

Working Australia, 2017: wages, families and poverty

Brian Lawrence, editor
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Preface

Working Australia, 2017: wages, families and poverty is the product of a number of submissions made to national minimum wage reviews over more than the past decade by the Australian Catholic Council for Employment Relations (ACCER).

Minimum wage setting is one of the most important areas of Australian public policy. Decisions made in the annual reviews have an immediate impact on the lives of the lowest paid workers and their families and a wider impact on Australian society. Despite this, the issues and evidence considered in wage reviews are little known in the broader community. To help promote wider knowledge of these matters ACCER decided to change the format and presentation of its 2014 submission and to publish a free of charge ebook incorporating the submission. The practice continued and this is the fourth annual book in the series.

This book has 10 chapters and three appendices. Chapter 9 is ACCER's March 2017 submission to the Annual Wage Review 2016-17. The manuscript of the first eight chapters was attached to ACCER's submission when it was lodged with the Fair Work Commission (FWC). A number of those chapters and chapter sections were relied upon in support of ACCER's claims for wage increases.

Chapter 10 comprises further submissions made by ACCER in April and May 2017. Chapter 11 is a response to the FWC's decision of 6 June 2017.

As we have done in previous years, we have included in this book appendices covering Catholic social teaching on work, economic relations and the rights of workers (see Appendix B) and the Australian Bishops' Statement of November 2005 on the then proposed *Work Choices* legislation (see Appendix C).

The book has been written in a way that requires no special familiarity with wage setting, with the chapters being designed to build on each other. The chapters are largely self-contained so that they may be read separately. Acronyms are introduced afresh in each chapter. We suggest that you read Chapter 9 and Chapter 10E (which reviews the FWC's decision of 6 June 2017) before reading the earlier chapters.

Our main message is that the wages safety net is failing to keep workers and their families out of poverty and provide them with a standard of living that is appropriate by reference to contemporary Australian living standards. We believe that there is widespread support for the principle that full time work should be sufficient to keep families out of poverty, at the least, in the ordinary cases in which working families find themselves.

Our principal objective is to increase the National Minimum Wage (NMW) to the point where it can be fairly described as a living wage. We argue that the wage rates for a large number of low paid award work classifications do not provide a living

wage. The relief of poverty and the addressing of the needs of the neediest workers should have priority in minimum wage setting. Poverty and low living standards should be targeted over successive wage cases. We propose that it be commenced in two ways: by the awarding of uniform money increases (not percentage increases) to all award rates of pay and the awarding of a greater increase in the NMW.

This year ACCER claimed an increase in the NMW of \$37.30 per week, or 5.5% , and a uniform increase of \$30.70 in respect of the award rates of pay. At the trade-qualified C10 wage rate the award claim amounts to an increase of 3.9%. The claims were substantially higher than those made in previous years because of the economic impact on families as a result of the withdrawal of the Schoolkids Bonus at the end of 2016.

On 6 June 2017 the FWC awarded a uniform increase of 3.3% to the NMW and all award wage rates. The 2017 decision, like earlier decisions, failed to target poverty. The “one size fits all” approach cannot target poverty and provide sufficient assistance to the neediest sections of the Australian workforce.

Brian Lawrence

23 June 2017

About the editor

Brian Lawrence holds Bachelor of Laws and Master of Economics degrees. He practised as a barrister at the Victorian Bar from 1971 to 2009, save for 1987 to 1993 when he was a Deputy President of the Industrial Relations Commission of Victoria, and specialised in industrial and employment law from 1977. He was appointed honorary Chairman of the Australian Catholic Council for Employment Relations (ACCER) in May 2007 and held that position until his retirement from ACCER in November 2015. Since his initial appointment to ACCER in 2002 he has been the primary drafter of its annual wage review submissions and has been its advocate in most of the reviews since 2005. He has continued in this role since his retirement from ACCER. In 2015 he was awarded a papal knighthood (KSS). He is married to Elizabeth Proust.

