gross wages. We will do this in the following chapters, in particular at Chapter 8C.
472. It is significant that the discussion of income inequality does not dwell on the position of safety net-dependent workers, over which the FWC has some control, and a statutory duty to provide a fair safety net. Rather, its focus is on a consideration of income inequality across the workforce, most of which is not dependent on safety net wages. This is apparent from the following passages:

"[356] While low-paid employees are not necessarily paid minimum award rates, it is useful to note the broader changes in overall levels of earnings inequality, by reference to real earnings. Overall levels of earnings inequality have increased over time. Chart 5.3 shows the growth in real weekly earnings by selected percentiles. It shows that real weekly earnings of full-time workers have become progressively less equal in the past decade—for each decile, the lower the earnings, the lower the rate of growth in earnings, reflected in the fanning out of the earnings distribution. While small relative to other deciles, there has been 15 per cent growth in the real earnings of even the lowest decile."

"[357] The rising earnings inequality over the past decade was concentrated in the period up to 2008 and has stabilised or even reversed since that time. As Table 5.5 shows, in the last three years there is no consistent relationship between the

position in the weekly full-time earnings distribution and the rate of growth of earnings. While the 90th percentile of the distribution had, by a small margin, the largest rise in each year, the pattern among the other percentiles varied, and in 2013 and 2014 the increase for the 90th percentile was a little below the increase for the average. At least for this measure, the longer-term trend of steadily rising inequality has ceased in recent years."

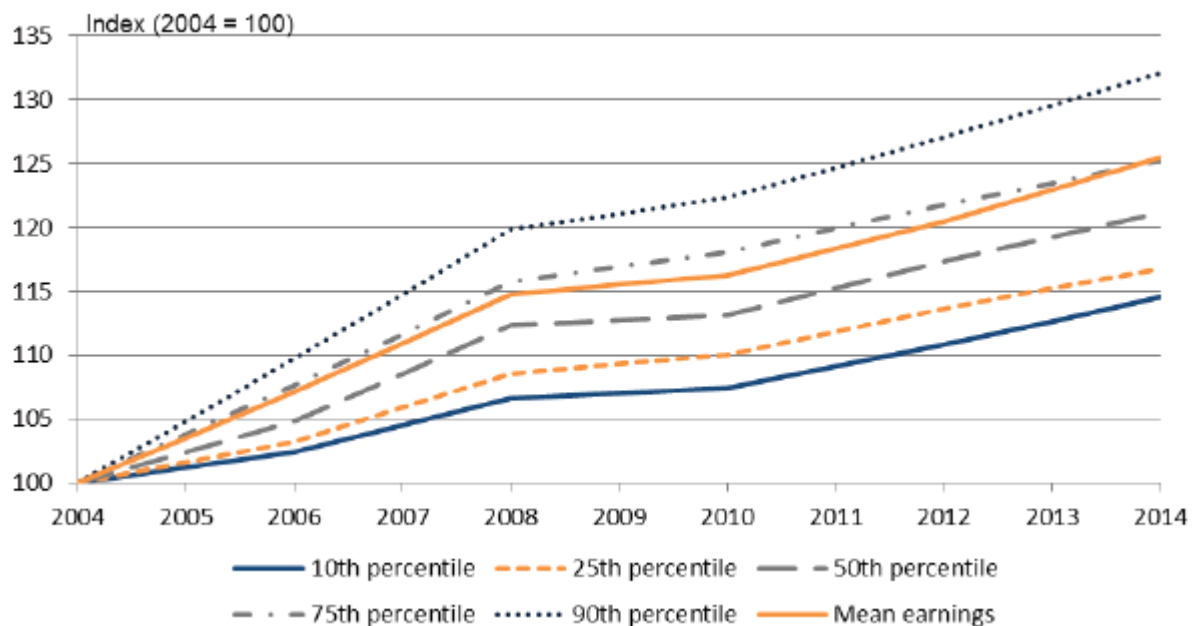
"[380]The ACTU and Australian Government submissions are consistent at least to the extent that the gradual increase in income inequality over the past two decades appears to have stabilised or even fallen from at least 2007–08, though at relatively high levels compared with the past."

"[411] Real weekly earnings of full-time workers have become progressively less equal in the past decade. While small relative to other deciles, there has been a 15 per cent growth in the real earnings of even the lowest decile. The rising earnings inequality over the past decade was concentrated in the period up to 2008 and there has been no systematic change since that time. The same is true for the distribution of household disposable incomes."

473. Significantly, this commentary avoids the position of safety net-dependent workers. The two references in these quotes to a "15 per cent growth in the real earnings of even the lowest decile" were based on the data illustrated in Chart 5.3 of the decision (at paragraph 356 in the above-quoted extracts. It is now reproduced as Figure 2.

Figure 2

Real weekly total earnings (full-time adult non-managerial employees) by percentile 2004–2014



The FWC's notes to Chart 5.3 were:

Note: Earnings figures are slightly inflated from May 2006 due to the inclusion of salary sacrificing. The EEH survey was not conducted in 2005, 2007, 2009, 2011 and 2013. Results for these years have been obtained through linear interpolation.

Source: ABS, Consumer Price Index, Australia, Mar 2015, Catalogue No. 6401.0; ABS, Employee Earnings and Hours, Australia, various, Catalogue No. 6306.0.

474. Figure 2 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. It focuses on the changes in relative earning of various income groups, regardless of the basis upon which they are paid. It includes those who are paid only the safety net wage and those who are entitled to a higher rate of pay, whether by collective or individual agreement. It appears from Figure 2 that the growth in wage inequality *across the workforce* has been arrested in recent years.
475. Most importantly, Figure 2 does not illustrate the position of safety net-dependent workers relative to these general workforce changes. Figure 2 focuses on aggregates and does not illustrate their how safety net-dependent workers have fared and does not show that their position has become less equal.
476. In order to illustrate how safety net-dependent workers have fared over this period we need to overlay on Figure 2 the real wage changes for safety net-dependent workers. If we did this 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.
477. We know that 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 and Table 3). 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.
478. 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. Figure 2 says nothing about the declining relative position of safety net-dependent workers.
479. In 2014 safety net-dependent workers were distributed across a number of the percentiles in Figure 2. At May 2014 the weekly cash earnings at the 10th percentile

were \$838.00 per week and weekly cash earnings at 25th percentile were \$1,011 per week; see *Employee Earnings and Hours, Australia, May 2014*, cat. no. 6306.0, 63060DO008_201405. By reference to Table 1 and Figure 1 (in Chapter 3), we can say that the vast majority of safety net-dependent workers would have been below the 25th percentile (and within the 1st quartile) and about half of them would have been below the 10th percentile (and within the 1st decile).

480. Because all of the safety net-dependent workers had received smaller increases than even the lowest 10th percentile in Figure 2, their positions would have deteriorated relative to the rest of the workforce. All of them would have fallen into a lower percentile by the end of the decade. While their inequality had increased relative to higher income earners, such as those at the 90th percentile, their inequality had increased very substantially relative to other low paid employees.
481. This demonstrates 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-dependent workers. The point is that minimum wage dependent workers and their families are less equal. The concern with aggregates has diverted attention from the position of safety net dependent workers.
482. In moving to a community wide discussion of inequality, without an explanation of the increasing inequality suffered by safety net-dependent workers, the FWC's analysis has overlooked the impact that minimum wage decisions have had on broader trends in inequality and, most importantly, the impact that growing inequality has had on the lives and relative living standards of low paid workers and their families.
483. The impact that the discussion about general changes in inequality has had on the FWC's wage setting decision is evident from the following passages in the June 2015 decision:

"[381] The evidence suggests that the forces for rising inequality have been subdued in the past few years. This reduces the work that needs to be done by the NMW and modern award minimum rates to protect the relative living standards of the low paid. (This is repeated at paragraph 412.)

"[417] The requirement to take into account relative living standards and the needs of the low paid supports an increase in the NMW and modern award minimum wages. Our overall assessment is that the relative living standards of NMW and award-reliant employees has improved a little over the past year or two. Inequality among all employees has stabilised. Indicators of unmet need among the low paid, while substantially higher than for the higher paid, have, if anything, also improved."

484. Two points emerge from these paragraphs. First, the improvement in the position of the "the relative living standards of NMW and award-reliant employees has improved a little over the past year or two" was a significant factor in the determination of the quantum of the increases awarded in the June 2015 decision. Second, the conclusion that the growing inequality across the workforce had been "subdued" or "stabilised" reduced "the work that needs to be done by the NMW and modern award minimum rates to protect the relative living standards of the low paid".
485. The "subdued" and "stabilised" community-wide trends over the past few years does not mean, however, that those trends should constrain current safety net wage setting because the events prior to the last few years have not reversed or made any significant impact on the increasing levels of inequality and poverty over a longer period of time. The real consideration should have been the damage done to their relative living standards by earlier increases in inequality. There was no basis for neglecting those changes.
486. The dramatic increase in the inequality experienced by safety net-dependent workers, could not be ignored by reason of changes "little" improvements in their relative living standards over "the past year or two" prior to the June 2015 decision, viewed against the "subdued" and "stabilised" community-wide trends over the past few years. Furthermore, the changes in the relationship between safety net wages generally and community averages has to be subject to the obligation to provide a safety net of fair wages that takes into account the relative living standards and needs of the low paid. It is evident that the decision made in the June 2015 decision to apply a 2.5% increase across all groups was underpinned by a short term assessment of broad changes in safety net wages and general wage levels and the absence of any consideration relevant to the unmet needs of those on the lowest safety net rates.

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

487. In its June 2014 decision the FWC accepted that its decisions had played a role in increasing the degree of inequality in the workforce. However, it claimed a justification for this change in living standards:

“[344] ...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.” (June 2014 decision, emphasis added.)

488. 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 to decisions by the AIRC and the AFPC as well as its own.
489. 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. It also means that, but for those other factors, poverty would not have increased at all, or by as much. 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. Given the social consequences of rising inequality, including 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* has been inhibited by economic factors.
490. The FWC has had ample evidence over the years demonstrating 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.” (June 2014 decision, paragraph 399)

What were the "other factors"?

491. The FWC's justification for the failure to fully address rising inequality, and, therefore poverty, is that there were other factors that it had to take into account.
492. A reading of the FWC’s decisions show that those reasons are not disclosed. There is no reasoning in the decisions about the FWC’s capacity to address the worst features of inequality and poverty. These matters have been given no special emphasis or weight in those decisions. Of course, each decision recites some of the evidence, stresses the need to balance social and economic factors and provides an assurance that all matters have been taken into account; but that is insufficient.
493. An essential part of the balancing process involved in the proper exercise of the FWC’s powers 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 if 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.

