

**Fair Work Commission**

*Fair Work Act 2009*

**Annual Wage Review 2015-16**

**Post-Budget Submission and Response to Questions for Consultations**

**by the**

**Australian Catholic Council for Employment Relations**

**9 May 2016**

**Table of Contents**

	Paragraph
<b>A. Preliminary matters: recent data</b>	1
<b>B. The May 2016 Budget</b>	10
<b>C. Response to Questions for Consultations</b>	30

**A. Preliminary matters: recent data on median equivalised disposable household income and poverty lines**

1. Table 8.2 of the *Statistical Report* of 28 April 2016, published by the Fair Work Commission (FWC), has been updated following the publication on 22 April 2016 of *Poverty Lines: Australia, December Quarter 2015* by the Melbourne Institute of Applied Economic and Social Research. Table 2 of the poverty lines publication showed that, in December 2015, seasonally adjusted per head household disposable income (HDI) was \$827.45 per week, \$2.71 per week less than the figure published in the previous quarterly publication. Taking that into account, the *Statistical Report* shows that the 60% of median poverty line for the single person was \$523.64 per week at December 2015. The previous figure for September 2015 was \$524.92 per week.
2. The March 2016 submission of the Australian Catholic Council for Employment Relations (ACCER) used the September quarter 2015 figure as the basis for the calculation of median equivalent disposable household income (MEDHI) and poverty lines for January 2016. Those figures need to be revised in the light of the latest HDI

calculation and the figures in the *Statistical Report*. So adjusted, the MEDHI figure for December 2015 was \$872.73 per week, up from \$860.63 one year earlier (see Table 27 of ACCER's March 2016 submission).

*Inequality*

3. Table 37 shows the changes in relative living standards over the period 1 January 2015 to 1 January 2016, based on the MEDHI figures for December 2014 and December 2015.

**Table 37**  
**Changes in relative living standards**  
**Disposable incomes**  
**January 2015- January 2016**  
(\$ per week, unless otherwise indicated)

	<b>January 2015</b>	<b>January 2016</b>	<b>Percentage increase</b>
<b>MEDHI</b>	860.63	872.73	1.4%
<b>Single worker NMW-dependent</b>	581.37	594.01	2.2%
<b>Couple and sole parent families with 2 children NMW-dependent</b>	953.63	971.87	1.9%
<b>Couple and sole parent families with 2 children C4 -dependent</b>	1121.44	1141.30	1.8%

Tables 1 to 36 are in ACCER's submission of March 2016. Table 37 uses the FWC's estimates of disposable incomes in the *Statistical Report* of 8 May 2015 and 28 April 2016 for December 2014 and December 2015, respectively. The figures are at 1 January in each year. The *Statistical Report* of 28 April 2016 estimates that the NMW-dependent family's disposable income at December 2015 was \$971.87 per week, \$8.91 per week less than ACCER's calculation in Table 28 of its March 2016 submission. This discrepancy, also evident in earlier editions of the report, is discussed at paragraph 674 of the Attachment to ACCER's March 2016 submission.

4. The reason for the different percentage increases in Table 37 is that the transfer payments received by families increased at a lower rate than the wages component of their disposable incomes. The non-wage component for these families increased by 1.5%. This is significant because it is evidence of governmental policy to reduce the degree of public support for families, a policy which has significant longer term consequences for wage setting. The changes do not reflect the forthcoming abolition of the Schoolkids Bonus, which will cease at the end of 2016. Furthermore, the May 2016 Budget affirmed the Government's intention to reduce family payments under

the Family Tax Benefit system, which is discussed below.