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List of Abbreviations

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

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WORKING AUSTRALIA, JANUARY 2001 TO JANUARY 2017

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**Working Australia, 2017:
wages, families and poverty**

CHAPTER 1

WORKING AUSTRALIA, JANUARY 2001 TO JANUARY 2017

A. INTRODUCTION

1. This is the fourth 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 rising levels of poverty in Australian working families and increasing inequality in Australian society.
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 self-contained 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 2017, 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 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 now 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 rely on the National Minimum Wage (NMW), now at \$672.70 per week, and the wages set by awards covering low paid work classifications. Low paid workers comprise those who only receive the minimum legal wage rate and those who are paid more than the legal minimum, but not sufficient to enable them and their families to achieve a basic acceptable standard of living and to live in dignity.
7. The NMW is established under the *Fair Work Act* as a general right that is not tied to any level of skill or responsibility. The great majority (about 95%) of workers who are covered by the NMW are also covered by an award which covers a defined occupation and/or industry. These awards provide a higher wage rate for work classifications that require higher levels of skill and responsibility. The scheme of the *Fair Work Act* requires that the NMW and award wages be set by reference to slightly different factors and that the NMW be decided before the adjustments to award wages are determined. The NMW is intended to operate as the basic safety net for Australian workers whether or not they are covered by an award. It would be contrary to the intention of the legislation for the FWC to rely on higher award rates to provide the safety net that is intended to be provided by the NMW. Yet this is, as we shall see, the effect of the FWC’s decisions. Although the percentage covered only by the NMW is small, the presence of this group reinforces the need for fair wages to be set by the NMW and not by the award system.
8. 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. Many workers are paid at higher wage rates through collective or

individual agreements. 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. The ability of unions to achieve decent wage outcomes for lower paid workers varies and many workers are effectively excluded from the collective bargaining framework established by the *Fair Work Act*.

Poverty matters and wage decisions affect child poverty

9. The stated object of the *Fair Work Act* is "... to provide a balanced framework for cooperative workplace relations that promotes national economic prosperity and social inclusion for all Australians ..." (section 3). The promotion of social inclusion underpins the particular obligation on the FWC to "establish and maintain a safety net of fair minimum wages, taking into account [among other factors] ... relative living standards and the needs of the low paid" (section 284(1)). It means that the FWC has to consider the living standards and needs of wage-dependent workers, whether they be totally reliant on the minimum wage rates set by the FWC or on some higher, but inadequate, wage rate that has been achieved by collective or individual bargaining.
10. A precondition for social inclusion is a decent 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 best way out of poverty is through a job that pays a decent wage.
11. The welfare of families in contemporary society 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.
12. 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)

13. 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 should not be ignored or glossed over in wage review decisions. Regrettably, this has been the case.
14. 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, which 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

15. 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, in the ordinary and expected cases, keep wage-dependent families out of poverty and provide them with a decent standard of living. 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

16. 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.
17. 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.

The single person benchmark

18. 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.
19. 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.
20. 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 the total responsibility for the support of the dependants of low paid workers. Yet it was clear that the Commonwealth had not assumed that responsibility and did not intend to. In fact, its May 2014 Budget, handed

down before the FWC's decision in June 2014, proposed very large cuts in family payments.

21. In the following year ACCER's 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 2D and E.
22. ACCER's submissions on the single person criterion were successful. However, they not the subject of any analysis by the FWC. 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 *Annual Wage Review 2014-15, Decision* [2015] FWCFB 3500 (June 2015 decision), paragraphs 140 to 143. This effectively disposed of the single person household criterion 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.
23. The FWC, nevertheless, saw a role for the single person 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".
24. Starting with an analysis of the position 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, as we explain in our discussion of the June 2015 decision in Chapter 2D, there was some reason at that time to believe that the purpose of the inquiries proposed by the FWC may have been to provide a decent standard of living to single workers and to merely provide workers with family responsibilities a standard of living that is free from poverty. If this is what

the FWC proposed it would be a matter of substantial importance in the operation of a system designed to provide a fair safety net of minimum wages. We return to this issue in Chapter 2F when discussing the FWC's decision in May 2016.