494. 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) of the *Fair Work Act* 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.
495. Adapting the words in *Lafu*, ACCER has argued 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. It is not a process limited to the FWC's own internal consideration of the issues, but a process that must be evident in its written reasons. That has not occurred.
496. If these principles were followed the "other factors", and their weighting in the mix of relevant factors, would be evident. This does not mean that the tribunal needs to have some arithmetical measure of the various factors, but it does mean that those who are concerned with the decisions made know the relevant factors and the way in which those factors influenced the final decision. If there are factors that the FWC believes should leave some families in poverty, or constrain its ability to provide families with a decent standard of living, it should identify and explain them.
497. Implicit in this is the requirement for the FWC to identify relevant factual matters. We referred in Chapter 1 to the FWC's statements in recent wage decisions to the assessment of the needs of the low paid requiring "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” (June 2015 decision, paragraph 36) and to the FWC’s view that” those in full-time employment can reasonably expect a standard of living that exceeds poverty levels” (June 2015 decision, paragraph 383). Both of these tasks involve an assessment of the relevant evidence about what income is needed to avoid poverty and to achieve a decent standard of living and the degree of unmet needs.

498. Each of these extracts from the FWC’s decisions begs an important question. “Which low paid workers are to be supported so that they can purchase the essentials for a decent standard of living for themselves and their families?” “Which workers in full time employment can reasonably expect a standard of living for themselves and their families that exceeds poverty levels?” These questions have not been addressed.
499. The discernment that should be evident in wage decisions needs to extend beyond economic assessments and include the matters that the FWC itself has identified as features of a decent standard of living: a capacity to participate and relevant :contemporary norms. These are not addressed in the decisions, yet they are fundamental to the promotion of social inclusion, which is a principal object of the legislation, and the setting of a safety net of fair wages, which is a specific requirement of the legislation. Looking at the everyday lives of low paid workers and their families will not be determinative of the function that has to be exercised by the FWC, but it is, we submit, an essential part the proper exercise of the FWC’s jurisdiction.
500. The evidence and issues concerning, for example, the impact the current levels of poverty are having on children is missing from the FWC’s decisions over the past six years. We cannot find any proffered justification for the failure to provide extra financial support for those in need. If the FWC was addressing these issues in a transparent way, in accordance with the requirements of section 577 of the *Fair Work Act*, and engaging in an active intellectual process with the relevant matters “receiving active consideration”, as stated in Federal Court decisions, we would know why families were being left in poverty and we would know why the FWC had decided on that outcome.

CHAPTER 6

TAX CUTS AND FAMILY PAYMENTS HAVE NOT MAINTAINED LIVING STANDARDS

	Paragraph
A. TAX CUTS DO NOT JUSTIFY REAL WAGE CUTS	501
B. FAMILY PAYMENTS HAVE NOT COMPENSATED FOR WAGE CUTS	524
C. THE WAGE SAFETY NET FALLS BELOW THE PENSION SAFETY NET	539

A. TAX CUTS DO NOT JUSTIFY REAL WAGE CUTS

501. Some commentaries on the fairness of safety net wage increases 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). Table 15 builds on the information in Table 1 in Chapter 3 about safety net wage rates and the details in Table 10 in Chapter 5 regarding Average Weekly Ordinary Time Earnings (AWOTE).

Table 15
After-tax changes to safety net wages and AWOTE
2001-2016
(\$ 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
2016 Gross	656.90	713.80	764.90	777.80	831.30	885.50	937.00	992.40	1499.30
2016 Net	593.75	637.99	670.69	678.96	713.19	747.88	780.85	816.29	1144.03
\$ increase in Gross	256.50	263.80	272.70	277.80	281.30	285.50	287.00	292.40	700.50
% increase in Gross	64.1%	58.6%	55.4%	55.6%	51.1%	47.6%	44.2%	41.8%	87.7%
\$ increase in Net	247.37	259.62	264.16	266.57	267.06	267.50	266.22	267.41	527.48
% increase in Net	71.4%	68.6%	65.0%	64.6%	61.9%	55.7%	51.7%	48.7%	85.6%
\$ loss in Gross relative to Gross AWOTE	94.65	130.85	158.96	160.70	201.05	240.70	283.05	321.50	
\$ loss in Net relative to Net AWOTE	49.13	64.26	83.83	86.44	114.83	143.71	174.30	202.43	

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 2015/16 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.

502. 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 the discounting of 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.
503. In ACCER's submissions to the Annual Wage Review 2014-15 similar calculations were made in the same form as Table 15; see *Working Australia, 2015: 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 year to January 2016. Over that time the C10 wage rate, for example, has increased by \$18.70 per week, but the net wage has only increased by \$11.97 per week. The C10 worker's net wage as a percentage of the gross wage has fallen from 88.3% to 87.7% over the past year.
504. Over the 15 years to January 2016 AWOTE increased by 87.7%, up from 84.8% a year earlier. The AWOTE worker's net wage has risen by 85.6%, 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 76.3% of the gross. If the AWOTE worker paid the same percentage of income tax in January 2016 as he or she did in January 2001, the net income in January 2016 would have been \$1,157.46, not \$1,144.03 per week. The income tax changes over the past 15 years have left this worker in the middle of middle Australia with a tax increase of \$13.43 per week. As we will see later in this chapter, the position of the AWOTE-dependent family with children is quite different.
505. 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”; see http://www.australianunions.org.au/why_join

Changes in taxation rates

506. One way of comparing the impact of taxation changes on various income groups over time is to see how the proportion of tax paid at various points in time has changed. In order to do this it is necessary to use some measure by which the income has increased over the relevant period. An appropriate measure for considering tax changes over the 2001 to 2016 period is AWOTE.
507. Table 16 shows what has happened to after-tax incomes for various wage groups receiving a wage increase of 87.7% since 2001, i.e. for workers who have moved in line with the changes in average ordinary time wages. Otherwise, Table 16 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 185.6%, which is the net AWOTE increase in Table 15, and finding the difference between that sum and the after-tax sum in January 2016. Clearly, the position of those whose gross wages have moved by more or less than 87.7% will have different outcomes.

Table 16
Net income of groups receiving wage increases of 87.7%
January 2001 – January 2016
(\$ 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
2016 Gross	750.80	844.65	938.50	1126.20	1501.60	2252.40	3003.20	3754.00	4504.80
2016 Net	661.68	721.74	781.80	901.93	1145.54	1604.95	2062.94	2490.49	2873.39
Net % of Gross 2001	86.5%	84.1%	82.5%	80.1%	77.2%	71.7%	66.5%	63.6%	61.6%
Net % of Gross 2016	88.1%	85.4%	83.3%	80.1%	76.3%	71.3%	68.7%	66.3%	63.8%
% increase in Net	91.2%	90.7%	89.6%	87.8%	85.5%	86.7%	93.9%	95.8%	94.4%
2016 net at 2001 rate	649.44	710.35	774.26	902.09	1159.24	1614.97	1997.13	2387.54	2774.96
\$ value of tax cuts	+12.24	+11.39	+7.54	-0.16	-13.70	-10.02	+65.81	+102.95	+98.43

508. 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, at least, \$1,100.00 to \$1,600.00 per week there have been very small tax cuts and, in most cases, a tax increase. The tax cuts of the past 15 years have not favoured this middle income group.

509. 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 and is included in those figures. The taxpayer in the \$2,000.00 column, now on \$3,754 per week, pays a levy of \$6.09 per week and the taxpayer in the \$2,400 column, now on \$4,508.80 per week, pays \$21.10 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 \$13.43 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 \$98.43 per week.
510. Table 16 also provides a means of estimating higher income earners who are beyond the income level in the right hand 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 \$4,504.80 per week, or \$235,060 per year, is one-fiftieth of the excess.
511. Table 16 again 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. Another way of presenting the essence of these changes is in Table 17,

Table 17
Income taxation for groups receiving wage increases of 87.7%
January 2001 – January 2016

\$ per week	2001	2016
\$400/\$750.80	13.5%	11.9%
\$800/\$1501.60	22.8%	23.7%
\$1600/\$3003.20	33.5%	31.3%
\$2400/\$235060	38.4%	36.2%

512. Table 17 compares the percentage of tax paid in 2001 and 2016 by four income groups: 11.9%, 23.7%, 31.3% and 36.2% in ascending order up the income scale. The percentages in Table 17 for January 2015 were 11.5%, 23.5%, 31.2% and 36.0%, respectively; see *Working Australia, 2015: wages, families and poverty*, Table 17. The slight increase is from the impact of bracket creep.
513. 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. The current tax rates, and their non-indexation, operates to the detriment of the low paid.
514. 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. Since then the only changes were the changes to the marginal tax rates introduced from the 2012-13 tax year. There were changes to thresholds and marginal rates between 2001 and 2008, but any political debate between the major parties about those changes were overtaken by the 2008 changes. The reduction in the top marginal rate from 47 cents (in 2001) to 45 cents in the dollar came in the 2007-07 tax year. The threshold at which the top marginal tax rate moved in several steps from \$60,001 per year in 2000-01 to \$180,001 per year in the 2008-09 tax year. 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

515. 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.
516. 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.

517. 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 continuing impact of bracket creep

518. The Budgets of 2013, 2014 and 2015 proposed no changes to the income taxation rates and thresholds which operated in 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 three Budgets to compensate for bracket creep, with the effect that taxpayers are being taxed on a higher proportion of their incomes.
519. 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.
520. It should be noted that in January 2013 the NMW was \$606.40, with a net wage of \$556.87 per week, or 91.8% of the gross wage; see ACCER submission to Annual Wage Review 2012-13, March 2013, at Table 13.. In January 2016, with the NMW at \$656.90, the net wage was \$593.75 per week, or 90.4% of the gross wage; see Table 15. Had the percentage of tax payable in January 2013 been payable in January 2016, the net NMW would have been \$603.23 per week, or \$9.48 more than it was in January 2016. Part of the change, however, was caused by the increase in the Medicare levy, equal to \$3.28 per week. The rest can be attributed to bracket creep. This means that if any tax cuts are introduced in the May 2016 Budget, the first \$6.20 per week for NMW-dependent workers will be compensation for bracket creep.

Tax cuts and wage increases

521. 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.)

522. 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.
523. 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

524. The assessment of the living standards of low income working families requires information about 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.