5. Table 37 shows a small reduction in inequality between minimum wage-dependent workers and their families and the median measurement of community incomes over the year to January 2016, principally as a result of the minimum wage increases of July 2015. However, that improvement has to be seen in the context of growing inequality over the medium term, at least. Over the period January 2004 to January 2016 MEDHI increased from \$499.98 per week (ACCER submission, March 2016, Table 27) to \$872.73, an increase of 74.6%. By contrast, over the same period, single workers dependent on the National Minimum Wage (NMW) had an increase in their disposable incomes of 57.1% and NMW-dependent couple and sole parent families with two children had an increase in their disposable incomes of 60.9%; see Tables 27 and 28. This represented a major increase in inequality.
6. Another way of looking at these figures is to compare the changes in disposable incomes and the equivalised MEDHI. In January 2004 the family's income was \$609.60 per week (Table 28) when MEDHI, equivalised for the same kind of family, was \$1,049.96 per week (see Table 27, with the per capita MEDHI figure multiplied by 2.1), with the family being at 58.1% of the equivalised MEDHI. In January 2016 the family's income was \$980.78 per week when the equivalised MEDHI for the same kind of family was \$1,832.73 (see Table 37, with the per capita MEDHI figure multiplied by 2.1), with the family being at 53.5% of the equivalised MEDHI. In order for the family's relative living standards to be restored to the January 2004 level, it would have needed an increase of \$84.03 per week (to \$1,064.81) in January 2016. This evidence drawn from the Australian Bureau of Statistics and the FWC is of fundamental importance in a wage setting system that requires the FWC to take into account relative living standards.
7. There are several other references in MEDHI in ACCER's March 2016 submission that need to be amended to reflect the revised figure: paragraph 48 of the submission and Tables 26 and 34 (and associated commentary) of the Attachment to the submission. In those sections MEDHI is calculated at \$874.89 per week, a little more than the revised figure of \$872.73 per week. Should the FWC wish, ACCER will provide the revised figures for these tables.

#### *Poverty Lines*

8. ACCER's submissions regarding poverty lines need to be revised to reflect the most

recent data. Table 8.2 of the *Statistical Report* now shows that, at December 2015, the poverty line for the family of four was \$1099.64 per week. The summary conclusions in paragraph 44 of ACCER's submission of March 2016 (and at paragraph 668 of the Attachment thereto) should now read:

"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 10.8% below it, with a poverty gap in January 2016 of \$118.86 per week;
- the C12-dependent family of four fell into poverty: from 1.7% above the poverty line to 7.5% below it, with a poverty gap in January 2016 of \$82.49 per week; and
- the C10-dependent family of four fell into poverty: from 7.6% above the poverty line to 3.6% below it, with a poverty gap in January 2016 of \$39.76 per week."

9. It should be noted that ACCER's estimates of disposable incomes are slightly higher than those in Table 8.2 of the *Statistical Report* of 28 April 2016; see note to Table 37. The *Statistical Report* has the NMW-dependent family at 12% below the poverty line and the C10-dependent family at 4% below the poverty line.
10. Consistent with the decrease in inequality over the year to January 2016, there was some improvement in poverty levels over that period. Poverty lines increased by 1.4%, whereas the disposable incomes of NMW-dependent families increased by 1.9%. Had the disposable incomes of NMW-dependent families increased by only 1.4% over the year to January 2016, they would have been \$975.16 per week, not \$980.78 per week (see Table 28), with an increase of \$5.62 per week. Given that poverty gap for the NMW-dependent family of four in January 2004 was \$20.37 per week (see Tables 27 and 28) and the 2015 increase has left with the same family with a poverty gap of \$118.86 per week, the reversal of the longer term increase in poverty levels was quite minor.

#### **B. The May 2016 Budget**

11. The May 2016 Budget confirms that the decades long pre-Global Financial Crisis increases in transfer payments to families have peaked and that the Government's policy to reverse that trend. In particular, the Government has re-committed to proposals, first introduced in the May 2014 Budget, to make substantial changes to

the Family Tax Benefits system.