Family payments cut and more are threatened

25. 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 disposable incomes and family welfare have changed markedly. The change in the level of family payments has been a major factor in constraining wage increases over this period. Targeted support for families has kept wage increases lower than they would have otherwise been.
26. In 1973 a single breadwinner family of a couple and two children dependent on a wage that was then the equivalent of the NMW received 7.7% of its disposable income from the public purse; see Table 11 in Chapter 5. The high point of the long term increase in family support was reached in 2016. 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. At January 2017 this family's transfers from the public purse had fallen to 37.7%, largely as a result of the abolition of the Schoolkids Bonus at the end of 2016, with the prospect of more to come; see section E, below. This is more than a re-balancing of the respective contributions of the public purse and the wage packet to family incomes: even after the FWC's 2016 wage increase of 2.4% the family had less disposable income in January 2017 than it had in January 2016: down from \$980.78 to \$973.71 per week.
27. Although substantial, family payments are not sufficient 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. Just three weeks before the decision by the FWC to adopt the single person criterion, the then 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)

28. Since May 2014 the Commonwealth's annual Budgets have contained various measures to reduce the amount of transfers to low and middle income families. Some of the measures proposed in the May 2014 Budget have been passed. The Schoolkids Bonus was removed at the end of 2016. In the case of a family with a child at primary school and another at secondary school, the loss was \$24.65 per week. At the end of 2015 the Government was able to secure the support of the Labor Opposition for the passage of legislation to remove from single breadwinner couple parent families, but not sole parent families, the ability to receive Family Tax Benefit, Part B (FTB B) once their youngest child turns 13. The Australian Greens opposed this change. The change in eligibility caused many couple parent families to lose \$62.28 per week (plus indexation) during the time that the child remains at secondary school. We say more about this change in section E, below; but it should be noted that the legislation discriminated against parents by reason of their cohabitation in marriage, including *de facto* marriage, and against children on the basis that their parents' relationship.
29. Many of the proposals in the 2014 Budget that sought to cut family payments have been blocked in the Senate, but the Government has continued to press those proposals, though in a modified form. On 8 February 2017 the Government introduced another Bill which includes provisions that would reduce the rate of Family Tax Benefit, Part A (FTB A) and to make further changes to FTB B payments; see *Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017*, which has been generally known as the Omnibus Bill. As a result of continued opposition and negotiation with cross bench senators agreement was reached in 22 March 2017 to the withdrawal of the proposals to cut family payments and to replace them with a two year freeze on the fortnightly payments of FTB A and FTB B payments. On that day the newly introduced *Social Services Legislation Amendment Bill 2017* was agreed to by the Senate. We return to these matters in section E of this chapter.
30. This changes 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.

31. It might be thought that this increase came during the pre-Global Financial Crisis (GFC) spending of the “rivers of gold” that came into the Treasury. This is not the case. In January 2001 the NMW-dependent family’s disposable income from the public purse was 37.5%, almost identical to the 37.7% in January 2017. The most significant change in family support during the pre-GFC years was the extension of family payments into higher income groups. Over the 16 years from January 2001 the NMW-dependent family saw an increase in family transfers from \$150.99 to \$277.11 per week, while a similar family in receipt of Average Weekly Ordinary Time Earnings (AWOTE) saw an increase from \$72.17 to \$215.62 per week; see Chapter 6, at Table 19. (Both figures exclude rent assistance.) The NMW-dependent family now receives \$290.56 per week (including the value of the Medicare levy exemption) with a gross wage of \$672.70 per week, whereas the middle income family receives \$215.60 per week on top of a net wage of \$1,533.10 per week.
32. The planned cuts to family payments are sometimes justified on the basis that they are remedying the effects of unsustainable improvements in the pre-GFC years, but the budgets low income families, who have been least advantaged over these years, would suffer relatively greater cuts than the budgets of middle income earners, who have been the most advantaged. There is a case that can be made for family support to be set at a standard rate across all income groups which reflects the basic costs of raising children, but when that is not accepted, as is the case now, the poorest need to be given priority.