525. 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.
526. 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.
527. 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. In Chapter 1E we refer to recent amendments to remove the eligibility of couple parent families for FTB B once the youngest child has turned 13 and proposals to limit FTB B the payments to and eligibility in the case of sole parents.
528. 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.
529. Over the fifteen 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 of payments 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, like a number of other proposals, this measure is yet to pass the Senate.

Table 18
Family payments 2001-2016

	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
07.15	89.88	116.97	28.84	726.35	6.23	76.44	53.41	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.

530. 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. A major reason for the extension of the eligibility for family payments was the then Government's policy to provide more support for middle income families.

531. 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 2016 is shown by a comparison between the "\$700.00" column and the AWOTE column.
532. 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.
533. The 2016 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 current annual payments are \$430.00 for primary students and \$856.00 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 \$24.65 per week (at 52.18 weeks per year). The Schoolkids Bonus will be discontinued at the end of 2016.
534. 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.
535. The middle income AWOTE family has had a gross wage increase of 87.7% (Table 15) and a disposable income increase of 100.6% (Table 19), well in excess of similar families who depend on safety net wages. The comparable figures for the NMW-dependent family are 64.1% and 79.7%, 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 the same 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 2016
 (\$ 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
2016 Gross wage	656.90	713.80	764.90	777.80	831.30	885.50	937.00	992.40	1499.30
2016 Net Wage	606.89	652.84	685.99	694.52	726.68	757.03	785.88	816.89	1144.03
2016 Family Transfers	297.75	297.75	297.75	297.75	297.75	297.75	297.75	296.00	237.68
2016 Disposable Income	904.64	950.59	983.74	992.27	1024.43	1054.78	1083.63	1112.89	1381.71
% Net Wage Increase	254.51	267.72	272.08	274.63	280.55	276.65	271.25	268.01	527.48
% Transfers Increase	97.2%	97.2%	97.2%	97.2%	105.0%	163.6%	249.3%	310.1%	229.3%
\$ Disposable Income Increase	401.27	414.48	419.24	421.39	433.05	461.45	483.75	491.84	692.99
% Disposable Income Increase	79.7%	77.3%	74.3%	73.8%	73.2%	77.8%	80.6%	79.2%	100.6%
\$ Loss per week in Disposable Income of Safety Net family relative to AWOTE family	105.39	124.38	149.26	153.17	162.46	134.87	119.84	133.41	-

The calculations are based on a year of 52.18 weeks. Where applicable, the Medicare levy has been taken into account when calculating the net wage. At present a single breadwinner family with two dependent children does not have to pay the Medicare levy if its annual income is under \$41,737 per year. This means that the families in the first four columns do not have to pay the levy and the others, apart from AWOTE pay a reduced levy. At the NMW, for example, the full Medicare levy exemption

currently adds \$13.14 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 \$4.97 per week. Family transfers in 2016 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

536. 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

537. 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. This evidence demonstrates that, when changes in wages, taxes and family payments over the past 15 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 74.3% in its disposable income, compared to the AWOTE family's 100.6%. This amounts to a relative loss of \$149.26 per week. In terms of disposable income, the C10 family has fallen from 79.4% of the AWOTE family to 71.2% over the period 2001 to 2016. A major reason for the improvement of the relative position of the AWOTE family has been the 229.3% increase in family payments received by it.
538. 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.

Table 20
Losses of safety net-dependent workers and their families relative to AWOTE
January 2001 - January 2016
(\$ per week unless indicated otherwise)

Household	Disposable Income 2001	Disposable Income 2016	Increase in gross wage	Increase in Disposable Income
NMW Single	346.38	593.75	64.1%	71.4%
NMW 2+2	503.37	904.64	64.1%	79.7%
NMW 1+2	503.37	904.64	64.1%	79.7%
C12 Single	370.50	629.22	59.6%	69.8%
C12 2+2	528.08	941.01	59.6%	78.2%
C12 1+2	528.08	941.01	59.6%	78.2%
C10 Single	406.53	670.69	55.4%	65.0%
C10 2+2	564.50	983.74	55.4%	74.3%
C10 1+2	564.50	983.74	55.4%	74.3%
AWOTE Single	616.55	1144.06	87.7%	87.7%
AWOTE 2+2	688.72	1381.71	87.7%	100.6%
AWOTE 1+2	688.72	1381.71	87.7%	100.6%

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.

C. THE WAGE SAFETY NET FALLS BELOW THE PENSION SAFETY NET

539. 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 very relevant to this process.

540. ACCER has drawn attention to the age and disability pension rates in every wage review since 2010 and argued that they should be taken into account, among other relevant factors, in setting wage rates. None of the decisions since 2010 have covered pension rates and the living standards of those living on pensions. In 2013, in the context of an application by ACCER regarding the FWC's research programme, the FWC said:

"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)

541. The matter was the subject of submissions in the Annual Wage Review 2013-14, with the FWC responding:

"[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". 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.*" (June 2014 decision, footnote omitted, emphasis added.)

542. Despite the acknowledgment by the FWC, no relevant reference was made to the level of pensions or the living standards of pensioners in the decision in June 2014 or in the following decision in June 2015.
543. 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 3.3 million Australians on age and disability pensions, with about three-quarters on the age pension.

The pension safety net reforms of 2009

544. 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. 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."

545. 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 a combination of price and 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."

546. 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.
547. 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 Federal election 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.

548. The MTAWWE 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 MTAWWE.
549. 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 2016. The pension rates are the base pension rate and the Total Maximum Periodic Pension-related payments (TMPPP).
550. 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 MTAWWE. From May 2000 to May 2015, the period covered by the most recently released figures prior to the relevant pension increases, MTAWWE increased from \$757.60 to \$1,369.50, or 80.8%; see *Average Weekly Earnings, Australia, May 2015*, Table 10C at A85002155K. This is considerably more than the NMW increase over a similar period.
551. 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, MTAWWE, the NMW and the C10 wage.

Table 21
Comparison of pensions and safety net wages
January 2001 – January 2016
(\$ 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	394.20	433.50	594.30	653.50	656.90	593.75	764.90	670.69	108.4
% increase	108.1%	115.4%	87.9%	96.2%	64.1%	71.4%	55.4%	65.0%	48.3%

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*.

552. Table 22 covers the period in which the first six 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 six years pensions have increased by 8.2 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 10.3 percentage points more than the NMW and even more compared to the C10 and other higher award rates. Over the five years MTAWWE increased by 23.3% while the NMW increased by 20.8%.

Table 22
Changes in pensions and safety net wages
January 2010 – January 2016

		January 2010 \$ per week	January 2016 \$ per week	\$ increase per week	Percentage increase
Single	Base	307.90	394.20	86.30	28.0%
	Supplement	28.05	39.30	11.25	40.1%
	Total	335.95	433.50	99.05	29.0%
Couple	Base	464.20	594.30	130.10	28.0%
	Supplement	42.30	59.20	16.90	40.0%
	Total	506.50	653.50	147.00	29.0%
CPI		92.9	107.5	15.7%	15.7%
MTAWE		1,110.30	1369.50	259.20	23.3%
AWOTE		1,158.50	1499.30	340.80	29.4%
NMW Gross		543.78	656.90	113.12	20.8%
NMW Net		500.04	593.75	93.71	18.7%
C10 Gross		637.48	764.90	127.42	20.0%
C10 Net		575.78	670.69	94.91	16.5%

Pensions are adjusted each March and September. The figures for the CPI index are those at June 2009 and June 2015, 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 2015 (108.4) was 16.7 %. 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 2015*, cat. no. 6302.0 and earlier publications in this series. MTAWE figures are for May 2009 and May 2015, the most recently published figures prior to the setting, in September of each year, of the rates recorded for January 2010 and January 2016. The AWOTE figures are at November 2009 and November 2015; see Table 10.

553. 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.
554. 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.
555. 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.

CHAPTER 7

POVERTY AND HOW WE MEASURE IT

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A. THE MEANING OF POVERTY

556. 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.
557. 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 the characteristics of a standard of living.
558. 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.
559. 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.

560. 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)

561. 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.”

562. The research report notes a definition by John H Pierson “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.” (*Tackling Social Inclusion*, Routledge, London, 2002)

563. 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

564. 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

565. 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.
566. 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 for this project is in the Melbourne Institute's ongoing research program Household, Income and Labour Dynamics in Australia (HILDA).
567. 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)

568. 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)

569. 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 poverty and disadvantage in Australia.

Poverty Lines

570. 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.
571. 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.
572. There are many of these needs-based poverty lines, or measures of income sufficiency around the world, and the best known poverty lines are those 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: 2014*, published by the Bureau in September 2015. There are 48 poverty thresholds covering a wide range of households; see Appendix B in the publication. The poverty thresholds are used 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.
573. 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 has provided 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.
574. 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.

575. 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 by the FWC on the basis that it has "no contemporary relevance" to the adequacy of the NMW, which itself was set in April 1997. For the NMW to maintain contemporary relevance its increases over the years should have generally reflected the increases in average incomes, which they have not done.

C. HENDERSON POVERTY LINES

576. 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.
577. 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.
578. 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 2015*, page 2)

579. 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. 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."

580. 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 inconsistent 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.

581. 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)

582. The second aspect of the rejection of the HPLs concerns the claimed "inconsistency between its original construction and the way it is updated". This appears to be 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.

583. The HPLs are criticised for the fact that they are updated by reference to a measure of increasing community income, while, as we explain later, the CPI-adjusted budget standards have been rejected, as lacking contemporary relevance, because they have only been adjusted by price changes.
584. The shortcoming of a price-adjusted basket of goods is that it becomes increasingly outdated with decreasing utility in the setting of wages based on relative living standards and the needs of the low paid. This is the substance of the point made by the Melbourne Institute in its newsletter. Without undertaking new complex and expensive research at 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 is preferable.
585. 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)

586. 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 \$221.58 per week. This is a very unrealistic figure.

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

Using the HPLs to identify changes over time

588. 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 2016. This is summarised in Table 23.

Table 23
Changes in incomes relative to Henderson Poverty Lines
January 2001- January 2016
(\$ 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%
2016 HPL	522.21	980.87
2016 Disposable income	593.75	904.64
2016 DI:HPL	+ 13.7%	-7.8%

Each of the HPLs for 2001 is calculated by the formula provided in *Poverty Lines Australia, September Quarter 2015*. The 2016 figures are calculated on the figures at September 2015, the latest available figures. Disposable incomes are from Tables 15 and 19, above. The rent assistance to which the family may be entitled 6.14 has not been included. Maximum rent assistance increased from \$50.43 to \$77.14 per week over the period January 2001 to January 2016 (see Table 28).