12. The re-commitment to the cut in family payments cuts is not explicit in the Budget papers. However, proposed changes are evident in Budget Statement 5, which is in *Budget Strategy and Outlook, Budget Paper No. 1*. Table 3.1 of Statement 5 shows the expenses of the family tax benefit programs. From an estimated cost in 2015-16 of \$20,895m, it is estimated that the annual cost will fall to \$19,341 in 2016-17 and to \$18,481m in 2017-18. This is a cut in nominal terms of 11.6%. Having regard to the estimated increases in the Consumer Price Index (CPI) over the 2016-17 and 2017-18 years (see Table 1 of Statement 2 in *Budget Paper No. 1*), this will amount to a cut in real terms of 15.8%. The Budget proposes major cuts in family payments, but does not provide information about how those changes will be achieved.
13. The policy in the May 2014 Budget was most recently detailed in the *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill (No. 2) 2015* (the Bill) which was introduced into Parliament in December 2015. The Bill and its antecedents are described in Chapter 1E of the Attachment to ACCER's March 2016 submission. The Bill provided for a three year transition period over which the cost savings were estimated to be \$4,259.8m according to the *Explanatory Memorandum* for the Bill (at page 2). The third year of these cuts is not covered in the estimates for 2016-17 and 2017-18 in the May 2016 Budget. The Bill lapsed following the prorogation of the first session of the 44th Parliament on 17 April 2016.
14. The Bill proposed the abolition of the annual supplement components of Family Tax Benefit, Part A (FTB A) and Family Tax Benefit, Part B (FTB B), to be partly offset by increases in the fortnightly FTB A payments. The changes in FTB A payments would result in losses (at current levels of indexation and at the end of a two year transitional period) from 1 July 2018 of \$8.88 per week per child and a further loss of \$6.79 per family if the family is eligible for a FTB B payment. In a two child family, such as those in Table 37 above, this will amount to a loss of \$24.55 per week (plus indexation increases) once fully implemented.
15. These proposed changes are in addition to the Government's proposed changes to the eligibility for FTB B once the youngest child turns 13. Legislation enacted in November 2015, with the support of the Labor Party, means that from 1 July 2016 couple parent families will be denied FTB B payments of \$60.20 per week once their youngest child turns 13, even though sole parent families will continue to receive that

payment. The *Revised Supplementary Memorandum* for this legislation estimated the cost savings as \$525.5m over the forward estimates of three years. Because the changes take effect on 1 July 2016, those savings should come within the estimates for 2016-17. The savings from this measure are additional to the \$4,259.8m proposed by the Bill. The total cost savings of \$4,785.3m cover a longer period than the Budget's estimates for 2016-17 and 2017-18. However, the Budget's expenses projections for the Family Tax Benefit during 2018-19 and 2019-20 (\$18,466m and \$18,685m, respectively) show that substantial cost savings are not projected to continue beyond 2017-18. This suggests that the costings are based on cuts that are only about half of those proposed in the Bill.

16. The Bill sought to reduce the FTB B payment to sole parents once their youngest child turns 13 to a payment of \$1000.10 per year until the child turns 17 years. We expect that this remains the Government's policy. Unless and until that policy is enacted it means that a sole parent family with an income of up to \$100,000 per year will receive the payment of \$60.20 per week while an unemployed couple and their children will receive nothing. If it is enacted there would still be a substantial difference between the two kinds of families, not based on financial circumstance, but the marital status of a child's parents. This is a clear case of discrimination against parents and children in couple parent families and will continue unless and until there is a return to parity of treatment. We draw this to the attention of the FWC because it is further evidence that the drive for budget cuts takes no account of basic fairness and the protection of vulnerable families.
17. It must also be noted that the winding back of family tax benefits did not start with the current Government, but with a Labor Government. Until 2009 FTB A fortnightly payments were adjusted by reference to the higher of the increases in the CPI and the combined pensioner couple rate. The link with the pensioner rate, which was in turn linked to movements in a measure of average weekly earnings, was severed in the May 2009 Budget. The following appeared in Budget Paper No.2 of May 2009:

"From 1 July 2009, Family Tax Benefit Part A (FTB-A) payment rates will be indexed by the Consumer Price Index consistent with other family payments such as Family Tax Benefit Part B and the Baby Bonus. This will replace the current arrangement whereby maximum rates of FTB-A for children under the age of 16 are benchmarked to a proportion of the combined couple rate of pension payments, or adjusted by the Consumer Price Index, whichever is higher. This is expected to result in reduced outlays of \$1.0 billion over four years compared to current indexation arrangements.

This measure will help reduce the long-term cost to the budget of a substantial and growing expenditure, contributing to the return of the budget to surplus and the reduction of net debt."