B. 16 YEARS OF INCREASING AFFLUENCE AND POVERTY

33. The last 16 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 GFC and the continuing global economic uncertainty. There are currently clouds on the economic horizon, but the Australian economy remains relatively strong.
34. By way of introduction to this section we refer to two assessments of changes in the living standards of working Australians and their families. For some years the Commonwealth Budget Papers have included an overview of how living standards have risen for various kinds of households by reference to changes in wages, taxes and transfers. The overview for workers and their families is presented in terms of the AWOTE measure of average weekly earnings and not by reference to the minimum wage rates, which give a very different picture of the position of many low income and

minimum wage-dependent workers and their families. Although each overview includes an element of estimation for the then current year, these documents present a picture of robust economic change.

35. There are two Budget documents that summarise this change in average living standards over the past two decades:

(a) The last Budget of the Coalition Government in May 2007 provides a summary of the projected improvement in real disposable incomes over the period 1996-97 to 2007-08, which was the period of Coalition Government. For the single AWOTE income couple with two children, the *real* increase (measured in 2007-08 dollars) was projected to be 34.6% and for the single person on AWOTE the figure was 25.6%; see *2007-08 Budget Overview, Appendix A, Higher household incomes*. In effect, this was the claim for the Coalition years.

(b) In the last Labor Budget in May 2013 the projected increase in real disposable incomes was for the period 2007-08 to 2013-14. For the single AWOTE income couple with two children the *real* increase (measured in 2012-13 dollars) was projected to be 8.4% and for the single person on AWOTE the figure was 11.8%; see *2013-14 Commonwealth Budget Overview, Appendix C Helping households with the cost of living*. In effect, this was the claim for the Labor years.

36. These kinds of figures have been at the centre of the narrative promoted by successive Governments over the last two decades. As we shall see, the narrative hides some significant counter-trends of that time. Neither side of politics has an interest in publicising the outcomes of those who are losing the battle to maintain living standards. The AWOTE measure has hidden the widening gap between sections of the workforce.

Falling relative living standards

37. Over the 16 years to January 2017 the AWOTE measure of average weekly ordinary time earnings increased by 91.9% (see Table 10 in Chapter 5), while the rate of inflation measured by the Consumer Price Index (CPI) increased by only 50.5% (see Table 1 in Chapter 3). By comparison, the NMW has increased by 68.0% over the past 16 years. As a consequence the NMW fell from 50.1% to 43.9% of AWOTE over the 16 years to January 2017. For low paid workers on the base trade-qualified C10 award rate (now at \$783.30 per week) the relativity fell from 61.6% to 51.1% over the same period; see Table 15 in Chapter 6. This has meant that those who are only paid the NMW or the minimum award rate and those whose higher rates are set by reference to those safety

net rates have seen falling living standards since the turn of the century. The economic pie has been growing, but the relative size of the slice going to the low paid has been reduced.

38. The growing disconnection between low paid minimum wage-dependent workers and the broader community can also be measured by references to the relative changes in minimum wage rates and national median wages. In the current Annual Wage Review, United Voice and the Australian Council of Trade Unions (ACTU) have asked the FWC to address the falling relative value of minimum wages by setting a medium term target for the NMW. They have pointed to the stunning loss of relativity between the NMW and the median wage and asked that the FWC adopt, as a medium term target, the setting of the NMW at 60% of median wages. This downward trend has flowed through to award wage rates. The ACTU and United Voice proposed that the adjustment to award rates be the subject of determination in each annual wage review and not be linked to the NMW-target.
39. The data produced by the unions showed that until 1992 the NMW was never less than 7.0% above 60% of median wages. By 1999 the NMW had fallen to less than 60% of the median. Since 2008, it has been at least 9.0% below 60% of the median. In the four years from 2004, a period coinciding with the *Work Choices* years, the NMW dropped by about four percentage points. In each of the three years to 2016 the NMW has been at or very close to 11.0% below 60% of the median.
40. It should also be noted that in August 1997, four months after the NMW was first set (and then called the Federal Minimum Wage), the NMW was 3.0% above 60% of the median. After 19 years it had fallen from 3.0% above to 11.0% below 60% of the median.
41. The application was heard in October 2016 as a preliminary issue. A decision is expected to be handed down in early April 2017, with the parties being given an opportunity to respond to that decision.