589. 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 2016 it was 7.8% 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.

590. This trend was not unknown to successive wage tribunals. 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

591. 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.
592. 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.
593. 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*.
594. 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 2015 (the latest available) HDI increased by 128.8% compared to a CPI increase of 61.0%; see *Poverty Lines Australia, September Quarter 2015*, page 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.

595. 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

596. 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 37.0% from the September Quarter 2003 to the December Quarter 2015

597. 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.

598. by way of a comparison between HDI and CPI movements since March 1997.

Table 25
Updated Low Cost and Modest but Adequate Budgets
January 2016
(\$ 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	226.53	226.53	226.53	274.77	323.15
Energy	12.61	12.61	16.45	21.11	25.08
Food	81.96	98.54	179.39	230.37	315.88
Clothing & footwear	38.79	29.47	58.39	80.58	96.48
Household goods & services	48.79	48.79	4.80	78.80	66.74
Health	7.13	10.55	17.41	22.21	25.90
Transport	122.52	122.11	137.46	141.84	146.23
Leisure	45.36	52.49	88.54	94.02	139.78
Personal care	36.31	16.03	45.50	48.79	50.43
Total	619.99	617.11	774.44	992.48	1189.68
	<i>Low Cost</i>				
Housing	197.07	199.81	199.81	251.89	303.97
Energy	11.65	11.79	15.63	18.77	21.79
Food	77.29	78.52	141.56	180.90	249.42
Clothing & footwear	22.89	23.30	52.49	66.61	84.00
Household goods & services	38.24	38.92	48.65	62.36	95.38
Health	6.58	6.86	11.79	15.21	18.22
Transport	91.54	93.19	105.53	113.47	113.47
Leisure	31.66	32.21	40.30	48.65	60.30
Personal care	8.77	8.91	14.89	20.83	24.67
Total	485.69	493.51	630.66	778.70	971.23

599. In January 2016 the Low Cost budget was \$971.23 per week for the family of four, compared to the disposable income of \$980.78 per week (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 the figure fixed for the Low Cost Budget, the CPI-adjusted figure of \$971.23 per week is a conservative estimate. Furthermore, given that community standards have increased, that figure is very conservative and a further margin should be factored

in. This is illustrated by the figures given above. In presenting this information we are not seeking to establish what should be the proper relationship between the SPRC 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 ACCER's claim for an extra increase in the NMW, over and above the amounts generally awarded, is fully justified. On a reasonable view of this material, it is.

600. In 2004 the AIRC discussed the SPRC Budget Standards evidence and concluded that there were significant difficulties in adopting the standards as a national 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.)

601. 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.
602. 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 \$303.97 per week in the Low Cost budget is too high in the current housing market. This figure represents 31.3% of household expenditure.
603. In the first decision under the *Fair Work Act*, the FWC, then known as Fair Work Australia, wrote the following on the SPRC's 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.)

604. 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 the 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.
605. The budgets were established and priced around the time that the FMW (now the NMW) 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.
606. 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. In subsequent cases ACCER maintained its position that the updated Budget Standards research *has relevance* in determining whether the current value of the NMW has contemporary relevance and has argued that there is no good reason for its *total* rejection.
607. 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, Decision 2011-12*, paragraph 41)
608. Nothing was added by way of reasons for the conclusion. 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, Decision*, paragraph 402).
609. 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)

610. 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.

611. In 2015 ACCER posed two questions:

"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." (ACCER, March 2015 submission, Attachment at paragraph 562.)

612. In the June 2015 decision (*Annual Wage Review 2014-15, Decision*) there was limited reference to the SPRC's Budget Standards research:

"[391] ACOSS referred us again to a comparison based on estimated Modest but Adequate Budget Standards, Low Cost Budget Standards and disposable incomes for two family types earning the NMW in December 2012. [Footnote] The Budget Standards were updated from the original 1997 figures, to allow for inflation. The calculations showed that the NMW (after tax and transfers) as a percentage of the:

- 'Modest but Adequate' Budget Standards: was 95 per cent for a single adult and 91 per cent for a single-income couple with two children;
- 'Low Cost' Budget Standards: was 122 per cent for a single adult and 112 per cent for a single-income couple with two children. [Footnote]"

613. There was no further comment on this matter. The table in the ACOSS submission to which the footnote refers (at page 25 of the submission), simply has an entry "Minimum wage (after tax and transfers) as a % of" each of the two budgets. It does not disclose the disposable income. The Low Cost figure is given as \$943.00. The

table is head “Budget Standards and Poverty Lines (2013)”. The same table appeared in ACOSS’s March 2014 submission, so the calculation of disposable income could have been made as late as early 2013. We know from Table 28 (in Chapter 8) that the disposable income of a NMW-dependent family of four was \$915.54 in January 2013, lower than the implicit figure given by ACOSS for the Low Cost budget. It appears that the difference is explained by the inclusion of the Newstart allowance for the parent who is not employed in this single breadwinner family, but there is no reference to this matter in the ACOSS submission.

614. The question of whether the second parent in a single breadwinner couple family should apply for a job, and receive at least the Newstart allowance while waiting to be employed, in order that the family might escape poverty is a critical question in minimum wage setting and one which ACCER has addressed in the past, without any response from the FWC. ACCER’s point is that the Newstart allowance should not be included.
615. It is not apparent that the FWC was aware of the probable inclusion of the Newstart allowance in the ACOSS calculations and, if it was, whether any weight was given to it. However, the recitation of a matter carries the implication that the material had some weight in the conclusion not to provide a further wage increase to those on the NMW, as sought by ACCER and not to provide for a dollar-based increase for low paid workers as sought by the ACTU (see Chapter 1D).
616. If this material did have some impact on the decision, then for the first time some reliance was being placed on material that the FWC had regarded as lacking in “contemporary relevance”. Rather than focusing on the CPI-adjusted figure, the FWC should have taken into account the movement national average incomes, in particular, the Melbourne Institute’s HDI figures. Had those figures been applied to the original data, the increase to January 2015 over the original February 1997 prices would have been 125.0% and not the CPI-base increase of 58.9%; see *Poverty Lines Australia, September Quarter 2015*, Table 2 and *Consumer Price Index, Australia, December 2015*, cat. no. 6401.0, Table 1 (A2325846C). Rather than the Low Cost budget being \$954.99 per week in January 2015 (see *Working Australia, 2015: wages, families and poverty*, Table 25), it would have been \$1,265.60 per week based on the income-related adjustment.

Value judgments

617. 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. Similar points are sometimes made about attempt the measurement of needs or poverty lines. 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." (*Annual Wage Review 2010-11, Decision*)

618. This was not a new issue, although surprising when made on behalf of the then Commonwealth Government which had returned "needs" to the wage setting legislation and had set pensions by reference to a "basic acceptable standard of living" standard.

619. 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)

620. 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.

621. 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.

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

622. 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.
623. This feature was evident in the 1997 decision of the AIRC in the *Safety Net Review, April 1997* to establish the FMW, which 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 of the rate; 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 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*. In referring to the ACTU's submissions the Full Bench of the AIRC noted:

"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" ((1998) 79 IR 37, at 74)

624. 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.
625. 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.”

626. 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:

"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, paragraph 222, emphasis in original.)

627. 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

628. 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 lack of

support 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.

629. 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.
630. 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.
631. 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.
632. 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)

633. 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".
634. 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.
635. 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.
636. 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)”
637. 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.

638. 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)

639. 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 2014 submission. 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". The FWC made no reference to the proposal in its June 2014 decision.
640. Again in 2015 ACCER asked for an investigation into the needs and relative living standards of low paid workers to be conducted under section 290 of the *Fair Work Act* and, again, it was not responded to. We should note that each year since 2010 ACOSS has asked the FWC for an inquiry into the needs of the low paid. For example, in 2015, one of its principal recommendations was:

"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." (ACOSS submission, 2015, page 6.)

Conclusion

641. 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.)

642. 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.)

643. Despite this progress, there was no movement by the FWC on the proposals for an inquiry into the needs of the low paid. These words are hollow if there is no serious attempt to inquire into what is needed to improve the living standards of those who are living in poverty. We find no serious attempt by the FWC to explore what its words 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.

644. 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?

645. 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.
646. In the absence of the FWC putting these questions to the parties, it would be appropriate to put them to the FWC itself. What has the FWC concluded about the amount of income that is needed to provide a basic acceptable standard of living for the nominated families, or any other kind of household? Despite six decisions by the FWC under the *Fair Work Act*, with its object to promote social inclusion and its requirement that the FWC sets a safety net of fair minimum wages taking into account, among other matters, relative living standards and the needs of the low paid, we have no guidance to the answer to this question.

CHAPTER 8

LOW INCOME WORKING FAMILIES HAVE FALLEN BELOW POVERTY LINES

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A. THE USE AND UTILITY OF RELATIVE POVERTY LINES

647. 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*.
648. 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.
649. 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 relative poverty line. 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.

650. 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, particularly 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% median relative poverty line is, we argue, 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.
651. Relative poverty lines are also 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.

ABS data collection

652. 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.
653. 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)

654. 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)

655. 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

656. The fundamental task in setting a median-based relative poverty line is identifying the median equivalised disposable household income (MEDHI). MEDHI is the foundation stone for poverty lines based on the median: the 60% poverty line is simply 60% of MEDHI. Like poverty lines, MEDHI can also be plotted on a graph.

657. 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 2013-14*, cat. no. 6523.0,

published in September 2015, where median and mean disposable incomes were calculated for 2013-14.