18. The inevitable result of this change has been, and will continue to be, the disconnection between family payments and community-wide incomes, with the deleterious effects being felt most acutely by low income families.
19. The FTB A and FTB B annual supplements have been frozen since 2011, initially as a result of the Labor Budget of May 2011, which proposed that the CPI-adjustment prices previously used for this payment be discontinued. This change and the variation to the FTB A indexation provisions were masked by the introduction of the Schoolkids Bonus in 2016, which will cease at the end of 2016.
20. The ongoing savings to the Budget, and losses to families, of the changes in the indexation of FTB A payments is evident from the comparison in Table 22 of ACCER's March 2016 submission: over the six years 2009 to 2015 increases in the CPI and Male Average Total Weekly Earnings were 15.7% and 23.3%, respectively. This discrepancy has meant, and will continue to mean, that if the living standards of working families are to reflect the increases in community living standards, more will be required of minimum wages.
21. We note that, despite the continuing commitment to a reduction in family payments to low income families, evident once again in the May 2016 Budget, the Government's submissions do not address the issue, referring instead to the desirability of targeting needs through "better ways", which could only mean increased transfer payments. There is a disconnection between the matters raised in the Government's submissions and the direction of its budgetary policy.
22. If there is a case for changes to the family payments system, recognition first needs to be given to the fact that the costs of the system increased substantially as a result of the extension of eligibility into middle income groups (as illustrated by Table 19 of ACCER's March 2016 submission) in the years before the Global Financial Crisis. Over the period January 2001 to January 2016 couple parent and sole parent families with two children and an income equal to Average Weekly Ordinary Time Earnings had a very large increase in family payments: from \$72.17 per week to \$237.68 per week, or 229.3%. NMW-dependent families saw an increase from \$150.99 to \$297.75 per week, or 97.2%. Low income sole parent and couple parent families need to be protected against budgetary cuts and protected in a way that does not discriminate between children on the basis of their parents' marital status.

23. The Additional Material section of the FWC's current wage review website includes recently listed references to developments in wage setting in the United Kingdom. The introduction of a legislated National Living Wage, providing a higher wage rate than the National Minimum Wage, is part of a strategy to reduce transfer payments and the mix of wage and transfer payments for low income families; see *Tax Credit changes from April 2016*, Briefing Paper number CBP7300, 11 September 2015, House of Commons Library.
24. The FWC's Additional Material section includes references to an *Impact Assessment* from the Department of Business Innovation and Skills in the United Kingdom entitled *Amendment to the National Minimum Wage regulations 2015 -introducing the National Living Wage*. The document includes:
- "What is the problem under consideration? Why is government intervention necessary?
- The economy requires rebalancing from a low wage, high tax, high welfare society to a higher wage, lower tax, lower welfare society. The National Living Wage (NLW) is an essential part of a package of measures, including changes to tax, national insurance, and further welfare reform, aiming to achieve this. It ensures that work pays and that low wage workers take a greater share of the gains from growth. The microeconomic rationale for the NLW remains as with the National Minimum Wage - to ensure that unequal bargaining power is not used by employers to undercut competitors by paying unacceptably low wages. What are the policy objectives and the intended effects?
- The policy objectives are to:
- raise the earnings of the lowest-paid;
  - increase the incentive to work;
  - and move to a higher wage, lower tax, lower welfare society.
- The intended effect is to protect the low paid and allow low wage workers to take a greater share of the gains from growth."
25. The wages and welfare policies and legislation have prompted public debate in the United Kingdom about the desirability and implications of the changes of a kind that we have not had in Australia, even though similar budgetary issues have been raised here. ACCER submits that the FWC could provide a suitable and appropriate forum in which these matters could be considered. These matters and the budgetary considerations should be included in the kind of review proposed by United Voice, and supported by ACCER in its Reply of April 2016.

*ACCER's wage claims are fair and affordable*

26. The case presented by ACCER is based on changes in relevant factors over the past year and on an evaluation and consideration of current circumstances. These cover

social and economic factors. The wage increases that are sought are not based on estimates of changes in those kinds of factors over the next year. It is in the nature of minimum wage setting that wage adjustments reflect past changes in prices, productivity, community living standards and other factors. Wage cases are essentially based on what has happened, not which is about to happen. However, it is proper to look at the future trends to determine if there are any exceptional and valid reasons for limiting increases based on past events. In the current review ACCER seeks an increase in the NMW of \$25.10 per week and an increase in all award wages of \$19.00 per week. In percentage terms, the amounts claimed reflect the greater need for financial support at lower income levels; for example, the amount sought for the NMW is equal to 3.8%, at the C10 award wage rate the amount is equal to 2.5% and at an award rate of \$1,200.00 per week the amount is equal to 1.6%. In June 2015 the FWC awarded an increase of 2.5%.