Increasing poverty

42. The broad economic growth over the past 16 years has masked some serious counter-trends. The changes in relative wage levels of low paid work demonstrate a very concerning change in the circumstances of 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. Many low paid workers and their families are further away from a decent standard of living and have fallen below, or closer to, rising poverty lines.

43. The figures produced by the ACTU and United Voice also demonstrate that we have had increasing poverty because the minimum wages system has not provided 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.
44. Compared to the rest of the workforce, *all* safety net-dependent workers are *relatively* worse off in 2017 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 relative living standards and increasing numbers falling into poverty.
45. As measured by the 60% relative poverty line, the changes have been dramatic. Over the 13 years from January 2004, the NMW-dependent family of a couple and two children referred to in paragraph 126 fell further below the poverty line: from 3.3% below to 11.7% below; see Chapter 8C. In January 2017 they had a poverty gap of \$129.51 per week. Many more families fell below the poverty line. Even trade-qualified workers on the widely-used C10 wage classification, whose wage we would have assumed could support a family of four (of the same kind as the NMW-dependent family) at a decent standard of living, saw their family's position fall from 7.6% above the poverty line in January 2004 to 4.6% below the poverty line in January 2017, with a poverty gap of \$51.04. These are dramatic changes which deserve close attention.
46. This decline in relative living standards is also illustrated by the change in the position of single workers. Over the same period, January 2004 to January 2017, the single NMW-dependent worker's margin over poverty fell from 26.0% to 15.4%. At the C10 wage level the single person's margin fell from 48.3% to 29.9%. This substantial decline in living standards has been the result of falling relative wages.

Growing inequality

47. A corollary of rising poverty levels is rising inequality. Since 2001 there has been growing inequality between safety net-dependent workers, including those whose higher wage rates are set by reference to safety net rates, and the workforce as a whole.
48. Growing inequality was not inevitable, nor was it needed for the overall national economic growth since 2001. This is not a case where the low paid had to pay the price

for the progress of the better off. If it were, it would require some serious soul-searching about the way in which our socioeconomic system works. Growing inequality has, however, been the result of conscious, but unarticulated, decisions of successive wage setting tribunals. Each year those tribunals have had enough evidence to demonstrate the long term path of minimum wage rates, with the result of increasing poverty and inequality between those who rely in some way on minimum wage rates. Increasing inequality may not have been chosen as a policy objective, but it was allowed to happen for reasons that have not been satisfactorily explained.

C. A DECENT WAGE IS A HUMAN RIGHT

49. The origins 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.
50. 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)).
51. 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)).
52. 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.

53. 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 regarding the protection of children and young persons. The resolution concerned a wage that would maintain the family at an adequate standard of living:

“[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)).

54. 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.
55. 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--

- (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.”

56. 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, emphasis added.

57. The wage setting provisions in the *Fair Work Act 2009* are consistent with Australia's 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.
58. 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.)

59. 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 emphasises the need 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.

60. 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.
61. 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 ignore human rights and 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.

Reasonable and proportionate application of human rights

62. 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 the 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 by the FWC, must be reasonable and proportionate to the power conferred. The right that is recognised does not extend to the setting of a minimum wage for exceptional cases, such as the setting of a wage that would be needed to support a family with nine children.
63. There are practical questions to be asked in giving effect to the right recognised in the Covenant and to the protection intended by 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?