658. 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 for 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 measures of income, however not all components introduced in 2007–08 are available for earlier cycles” (Table 1.1, note (a))

659. Because the ABS usually collects the relevant data for this purpose every two years there is a necessary delay between collection and publication. As 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.
660. In Table 26 we have calculated changes in MEDHI over the period January 2001 to January 2016. 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.
661. The median equivalised figures for January 2015 and January 2016 are based on the latest ABS figures adjusted by changes in HDI contained in *Poverty Lines Australia, September 2015*, a newsletter published by the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute). For each of the years between the ABS surveys, i.e. at January in each of the years 2002, 2005, 2007, 2009 2011 and 2013, 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 intervening year 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 2016
(\$ per week)

	Median equivalised disposable household income (ABS)	Household Disposable Income per head (Melbourne Institute)	Median equivalised disposable income
January 2001	413.59	415.63	413.59
January 2002	-	457.38	436.58
January 2003	435.48	454.51	435.48
January 2004	499.98	481.03	499.98
January 2005	-	517.24	544.20
January 2006	568.43	536.66	568.43
January 2007	-	576.92	620.43
January 2008	687.42	627.52	687.42
January 2009	-	692.04	716.28
January 2010	714.27	688.82	714.27
January 2011	-	731.61	756.09
January 2012	790.16	765.09	790.016
January 2013	-	775.90	809.30
January 2014	844.00	800.87	844.00
January 2015	-	816.62	860.63
January 2016	-	830.16	874.89

Household Disposable Income (HDI) per head figures are taken from *Poverty Lines Australia, September Quarter 2015*, published by the Melbourne Institute. The figure used for each January is the published figure for the immediately preceding December quarter, save for January 2016 where the figure is for the September quarter 2015 and taken from *Poverty Lines Australia, September Quarter 2015*, the most recent publication in that series. The next in that series is due to be published in April 2016.

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, 2012 and 2014 are respectively taken from the calculations for 2000-01, 2002-03, 2003-04, 2005-06, 2007-08, 2009-10, 2011-12 and 2013-14 in *Household Income and Income Distribution, Australia, 2013-14*, cat. no. 6523.0, at Table 1.1. As the published figures for all of those years are in 2013-14 prices, the earlier years have been re-calculated in accordance with the disclosed price adjustments in Table 1.1.

C. CONSTRUCTING RELATIVE POVERTY LINES

662. 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 2016. 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 2016 the 60% poverty line for a single adult was calculated on a median equivalised disposable household income of \$874.89 per week and was \$524.93 per week. For a family of two adults and two children the 60% poverty line was \$1,102.36 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 \$839.89 per week, or 1.6 times the single person's.

Table 27
Poverty lines for workers and families
January 2001 – January 2016
(\$ 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	413.59	248.15	521.16	397.04
January 2002	436.58	261.95	550.09	419.12
January 2003	435.48	261.29	548.70	418.06
January 2004	499.98	299.99	629.97	479.98
January 2005	544.20	326.52	685.69	522.43
January 2006	568.43	341.06	716.22	545.69
January 2007	620.43	372.26	781.74	595.61
January 2008	687.42	412.45	866.15	659.92
January 2009	716.28	429.77	902.51	687.63
January 2010	714.27	428.56	899.98	685.70
January 2011	756.09	453.65	952.67	725.85
January 2012	790.16	474.10	995.60	758.55
January 2013	809.30	485.58	1,019.72	776.93
January 2014	844.00	506.40	1,063.44	810.24
January 2015	860.63	516.38	1,078.46	826.21
January 2016	874.89	524.93	1,102.36	839.89

663. These kinds of figures are included in the FWC's *Statistical Report*. Table 8.2 of the March 2016 edition has the single person's poverty line at \$524.92, one cent lower than our calculations. Both calculations are based on the HDI figures to September 2015 in

Poverty Lines Australia, September Quarter 2015. Table 8.2 is calculated at September 2015, whereas we have used the September 2015 figures for January 2016. Both figures will be revised following the release of following the release of *Poverty Lines Australia, December Quarter 2015*.

664. 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 2016
(\$ 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
2016	656.90	34,277	593.75	13.14	208.54	54.58	27.84	6.79	76.14	980.78

The figures in Tables 28 to 30 are at January of each year. Family Tax Benefits are taken from Table 19. Rental assistance, calculated on the basis of 52.18 weeks per year, is included on the basis that the family is in private rental accommodation. The “net” amount includes the Medicare levy. The family exemption from the Medicare levy is treated as a family transfer.

Table 29
Wages, taxes and family payments for C12-dependent workers and families
January 2001 – January 2016
(\$ per week)

Year	C12	C12 per	C12 net	Medicare exemption	FTB A	FTB B	FTB A Supp.	FTB B Supp.	Rental assist. max	Disposable income
2001	439.60	22,938	370.50	6.59	116.20	34.79	-	-	50.43	578.51
2002	452.60	23,617	380.05	6.79	122.92	36.82	-	-	52.46	599.04
2003	470.60	24,556	391.74	7.06	126.70	37.94	-	-	53.93	617.37
2004	487.60	25,443	408.93	7.31	130.48	39.06	-	-	55.40	641.18
2005	506.60	26,434	421.18	7.60	133.56	39.97	23.50	2.87	56.80	685.48
2006	523.60	27,321	438.14	7.85	139.06	41.02	24.06	5.88	58.27	714.28
2007	551.00	28,751	475.17	8.26	140.84	42.14	24.76	6.02	60.58	757.77
2008	561.26	29,287	500.28	8.42	147.46	43.54	25.60	6.23	61.84	793.37
2009	582.92	30,417	526.67	8.74	151.34	44.87	26.20	6.44	64.63	828.89
2010	582.92	30,417	529.54	8.74	156.94	46.55	27.28	6.65	65.61	841.31
2011	609.00	31,778	553.15	9.14	160.30	47.53	27.84	6.79	67.57	872.32
2012	629.70	32,857	569.59	9.45	164.64	48.79	27.84	6.79	70.02	897.12
2013	648.00	33,813	589.96	9.72	193.25	50.53	27.84	6.79	71.16	949.25
2014	664.80	34,689	603.31	9.97	199.74	52.56	27.84	6.79	72.84	972.75
2015	684.70	35,727	615.71	13.69	204.51	53.66	27.84	6.79	74.97	997.17
2016	701.80	36,620	629.22	14.04	208.54	54.58	27.84	6.79	76.14	1,017.15

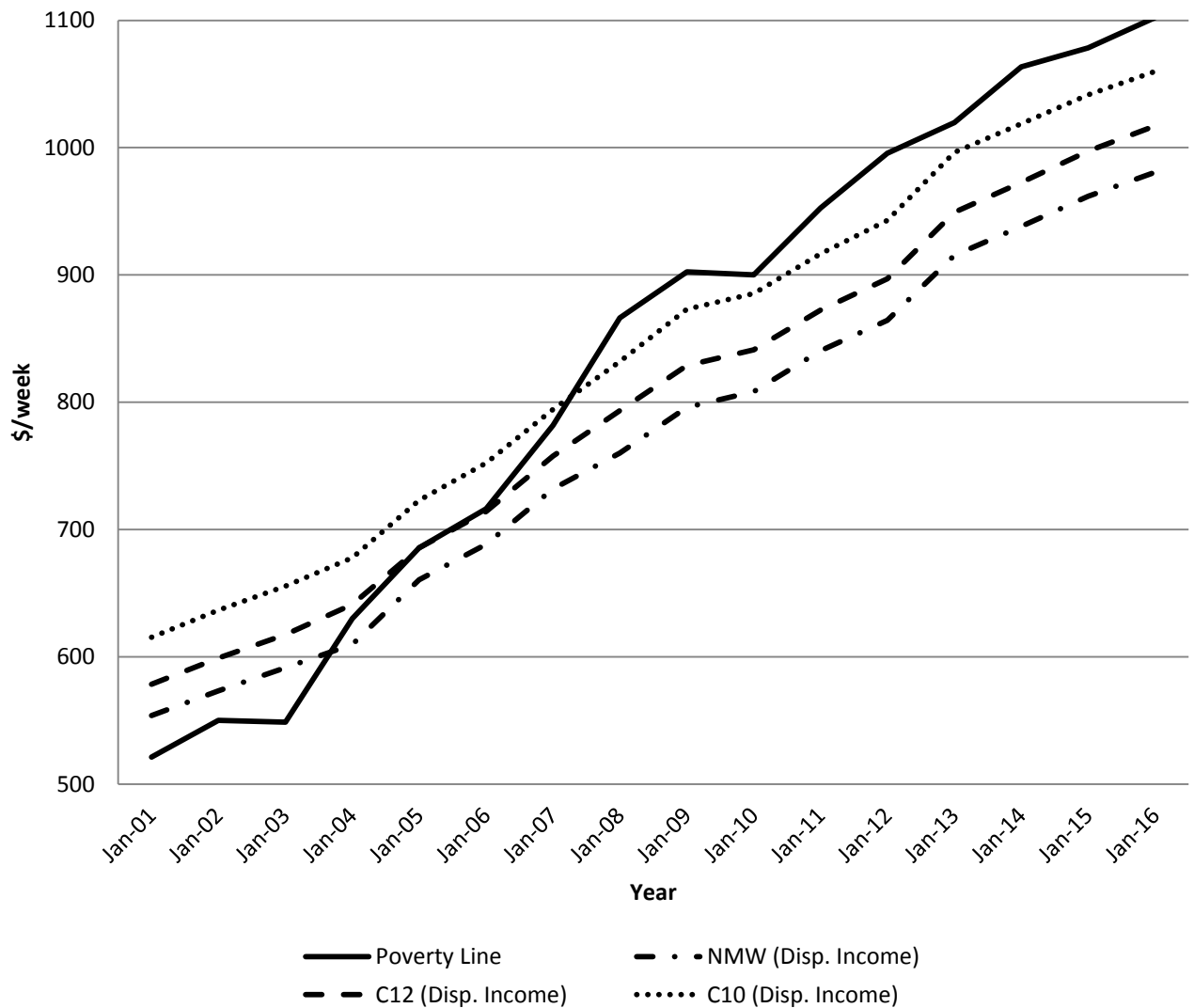
Table 30
Wages, taxes and family payments for C10-dependent workers and families
January 2001 – January 2016
(\$ per week)

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	1,018.81
2015	746.20	38,936	658.72	14.92	204.51	53.66	27.84	6.79	74.97	1,041.41
2016	764.90	39,912	670.69	15.30	208.54	54.58	27.84	6.79	76.14	1,059.88

665. Table 28 shows wage, tax and family payment calculations for NMW-dependent workers and families over the period January 2001 to January 2016. 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 other child is in secondary school.
666. Table 29 shows wage, tax and family payment calculations for C12-dependent workers and families over the period January 2001 to January 2016. Table 30 contains similar data for a worker paid at the C10 trade-qualified wage rate. This family is \$42.48 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.
667. Figure 3 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% poverty line over the period January 2001 to January 2016.
668. Comparing the changes over the years January 2004 to January 2016, we find:
- the NMW-dependent family of four fell further into poverty: from 3.3% below the poverty line to 11.0% below it, with a poverty gap in January 2016 of \$121.58 per week;
 - the C12-dependent family of four fell into poverty: from 1.7% above the poverty line to 7.7% below it, with a poverty gap in January 2016 of \$85.21 per week; and
 - the C10-dependent family of four fell into poverty: from 7.6% above the poverty line to 3.9% below it, with a poverty gap in January 2015 of \$42.48 per week.
669. 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 26.0% above the poverty line, but by January 2016 had fallen to 13.1% above the poverty line. Because of the more limited increases to higher paid classifications, as shown in Tables 1 and 15 (at Chapters 3 and 6, respectively), the fall in the standard of living was even more dramatic for workers in those classifications.