27. There is nothing in the expected economic developments over the next year that would constrain the granting of ACCER's claims. In an overview of the economy the Treasurer, Mr Morrison, said:

"Australians know it is no easy task to secure jobs and growth in a highly competitive, volatile and uncertain global economy. Despite the challenges and the naysayers, we are already making it happen. Our economy last year grew by almost \$40 billion and added almost 300,000 jobs. Since the last election more than 440,000 jobs have been created. Unemployment has fallen to 5.7 per cent, and youth unemployment is lower than it was at the last election, including more than 50,000 new jobs created for young people in the last eighteen months alone. At three per cent, our economy has grown faster than the world's major advanced economies, faster than the United Kingdom, the United States, Japan and Germany. We are growing more than twice as fast as Canada, faster than New Zealand and Singapore, and matching it with economies like South Korea. Given the international headwinds and fragility, this is an achievement of which we should all be proud. So like the Australian people, we are upbeat and optimistic, even though some Australians are feeling the transition more acutely in some parts of the country than others." (*Budget Speech*, 3 May 2016)

28. This assessment of the strength of the Australian economy is supported by several of the major economic forecasts included in Table 1 of Statement 2 of *Budget Paper No.1: Budget Overview*:

- Real GDP is forecast to grow by 2.5% in both 2015-16 and 2016-17, up from 2.2% in 2014-15, before strengthening to 3% in 2017-18.

- The CPI is forecast to rise by 1.25% in 2015-16 and 2% in 2016-17.
  - The Wage Price Index is forecast to rise by 2.25% in 2015-16 and 2.5% in 2016-17.
29. This material supports ACCER's submission that its claims are both fair and affordable.

### **C. Response to Questions for Consultations, May 2016**

30. On 28 April 2016 the FWC published a series of questions for the participating parties to address prior to the final consultations on 10 and 11 May 2016. The questions are variously directed to all parties, to specific parties, and to specific parties with an invitation for others to respond. The following paragraphs respond to those where ACCER is able to assist the FWC in its request for further information and responses.

#### *Question 1.1*

31. Question 1.1 concerns submissions by the Australian Chamber of Commerce and Industry (ACCI) regarding the transparency of the FWC's decision making process. In particular, ACCI suggested that the tribunal should disclose the factors which are most relevant to its decision and quantify how the decision would have changed if key variables had been different. Question 1.1 also refers to a statement by the Productivity Commission in its *Workplace Relations Framework, Final Report* of November 2015 that it would often be better if the Panel itself re-investigated its prior positions, suggesting it reach its decisions afresh rather than consider changed circumstances from those existing at the time of earlier decisions. The FWC has invited all parties to respond to the Productivity Commission's proposal, which raises for consideration the basic transparency issue raised by ACCI.
32. ACCI made a similar submission in its submission to the Annual Wage Review 2014-15:
- “Given that a broad exercise of judgement guides the determination of the Panel, detailed explanation of the factors that most significantly influenced the Panel’s decision making would assist the parties in approaching future annual wage reviews. To ensure that all statutory considerations are appropriately taken into account, it is very important to justify how these considerations have been interpreted and operationalised and how judgements have been formed about the relationship between these considerations and changes in minimum and award wages, both in general and in relation to prevailing circumstances.” (ACCI submission, March 2015, paragraph 23)

33. The FWC responded to this submission at paragraphs 7 to 12 of its June 2015 decision ([2015] FWCFB 3500), where the substance of its response was “it is not feasible to quantify the weight given to particular factors in balancing the various considerations prescribed by the Act” (paragraph 12).
34. ACCI's March 2016 submission referred to this conclusion, but pressed a similar issue:
- "23. Whilst we understand the proposition in paragraph 12 of the 2015 decision that “The wide range of data and information before the Panel and the often complex interaction between these factors mean that a comparison between reviews will rarely be straightforward” the explanation of how the relevant decision or quantum is arrived at having regard to the ascertained facts or statutory considerations should have the necessary consistency from year to year to be readily explicable from the rules required to be applied to a determination. Hence, the transparency of the process should be given great weight. The Panel should explain in its decision the basis on which it differed from prior decisions and the manner in which the mix of statutory considerations in the current context differed from prior considerations. Continued emphasis on explaining the interplay of the factors that are brought to account is commended. ....
25. Whilst judgements are not always able to be fully explained, that issue should give added impetus to the Panel to disclose the factors which are most relevant, and quantifying how the Panel’s decision would have changed if key variables had been different. Although there is always more than one factor which changes from year to year, this sort of analysis would make the Panel’s decisions more transparent and improve the relevance of submissions in subsequent years.
26. The Australian Chamber accepts that the range of considerations the Panel must take into account means broad judgement is to be exercised in weighing the relative importance of different considerations, but that does not preclude quantification of the weight given to the most important considerations. Continuation and refinement of that process is commended."
35. These matters need to be considered in the light of the transparency requirements under section 577 of the *Fair Work Act 2009* and the relevant legal principles concerning the obligations of decision makers who are required to make decisions by reference to a range of matters specified in the legislation under which they operate. Section 577 provides that the FWC "must perform its functions and exercise its powers in a manner that...is fair and just...and...is open and transparent..."
36. ACCER has been concerned about transparency in annual wage review decisions since the first decision was made under the *Fair Work Act 2009*. In its March 2011 submission ACCER argued (at paragraphs 410-18) that there was a lack of transparency in the June 2010 decision ([2010] FWAFB 4000). ACCER was concerned about what it saw as a failure of Fair Work Australia (FWA), now the FWC, to give sufficient consideration to the needs of the low paid. The submission

relied on the application of the principles in the judgment of the Full Court of the Federal Court in *Minister for Immigration and Citizenship v Khadgi* [2010] FCAFC 145.

"414. Furthermore, section 284(1) of its nature requires FWA to engage in what has been described as "an active intellectual process" in which each of the prescribed circumstances receives "genuine" consideration. The last case mentioned in the extract from the judgment of the Full Court, *Lafu v Minister for Immigration and Citizenship*, contains, we submit, the requirements of decision-making under section 284(1): FWA 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.

415. *Lafu v Minister for Immigration and Citizenship* also emphasises another aspect of section 284(1). We submit that there is an obligation on FWA, as a decision-maker who is obliged to have regard to mandatory considerations, to show through its reasons for decision "an active intellectual engagement with all mandatory criteria". ....

417. ACCER submits that FWA is obliged to state the basis upon which it makes its decisions in an open and transparent way that would enable the public to know how it came to its decision. The fact that a decision is necessarily based on a range of factors does not justify opaqueness on critical parts of its decision.

418. There is a clear public interest in the public knowing how FWA arrived at its decisions. First and foremost low paid worker have a vital interest in knowing how FWA came to its decision about *their* needs. Many others also have an interest in this information; for example, employers, government, economic commentators and editorial writers. An explanation is also needed because the review of wages is an ongoing process. Those who represent or advocate for low paid workers are entitled to know what FWA has concluded about significant issues so that they can identify contentious issues and evidentiary matters and better prepare material for the future. If evidence about the living costs is rejected, the basis for that rejection should be disclosed so that the shortcomings in that material can be addressed and other evidence can be obtained."

37. These kinds of concerns were raised in ACCER's submissions in its 2013, 2014 and 2016 submissions. Its March 2016 submission referred to this matter in responding to the FWC's view in its June 2014 decision that its decisions had played a role in increasing the degree of inequality in the workforce because it was required to take into account "other factors" when setting minimum wages. After referring to the application of the principles in *Minister for Immigration and Citizenship v Khadgi* and *Lafu v Minister for Immigration and Citizenship* [2009] FCAFC 140 the submission continued:

"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."