Figure 3

**Disposable Incomes of Safety Net-dependent Families Relative to 60% Poverty Line
(Couple and two children)
January 2001 – January 2016**



670. Another way of presenting the changes in the position of safety net-dependent families is by the following table setting out the family of four's disposable income as a proportion of the 60% poverty line.

Table 31

**Disposable income of family as proportion of 60% poverty line
January 2001– January 2016**

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
96.7	96.3	96.1	93.3	87.8	88.2	89.8	88.2	86.8	89.8	88.2	89.1	89.0

Sole parent families

671. 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 2016 the NMW-dependent sole parent family with two children was 16.8% above poverty, with a margin over poverty greater than the single person's margin of 13.1%. This kind of figure has been produced each year since the AFPC introduced poverty line comparisons in 2006. It is misleading about the living standards of sole parent families.
672. 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 childcare 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. There has been no response to these submissions. Furthermore, the publishing of these figures without proper explanation is likely to engender a misleading view that low paid sole parents are doing well.

More recent changes

673. Tables 27 to 30 allow us to quantify the changes in poverty gaps over the operation of the *Fair Work Act*, starting with January 2010 when it came into operation. In January 2010 the single person was 16.0% above the poverty line, compared to 13.1% in January 2016. In January 2010 the NMW-dependent family of four was 10.2% below the poverty line, compared to 11.0% below the poverty line in January 2016. Table 31 shows the disposable income of the family as a proportion of the 60% poverty line over the period January 2004 to January 2016. The significant decline occurred in the *Work Choices* years, and the numbers have changed little since then. These figures confirm the view that decisions under the *Fair Work Act* have not improved the position of the lowest paid in our community, contrary to the promise held out by the legislation when it was enacted in 2009. Low income families are still in poverty and their relative living standards have fallen. Even if there was some marginal improvement, it would not lessen the priority to be given to these families who are in great poverty.

Data in the FWC's Statistical Report

674. Table 8.2 of the FWC's March 2016 edition of the *Statistical Report* has estimates of the disposable incomes of the NMW-dependent and C10-dependent families at September 2015. The figure given for the former, \$971.87 per week, is \$8.91 less than our figure in Table 28 and the figure given for the latter, \$1051.34 per week, is \$8.54 less than our figure in Table 30. The *Statistical Report* does not disclose the amount of the payment upon which the figures are calculated and there is no published data of the kind that we have in Tables 28 to 30. The figures should be the same as no relevant changes occurred over this time. Nevertheless, these are small differences and show that ACCER's poverty lines might understate the degree of poverty among these low income groups. The FWC's *Statistical Report* shows that at September 2015, these two single breadwinner families were below the poverty line. The NMW-dependent family was \$130.46 per week below the poverty line and the C10-dependent family was \$50.99 per week below the poverty line. Both are higher than ACCER's estimates for January 2016.
675. Table 8.2 of the *Statistical Report* also shows the position of both families if the primary carer of the children sought employment and was receipt of the Newstart allowance while searching for employment. The NMW-dependent family would then have had a disposable income of \$1,096.59 per week, \$5.74 below the poverty line and the C10-dependent family would have been \$11.58 above the poverty line, with a disposable income of \$1,113.91 per week. The Newstart allowance closes the income gap between these two families (to \$17.32 per week) because the means-testing of the payment takes into account the earnings of the principal breadwinner.
676. ACCER has argued that the primary carer of children should not have to seek employment in order for the family to escape poverty and achieve a decent standard of living; nor should the breadwinner have to seek overtime or a second job in order for the family to do so. We return to this issue in section E of this chapter.

Workers and their families have suffered from rising inequality: MEDHI

677. The foregoing description of the declining position families is put in terms of their positions relative to poverty lines. Another way of looking at these changes is to describe the position of these families by reference to the changes in MEDHI. This compares the family's income to a measure of community-wide income, with any issues being raised concerning the measurement of poverty; and it enables that relationship to be tracked over time. In January 2004, the NMW-dependent family's income was 29.1% above MEDHI, but by

January 2016 it had fallen to 12.1% above MEDHI. The position is worse for higher paid workers; for example, the C10-dependent family was 35.6% above MEDHI in January 2004, but had fallen to 21.1% above it in January 2016. If the family income is equivalised, by dividing it by the 2.1 equivalence scale, the equivalised income of the NMW-dependent family has fallen from 58.1% to 53.4% of MEDHI and the C10-dependent family has fallen from 64.6% to 57.7% of MEDHI.

678. The last six years of wage setting under the operation of the *Fair Work Act* has seen no improvement in the relative living standards of the lowest paid workers and their families (the figures show a slight worsening) and no reversal of the growing inequality in the years preceding the enactment of the *Fair Work Act*. Over the period January 2010 to January 2016 the NMW-dependent family's margin over MEDHI fell from 13.2% to 12.1% or, in equivalised terms, from 53.9% to 53.4% of MEDHI. This is not a situation where one national wage setting tribunal can ignore the legacies of the previous national wage setting tribunals.

HDI figures confirm low paid workers have suffered rising inequality

679. Table 32 compares the changes in the HDI made by the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute) and the disposable incomes of the couple parent families in Tables 28 to 30 over the period January 2001 to January 2016.
680. Table 32 confirms the trends in the earlier poverty line data and illustrates growing inequality by reference to a national measure of changes in disposable incomes. The table applies to couple parent families and sole parent families.
681. The HDIs are also an appropriate guide to measure changes in the relative living standards of safety net dependent families and, as such, are very relevant to the determination of changes in relative living standards. They demonstrate that safety net-dependent families, and those families whose wage incomes are influenced by safety net wages, have suffered a substantial decline in their relative living standards and increased inequality over the past 15 years. Each of the wage groups covered in Table 32 has suffered a very substantial deterioration in relative standard of living. Over this period, the C10-dependent family has had an increase of 72.2% in its disposable income, compared to a 99.7% increase in the average measure of household disposable income. For the NMW-dependent family, the increase was 77.1% and for the C12-dependent family it was 75.8%.

Table 32**Disposable incomes of safety net families and national Household Disposable Income**

(Couple parent and sole parent families with two children)

January 2001–January 2016

(\$ per week, unless stated)

Year	HDI	NMW Family. Disposable income	NMW DI as % of HDI	C12 Family. Disposable income	C12 DI as % of HDI	C10 Family. Disposable income	C10 DI as % of HDI
2001	415.63	553.80	133.2%	578.51	139.2%	615.33	148.0%
2002	457.38	573.16	125.3%	599.04	131.0%	636.62	139.2%
2003	454.51	591.41	130.1%	617.37	135.8%	655.59	144.2%
2004	481.03	609.60	126.7%	641.18	133.3%	677.84	140.9%
2005	517.24	660.49	127.7%	685.48	132.5%	722.90	139.8%
2006	536.66	688.40	128.3%	714.28	133.1%	752.36	140.2%
2007	576.92	731.95	126.9%	757.77	131.3%	794.36	137.7%
2008	627.52	760.09	121.1%	793.37	126.4%	831.97	132.6%
2009	692.04	795.93	115.0%	828.89	119.8%	873.07	126.2%
2010	688.82	808.36	117.4%	841.31	122.1%	885.49	128.6%
2011	731.61	840.44	114.9%	872.32	119.2%	916.54	125.3%
2012	765.09	864.41	113.0%	897.12	117.3%	942.89	123.2%
2013	775.90	915.54	118.0%	949.25	122.3%	996.30	128.4%
2014	800.87	938.24	117.2%	972.75	121.5%	1,018.81	127.2%
2015	816.62	961.70	117.8%	997.17	122.1%	1,041.41	127.5%
2016	830.16	980.78	118.1%	1,017.15	122.5%	1,059.88	127.7%

The HDI figures are for December of the previous year, save for January 2016, where the figure is for September 2015. The HDIs are taken from *Poverty Lines Australia: September Quarter 2015*.

682. The loss of relative living standards and increasing inequality is also evident in the case of single workers. In Table 33 we have provided similar data in respect of single workers employed on the NMW and C10 wage rates over the period April 1997 to January 2016. Save for the first entry, which is April 1997, when the Federal Minimum Wage (FMW), now called the NMW, was introduced. The other figures are at 1 January of each year. We described the setting of the FMW in Chapter 7E.
683. Table 33, like Table 32, shows a very substantial loss of relative living standards for the safety net-dependent single worker and the growing inequality of this cohort of workers. It also demonstrates that the wage rates set in 1997 have lost contemporary relevance over the years because of the failure of successive wage tribunals to take into account the movements in community incomes. The comparisons in Table 33 were not unknown over the years: in every quarter over this period the Melbourne

Institute has published updated figures. Some change in the relative position of single workers could be justified on the basis that increases in family payments were better targeting the needs of families, and limiting the need for the minimum wage to support families, but, as we have seen, families have done badly over the past 15 years.

Table 33
Safety Net Wages and Household Disposable Income – Single worker
April 1997–January 2016

(\$ per week, unless stated)

Year	HDI	NMW gross	NMW net	NMW net as % of HDI	C10	C10 net	C10 net as % of HDI
1997	354.79	359.40	305.70	86.16%	451.20	367.96	103.7%
1998	364.18	359.40	305.70	83.94%	451.20	367.96	101.0%
1999	368.87	373.40	316.69	85.85%	465.20	376.43	102.0%
2000	394.18	385.40	326.11	82.73%	477.20	384.03	97.4%
2001	415.63	400.40	346.38	83.34%	492.20	406.53	97.8%
2002	457.38	413.40	354.76	77.56%	507.20	416.81	91.1%
2003	454.51	431.40	366.37	80.61%	525.20	429.14	94.4%
2004	481.03	448.40	377.93	78.57%	542.20	444.77	92.5%
2005	517.24	467.40	396.78	76.71%	561.20	457.78	88.5%
2006	536.66	484.40	412.84	76.93%	578.20	475.40	88.6%
2007	576.92	511.86	449.93	77.99%	605.56	510.94	88.6%
2008	627.52	522.12	467.59	74.51%	615.82	538.06	85.7%
2009	692.04	543.78	494.29	71.43%	637.48	570.03	82.4%
2010	688.82	543.78	497.17	72.18%	637.48	572.90	83.2%
2011	731.61	569.90	521.86	71.33%	663.60	596.56	81.5%
2012	765.09	589.30	537.49	70.25%	686.20	614.52	80.3%
2013	775.90	606.40	556.87	71.77%	706.10	636.14	82.0%
2014	800.87	622.20	569.44	71.10%	724.50	648.47	81.0%
2015	816.62	640.90	581.11	71.16%	746.20	658.72	80.7%
2016	830.16	656.90	573.79	69.12%	764.90	670.70	80.8%

The gross and net wages are figures are at April 1998 and at 1 January in the succeeding years. The HDI figures are for December of the previous year, save for January 2016, where the figure is for September 2015. The HDIs are taken from *Poverty Lines Australia: September Quarter 2015*.