38. *Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage and the Arts* [2011] FCAFC 59 was a judicial review under the *Administrative Decisions (Judicial Review) Act 1977* by a Full Court of the Federal Court of Australia of a decision made under the *Environment Protection and Biodiversity Conservation Act 1999*. Although these principles were identified in the kind of judicial review that does not apply to the FWC, we submit that they are the appropriate principles to be applied in annual wage reviews. The following appears under the heading "Relevant Legal Principles":

44. The obligation of a decision-maker to consider mandatory relevant matters requires a decision-maker to engage in an active intellectual process, in which each relevant matter receives his or her genuine consideration (see *Tickner v Chapman* (1995) 57 FCR 451 at 462 and *Minister for Immigration and Multicultural Affairs v Jia* (2001) 205 CLR 507 at [105]). However, in the absence of any statutory or contextual indication of the weight to be given to factors to which a decision-maker must have regard, it is generally for the decision maker to determine the appropriate weight to be given to them. The failure to give any weight to a factor to which a decision-maker is bound to have regard, in circumstances where that factor is of great importance in the particular case, may support an inference that the decision-maker did not have regard to that factor at all. Similarly, if a decision-maker simply dismisses, as irrelevant, a consideration that must be taken into account, that is not to take the matter into account. On the other hand, it does not follow that a decision-maker who genuinely considers a factor but then dismisses it as having no application or significance in the circumstances of the particular case, will have committed an error. The Court should not necessarily infer from the failure of a decision-maker to refer expressly to such a matter, in the reasons for decision, that the matter has been overlooked. But if it is apparent that the particular matter has been given cursory consideration only so that it may simply be cast aside, despite its apparent relevance, then it may be inferred that the matter has not in fact been taken into account in arriving at the relevant decision. Whether that inference should be drawn will depend on the circumstances of the particular case (see *Minister for Immigration and Citizenship v Khadgi* at [2010] FCAFC 145; (2010) 274 CLR 438 [58]–[59]).

45. Once a matter has been identified as a mandatory relevant consideration, it is the salient facts that give shape and substance to the matter that must be brought to mind. These are the facts which are of such importance that, if they are not considered, it could not be said that the matter has been properly considered (see *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 61).

46. A statement of reasons given by a decision maker can constitute evidence of the material put before the decision maker, the way in which that material has been dealt with and the reasons for which the decision was made. A failure to include reference to a matter in a statement of reasons may justify the inference that, as a matter of fact, the matter was not taken into account. Thus, a statement of reasons may be accepted as evidence of the truth of what it says, namely, that the findings made and the evidence referred to and the reasons set out are as stated in the statement of reasons. It can be accepted as evidence that no finding, evidence or reason that was of any significance to the decision has been omitted (see *Minister for Immigration and Ethnic Affairs v Taveli* [1990 FCA 169; (1990) 23 FCR 162 at 179 and 182).

47. A statement of reasons under s 13 of the Review Act does not require a decision-maker to pass comment on all of the material to which his attention has been drawn and to which he has had regard. What the provision requires is that the decision-maker set out his or her findings on 'material questions of fact'. While a failure to include a matter in a statement of reasons may justify a court inferring, as a matter of fact, that the matter was not taken into account, such an omission is not necessarily conclusive (see *Our Town FM Pty Ltd v Australian Broadcasting Tribunal* [1987] FCA 301; (1987) 16 FCR 465 at 485). Whether that inference will be drawn in a particular case will depend on all the circumstances (see *ARM Constructions Pty Ltd v Commissioner of Taxation* (1986) 10 FCR 197 at 205).

48. The Appellant's complaint is that the Minister failed to participate in any 'active intellectual engagement' with the loss of critical habitat or the Draft Plan. It complains that there was a failure to give weight to those matters as fundamental elements in making a determination: there was mere advertence to the matters, which were then discarded as irrelevant, and a failure to consider the salient facts that give shape and substance to the matter, being facts of such importance that, if they were not considered, it could not be said that the matter had been properly considered. If there were any such failures there would be jurisdictional error.

39. We agree with the FWC's conclusion in the June 2015 decision that "it is not feasible to quantify the weight given to particular factors in balancing the various considerations prescribed by the Act" if the quantification involves the pursuit of some kind of formula, but we submit that a decision should address the various issues that need to be considered in a way that would give the reader an understanding of the relative weight that the tribunal has given to each of the factors. It is not possible to provide a check list of what needs to be addressed because that that will depend on each case. On the particular question of whether each issue has to be revisited, the answer must depend on how relevant the issue is to the review being conducted. We favour a broad approach, rather than a narrow approach, to decision writing. ACCI's request for the FWC to quantify how its decision "would have changed if key variables had been different" appears to be asking for too much detail on matters that may be hypothetical.