684. Table 33 sets out the change in the relationship between the NMW and the C10 wage rates and the Melbourne Institute's HDIs. The relevant comparators for measuring the change are the net wages and the HDI. Over the period 1 January 1998 to 1 January 2016 the C10 worker's net wage increased by 82.3%, while the HDI increased by 128.0%. For the NMW-dependent worker, the net wage increase was 87.7%.

685. The figures in Tables 32 and 33 showing the relationship between disposable incomes and the HDIs show that the decline in the relative incomes and living standards of safety net-dependent workers, and the increases in income inequality, occurred over the years in which the Australian Industrial Relations Commission and the AFPC set minimum wages. In general, the decline in relative living standards and the increase in inequality have been arrested in the years since the commencement of the *Fair Work Act*, but, the FWC has not addressed these legacies.

D. COMPARING THE PENSION AND WAGES SAFETY NETS

686. 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 of this chapter and Chapter 6C provide a basis for comparing the operation of the wage safety net with the operation of the pension safety net.

687. It is important to keep in mind that when the pension system was reformed in 2009 pension rates was 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.

688. Table 34 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 outcomes for working families and for families who rely totally on government transfers by reference to median equivalised disposable household income (MEDHI). It compares relative living standards. The purpose of the last column of Table 34 is to put each of the households in a community-wide context.

689. Table 34 shows, by reference to the equivalence scales used by the ABS, that the pension safety net for a couple, \$716.87 per week, produces a standard of living that is 1.3 percentage points higher than that of NMW-dependent family of two adults and two children with a disposable income of \$980.78 per week. In equivalised terms, the family is \$22.87 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 \$1003.61 per week to equal the pensioner couple.

690. This comparison understates the differences between those on the wages safety net and those on the pension safety net. The NMW-dependent family has the costs of work, unlike pensioners. Table 14.1 of the *Statistical Report* of 18 March 2016 contains data on the costs of working, other than childcare. A note to the table reads “As an example of how these data can be read, results show that the average cost of working is \$70.75 for full-time award-reliant males and that they spent, on average, 8.0 per cent of their weekly gross wages on the costs of working.” Furthermore, pensioners are entitled to the pensioner concession card with its wide range of benefits, including health care.

Table 34
Relative living standards of pension and safety net-dependent families
January 2016

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	980.78	2.1	467.04	53.4%
C12-dependent family, second parent not seeking employment, 2 children	1017.15	2.1	484.36	55.4%
C10-dependent family, second parent not seeking employment, 2 children	1059.88	2.1	504.70	57.7%
Sole parent on disability pension, 2 children	808.89	1.6	505.56	57.8%
Single person on disability pension	493.03	1	499.92	57.1%
Couple on age pension	716.87	1.5	477.91	54.7%
Single person on age pension	499.92	1	499.92	57.1%

The median equivalised disposable household income (MEDHI) used for January 2016 is \$874.89 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. 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. Maximum rental assistance rates are \$64.92 (single), \$61.11 (couple) and \$76.14 (two children) per week. The Schoolkids Bonus is included in relevant entries on the basis that one child is in primary school and the other in secondary school.

691. The contrast between the living standards of low income working families is even starker if we compare the NMW-dependent and C10-dependent families with single pensioners. Before taking into account the costs of work and the value of the

pensioner concession card, the C10 family is barely above the single pensioner's standard of living: 57.7% of MEDHI compared to 57.1%. Before those matters are taken into account the C10 family is virtually on the same level as the single person on a disability pension with two children: 57.7% and 57.8%, respectively. We observed earlier that something very significant has happened when a family supported by a worker in a skilled trade has fallen into poverty. We can also say the fact that the minimum rate for a skilled worker provides a standard of living below those provided to pensioners is a sign that there is something very wrong with the minimum wage system.

692. In making these comments we stress that we do not suggest that the rates set for pensioners are more than adequate. We have demonstrated that they have fallen below the 60% poverty line and, at the least, are at risk of poverty. The basic acceptable standard of living criterion used in the 2009 review and adjustment of pensions understates, rather than overstates the needs of pensioners.
693. Having regard to the obligation for the FWC to take into account relative living standards when setting a safety net of fair minimum wages, why should the breadwinners in these families have to work overtime or take an extra job, or the primary carers have to seek employment, in order for them to achieve a the higher standard of living provided to those on the age and disability pensions? Why should they have to do one or more of these things in order to achieve the basic acceptable standard of living provided to pensioners?
694. 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 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. Having regard to the pension safety net and taking into account the costs of work, a basic acceptable standard of living for these families would be in excess of 60% of the Australian median equivalised disposable household income.
695. Despite submissions by ACCER for it to do so, the FWC has not referred to these issues in its decisions since 2010. As well as being obliged to take into account relative living standards and the needs of the low paid, the FWC has an obligation to

promote social inclusion and an obligation to provide a safety net of fair minimum wages. Neither of those obligations is served by the continuing failure of the FWC to consider and take into account the amount paid by way of pensions and the living standards provided by them.

E. THE WORKING FAMILY PROFILE: ISSUES AND DATA

696. 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.
697. 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.
698. The first point in response is that the number of juniors has no merit because, as juniors, 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.
699. 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 internationally recognised human rights, discussed in Chapters 1C and 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 will be reduced; but the essential role of wages remains.

Promoting the common good by supporting workers with family responsibilities

700. 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.)

701. 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 that low wages were placing 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.

702. This passage was written in the context of a higher proportion of stay-at-home mothers in couple 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.

703. 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.
704. 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.
705. 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.
706. 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

707. 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”.
708. 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.
709. 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.
710. 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.

711. 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.)

712. 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 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.

713. 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.

714. So those families with two children within the total of 550,000 families would have been below the 60% poverty line. 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 rather 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.

715. 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)

716. 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)

717. 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.

718. 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.
719. 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.
720. 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)
721. The evidence pointed to many working families being in poverty, even where there was a person in the household in full time employment and on a wage substantially higher than the NMW, 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?
722. In both 2014 and 2015 ACCER submitted evidence from the 2011 Census on the profile of low income working families. That evidence is set out in the following section. There was no reference to the evidence in the June 2014 decision, but reference to was made to it in the June 2015 decision. It came in the context of a reference to the “family types among those on the NMW or modern award minimum wages”, a more limited question than the family types or circumstances of the low paid and of those workers who are living in poverty. It suggested that the FWC was focussed on those workers who happened to be paid the minimum wage rates rather than those who were living in need because the safety net wages system and their limited bargaining strength had left them in that position. The low minimum wage rates set by the FWC are poverty-inducing rates even when some workers are able to bargain for an overaward payment. The distinction drawn by the FWC is artificial and does not address the question of the level at which wages should be set in order to

provide a decent standard of living. The following passages in the June 2015 decision relate to this aspect

“[340] Little information as to the prevalence of particular family types among those on the NMW or modern award minimum wages was put to us in the current Review. ACCER relied on 2011 Census data to submit that 55 020 families (or 7 per cent of all couple families with two children) with at least one full-time breadwinner were under their approximation of the 60 per cent relative poverty line. The Australian Government drew on HILDA data, submitting that 14.6 per cent of award-reliant employees were in a couple household with a child under 15.

[341] The HILDA data do not identify the proportion of award-reliant employees in a couple household with children under 15 who were single-income earners. It is clear that the proportion must be less than 14.6 per cent.

[342] We are aware that the AWRS collected information from employers and their employees on a range of workplace relations and employment matters. Unlike HILDA, the AWRS provides information on whether an employee is the sole, main or secondary income earner in their household.

[343] The relevant data collected have not been published and the parties in the Review have not had an opportunity to consider and put submissions in relation to the data. In that circumstance, it is inappropriate that we rely on the unpublished data for the purpose of our decision in the current Review.

[344] We intend to publish the AWRS information about whether award-reliant employees are the sole, main or secondary income earner in their household by reference to the various household types, including couple households with children under 15, in the statistical report for the 2015–16 Review. This will provide the parties with an opportunity to put submissions about the information and to bring any alternative evidence on the issue. It is important that our consideration of any proposals to address relative living standards of NMW and award-reliant employees and the needs of the low paid is better informed by some understanding of the incidence of award-reliant household types. We would be assisted by any information or submissions, including any submissions in relation to the AWRS data, in future reviews.” (*Annual Wage Review 2014-15, Decision*, footnotes omitted.)

723. The FWC was obviously aware of some unpublished data, but was not in a position to rely on it in 2015. The proposal to release it for comment implied that it was relevant and that the kind and extent of the family responsibilities of the workers covered by the survey, specifically those who are only paid the minimum wage rate, would be relevant to the wages being set. There are a number of responses that could be made in response to this, concerning the nature and the purpose of safety net wages and the human rights of low paid workers, along the lines already covered in this section and in other parts chapters. They are not needed at this stage because, as at 30 March 2016, none of this kind of material has been included in the FWC’s *Statistical Report*, the latest edition being dated 18 March 2016.

F. THE 2011 CENSUS AND THE WORKING FAMILY PROFILE

724. Since the FWC raised questions in 2013 regarding the number of couple parent families with children, 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. The following material was before the FWC in 2014 and 2015. It was worthy of more than the passing reference it received in the June 2015 decision.; see paragraph 340, which we quoted in the second last paragraph.
725. 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 less than 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.
726. In the Table 35 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.
727. Table 35 has two purposes: to provide evidence about the extent of poverty among low income working families and to provide an employment profile of those families.

Table 35**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.