40. The guiding rule, we submit, for the writing of decisions is the recognition that these are public documents dealing with a range of issues relevant to the interests of a wide range of citizens. The decisions should enable citizens to understand the substance of the evidence and submissions before the FWC. Citizens should not have to seek out that information by searching through the submissions and the evidence made and tendered by the parties; nor should they have to read past decisions in order to understand the reasoning in a particular case.

*Question 2.1*

41. Question 2.1 concerns that part of the submission by the Australian Government's of March 2016 concerning those groups which "experience relatively poor outcomes in the labour market". The groups are the long-term unemployed, youth, indigenous unemployed, low-skilled unemployed and persons in weak regional labour markets.

Three questions are posed for the Government and other parties:

"Is there any evidence that minimum wages (and changes in minimum wages) contributed to the more disadvantageous labour market outcomes for these groups? Further, is there any evidence that lower minimum wages would improve the relative labour market outcomes for these groups? Are minimum wages particularly well suited to addressing the complex factors underlying the circumstances of those groups within the labour market?"

42. ACCER's answer to each of these questions is "no". The answer to the disengagement of these groups from regular and secure employment that pays a decent wage lies in the provision of targeted programmes essentially funded by the Commonwealth. These may consist of financial incentives to employers and workers, but in many cases effective programmes will require substantial skills development, work experience and vocational counselling. The Youth Jobs PaTH initiative announced in the May 2016 Budget is recognition of the need to target youth employment. It has attracted some debate about its nature and detail. If it operates in a way that provides participants with a decent income and treats them with respect then it will serve the interests of the community and the participants themselves.

*Question 3.1*

43. Question 3.1 concerns the Budget Standards research project currently being undertaken by the Social Policy Research Centre at the University of New South Wales (see Chapter 7D of the Attachment to ACCER's March 2016 submission). The FWC has sought advice from several parties, including ACCER, concerning the

program for the project and the likely timing of the availability of contemporary budget standard benchmarks arising from the project. One of the participating parties in this project is Catholic Social Services Australia, which, like ACCER, is an agency of the Australian Catholic Bishops Conference. ACCER has sought advice, but it is not yet available. It will be provided as soon as it becomes available.

#### *Question 4.4*

44. Question 4.4 invites submissions on the view in a publication of the Organisation for Economic Cooperation and Development (OECD) that rising income inequality, especially the low level of and growth in wages of low skilled workers, has reduced levels of economic growth in OECD countries. The question refers to a passage in the March 2016 submission by the Australian Council of Trade Unions relying on the OECD's view:

"The rise of income inequality .. is estimated to have knocked 4.7 percentage points off cumulative growth between 1990 and 2010, on average across OECD countries.. The key driver is the growing gap between lower-income households – the bottom 40% of the distribution – and the rest of the population. ... In particular, low-skilled temporary workers face substantial wage penalties, earnings instability and slower wage growth." (*In It Together: Why less inequality benefits all*, page 15, Organisation for Economic Cooperation and Development, May 2015)

45. It cannot be denied that society as a whole suffers economically when economic inequality reaches the point where the lowest income groups do not have the opportunity and capacity to develop their skills and talents, and when parents are unable to afford a decent life and education for their children. Poverty and income-related disadvantage have economic costs, including opportunity costs.
46. ACCER's March 2016 submission (at paragraphs 567-9 of the Attachment) refers to a Productivity Commission Staff Working Paper, entitled *Deep and Persistent Disadvantage in Australia*, which includes an extensive consideration of the costs of disadvantage (see pages 147-86). It refers (at page 160) to several studies that have sought to estimate the costs of childhood poverty. One study in the United States estimated the cost of child poverty at 4% of GDP in the United States. A study in the United Kingdom put the annual cost of child poverty at 2% of GDP.
47. We have an acceptable degree of poverty and disadvantage in Australia, including in wage-dependent families, has an adverse economic impact on the national economy. More importantly, economic powerlessness and social exclusion deny a person his or her human rights and strike at the most basic requirements of justice.