Poverty among low income working families

728. Table 35 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 \$952.67 (January 2011) and \$995.60 (January 2012); see Table 27. We can say, therefore, that all of the people covered by the “less than \$1000.00” column in Table 35 were in households under the 60% relative poverty line, subject, of course, to the accuracy of the individual returns.

729. 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).
730. 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

731. The second purpose of Table 32 is to provide evidence of the working profiles of low income families. As we explained in section E, 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%.
732. 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

733. Table 36 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 35 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 \$725.85 (January 2011) and \$758.55 (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 36
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.

734. Table 36 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.

735. ACCER has argued over the years that high childcare 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.
736. The high cost of childcare for working sole parents is illustrated by Table 15.1 of the FWC's *Statistical Report* of 18 March 2016. The table provides data on the average weekly cost of work-related child care by gender for employees reporting cost of work-related child care greater than zero. A footnote to the table summarises the import of the data for sole parents: "As an example of how these data can be read, results show that the average cost of work-related child care was \$116.48 for award-reliant females who were primary carers and that they spent, on average, 19.0 per cent of their weekly gross wages on the costs of work-related child care".
737. Full time employment unobtainable or impractical for many sole parents. Table 36 shows, for sole parents with two children, there are more employed part time than full time. The FWC has set wages on the basis that workers are employed full time, i.e. for 38 hours per week. It has said in each of its past decisions that workers "in full-time employment can reasonably expect a standard of living that exceeds poverty levels"; see, for example, *Annual Wage Review 2012-13, Decision*, paragraph 33. The *Statistical Report*, at Table 8.2, has the NMW-dependent sole parent with two children working full time and having a margin of 18% over the poverty line, a margin greater than the 15% margin of the single adult. The FWC relies on this table in its assessment of relative living standards and the relative needs of different kinds of households; see, for example, *Annual Wage Review 2014-15, Decision*, paragraph 337, footnote 229.
738. The effect of the FWC taking into account the position of sole parents on the basis that they are employed full time is unrealistic and detrimental to their interests. In the absence of the FWC taking into account a realistic assessment of child care costs for sole parents, the FWC should assess the needs of sole parents on the basis that they work for 27.5 hours per week. It is a working week that could be worked within school hours and one which would enable sole parents to give their children, care and

support outside school hours. For the NMW-dependent sole parent, this would result in a disposable income of \$833.76 per week, \$6.13 below the 60% poverty line. This is a much more realistic figure than the current estimate of full time employment, with no childcare costs and a margin of 18% over the poverty line. It would also be public recognition of some of the difficulties faced by sole parents in caring for their children.

G. NATIONAL MEASURES OF POVERTY IN THE LUCKY COUNTRY

739. Over the past few years several significant reports have been published on the extent of poverty in Australia. Together they present a grim picture of the persistence of poverty during a period of substantial economic growth. For many this is not the Lucky Country.

740. *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 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)

741. 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).

742. *Poverty in Australia 2014* was published by ACOSS in October 2014. It was 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 "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).
743. 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 \$474.10 per week and the couple with two children family is at \$995.60 per week.
744. 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.
745. 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 20 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, full time 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).
746. Similar statistics to those just quoted were before the FWC in 2013. 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 and emphasis added)

747. 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. Over the two years from the 2012 report to the 2014 report the figure of 20.5% referred to by the FWC increased to 22.2%.

748. 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.

749. In July 2015 the Melbourne Institute published *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 12*. The report, based on the Household, Income and Labour Dynamics in Australia Survey (HILDA), is authored by Roger Wilkins and includes data on the extent of income poverty in Australia. There is a short summary of income poverty:

"A wide variety of definitions or measures of poverty, or material deprivation, have been employed by economic and social researchers. While recognising this diversity of potential measures, in this chapter we focus on the most commonly employed definition applied to the study of poverty in developed countries, which conceives of poverty as *relative* deprivation or socio-economic disadvantage, and which measures deprivation in terms of inadequacy of *income*. Consistent with the approach of the Organisation for Economic Cooperation and Development (OECD) and other international bodies, we define relative income poverty as having a household income below 50% of median income. While based on a degree of public and researcher consensus, it should nonetheless be acknowledged that there is an element of arbitrariness to this—or any other—definition of relative poverty." (Page 27)

750. The element of arbitrariness in the relative poverty line arises from two sources, which we discussed in section A of this chapter: a particular income point does not determine whether or not a particular household is living in poverty in a qualitative sense; and the choice of 50%, rather than 60% of median income, or some point in between, is a matter for judgment in the absence of any research directed at the question of where

the poverty line should be best placed by reference to the median. We suggested earlier that the 50% relative poverty line could be regarded as a measure of “deep poverty”.

751. The data on which the HILDA report is based covers the period 2001 to 2012. It found that in 2012 the poverty rate, by the low measure of 50% of median income, was 11.4%

“The proportion of the population below this poverty line has fluctuated over time, rising substantially between 2006 and 2008, since when it has steadily declined from 13.2% to 11.4% in 2012. A key reason for this fluctuation is that many welfare recipients in Australia have incomes quite close to 50% of median income, so that relatively small movements in government benefits or the median can bring about sizeable changes in the poverty rate. While the limited progress in reducing relative income poverty between 2001 and 2012 may be regarded as undesirable, concern may be tempered by the poverty estimates obtained when the real value of the poverty line is maintained at its 2001 level of \$16,510 (at December 2012 prices). For this absolute poverty line, the proportion of the population below the poverty line drops from 12.5% in 2001 to 4.4%” (Page 27)

752. The absolute (or anchored) poverty line referred to in this passage is “an income poverty threshold which has its real value held constant over time rather than adjusted for changes in average living standards” (page 27).
753. The report also reported on child poverty rates. In 2012 the child poverty rate, at 8.1%, was below the overall poverty rate, with child poverty being significantly higher when children live with one parent, rather than both parents: 19.8%, compared to 5.2%. Our figures in Table 36 show that the major causes of this would be the number of sole parents who are engaged in part time and not full time employed and the number who are unemployed or not in the labour force. These groups comprise 87.2% of the sole parent families with two children living on incomes of less than \$800.00 per week in 2011.
754. 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.
755. 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)

756. 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)

757. 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.
758. In March 2014 the OECD published *Society at a Glance 2014 Highlights: Australia, OECD Social Indicators*. This 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. Using the 50% relative poverty measure it found Australia's poverty rate was 14.4%, which was considerably higher than the European Union average of 9.4% and substantially higher than the OECD average of 11.3%. In regard to inequality, the Gini coefficient was 0.334, considerably higher than the more egalitarian European Union (0.029) and marginally behind the OECD average of 0.313.
759. 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 than Australia at the 60% level.

760. 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 (a method referred to earlier in relation to the abovementioned HILDA report). The 2008 line was adjusted by inflation between 2008 and 2012, rather than by changes in the median.
761. The UNICEF 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, which was singled out for particular praise, 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)

762. 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.

....

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.)

763. As we have seen in Chapter 1E, the family payments system has already been wound back with more changes in prospect, through reduced payment rates, the changing of eligibility criteria, the freezing or reduction of eligibility thresholds and the changing of indexing provisions. The developments that made Australia stand out from most other countries are now being wound back.

Fact Checks on topical issues concerning poverty and disadvantage

764. In a speech delivered on Australia Day 2016 the Opposition Leader, Mr Bill Shorten, said:

"As long as 2.5 million Australians live below the poverty line, and one out of every four are children ... We cannot say the fair go belongs to all,"

765. This prompted a public discussion about the accuracy of the claim which was taken up by the Australian Broadcasting Corporation's Fact Check unit in *Fact check: Are 2.5 million Australians in poverty and are one quarter of them children?*
766. The Fact Check process does not have the academic rigour that characterise the research referred to earlier, but it highlights broad issues and draws on the views of experts in coming to its conclusions. The verdict on Mr Shorten's claim was:

"Mr Shorten's claim checks out.

The basis for the Opposition Leader's claim comes from a 2014 report commissioned by the Australian Council of Social Service which suggests that 2.55 million Australians live in poverty, with 23.6 per cent of them children.

Whilst other research from NATSEM and HILDA found slightly more Australians under the poverty line, with fewer of them children, these reports measure poverty and define children differently, and the numbers are still comparable with data in the report which Mr Shorten uses as the basis for his claim.

Experts say that whilst the different reports make slightly different assumptions, all are sound in their methodology.

They also said that there are many ways to measure poverty, and there's an element of arbitrariness involved."

767. As the conclusion notes, the verdict based on the three research documents referred to earlier in this section.
768. One of the matters referred to in the Fact Check report concerns the efficacy of only using income as a measure of poverty. The report refers to an earlier Fact Check in December 2015 when the then Deputy Leader of the Nationals, Mr Barnaby Joyce,

now the Leader and Deputy Prime Minister, told the ABC TV's Q&A program:

"Our constituents are the poorest, that's one thing we do know and so we are always looking out for them,"

769. In *Fact check: Do the Nationals represent Australia's poorest electorates?* 11

December 2015, the verdict was:

Mr Joyce's claim checks out.

Experts agree that there is no "gold standard" in measuring poverty.

Fact Check was unable to find one dataset that definitively measures poverty in relation to electorates.

However, three separate datasets all indicate that the Nationals' electorates are on average poorer or more disadvantaged than those represented by Labor and the Liberal Party.

770. The three separate data sets referred to in this *Fact Check* were an income indicator to define poverty and two sets of disadvantage indicators. The income indicator was the abovementioned NATSEM/UnitingCare report *Poverty, Social Exclusion and Disadvantage in Australia*, which included data to enable the determination of the number of children in poverty and the total number of people in poverty in each local government area in Australia.

771. The first of the two measures of disadvantage was from the Australian Bureau of Statistics' data on disadvantage for areas in Australia in the *Index of Relative Socio-Economic Disadvantage*. This study is based on information from the Census and takes into account income and other dimensions of disadvantage, such as the proportion of people working in low-paid occupations, the proportion of people unemployed and one-parent families. The second measure of disadvantage was that used in the report *Dropping off the Edge 2015* by Professor Tony Vinson and Associate Professor Margot Rawsthorne and published by Catholic Social Services Australia and Jesuit Social Services. This report looked at disadvantage across areas in Australia by reference to 22 indicators which are used to measure social wellbeing, health, community safety, economic and education outcomes. The areas are ranked according to their susceptibility to disadvantage. The indicators include the rates of adult criminal convictions and prison admissions, juvenile offending, youth and adult unemployment, no household access to the internet and the lack of post-school qualifications.