64. 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, because two best approximates the number of children in Australian families. Single persons would, of course, fall into the ordinary and expected test. Couples and sole parents with one child would also be included, 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. Larger families will, of course, benefit from a wages safety net that supports smaller families at a decent standard of living. The extra needs of the families who fall outside the immediate ambit of the wages safety net should be met by government.

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

65. ACCER's principal reason 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. Poverty, which can be defined as an inability to buy the material resources required to meet basic needs, must be part of any formulation of a minimum wage objective. If it is not the decision makers have lost sight of the fundamental purpose of minimum wage system. Furthermore, 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.
66. As the poverty data referred to in the section B demonstrates, the position of low income workers has deteriorated. The experience of the *Work Choices* years (discussed in Chapter 3A) meant that we welcomed the *Fair Work Act* when it was enacted in 2009. From the first annual wage review in 2010 ACCER argued that the NMW was inadequate and needed to be increased over time so that fewer workers and their families would be left in poverty. 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. Apart from the general increases, no increases have been made to the NMW.

67. The absence of apparent direction in wage setting was highlighted in the FWC's *Annual Wage Review 2011-12, Decision*, [2012] FWA FB 5000 (June 2012 decision) where poverty was not even mentioned, even though there was substantial evidence before the FWC regarding poverty. In 2013 ACCER referred to that omission and argued that the first three 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)

A standard of living that exceeds poverty levels

68. The FWC responded in its 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." (*Annual Wage Review 2012-13, Decision*, [2013] FWC FB 4000 (June 2013 decision), paragraph 33)

69. 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. The reference in the second sentence the conventional measure of poverty references to the 60% relative poverty line, which is referred to in section B, above, and explained further in Chapter 8.
70. The last sentence in this quotation has been repeated in all three decisions since 2013: in the June 2014 decision at paragraph 323, in the June 2015 decision at paragraph 383, and in the May 2016 decision in the following paragraph:

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

The essentials for a decent standard of living

71. Also included in the June 2013 decision was a passage that described what a standard of living in excess of poverty would mean. The relevant passage appeared in the FWC's consideration of the needs of the low paid:

“[361] The minimum wages objective and the modern awards objective [in the *Fair Work Act*] both require us to take into account two particular matters, relative living standards and the needs of the low paid. These are different, but related, concepts. The former, relative living standards, requires a comparison of the living standards of award-reliant workers with those of other groups that are deemed to be relevant. The latter, 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. The assessment of what constitutes a decent standard of living is in turn influenced by contemporary norms.”

72. Similar paragraphs in regard to the needs of the low paid appear in the June 2014 decision (at paragraph 302), the June 2015 decision (at paragraphs 36 and 311) and in the May 2016 decision. The formulation used in the May 2016 decision was:

“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.” (Paragraphs 55 and 352)

The operational objective

73. From these two positions articulated over the past four decisions we can formulate the following:

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.

74. This composite formulation can be called the basic operational objective of the minimum wage system. It is the operational objective of the NMW, upon which the award system should operate, with award classifications and wage rates recognising increasing levels of skills and responsibilities among different work classifications.
75. It is immediately apparent from this formulation, as it is from each of the FWC's underpinning statements, that it is unlimited in its terms. However, not every worker in Australia who is employed on the NMW or an award rate can expect the full benefit of the application of this objective. This point has been made by the FWC in its June 2015 decision (at paragraph 338): “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.”

76. The extracts from the FWC’s decisions, summarised in the operational objective, beg an important question:

“Which workers in full time employment can reasonably expect a standard of living for themselves and their families that exceeds poverty levels and provides them and their families with an income that will enable them to purchase the essentials for a decent standard of living for themselves and their families?”

77. Save for its short-lived adoption of the single person criterion in 2014, which narrowed the prospect of freedom from poverty and a decent standard of living, the FWC has given no indication of its own views on the answer to this question. ACCER raised the question in its March 2016 submission in the Annual Wages Review 2015-16, but there was no response from the FWC.

The application of human rights

78. In the previous section we discussed the application of generally expressed human rights, such as the worker’s right to a wage that provides a “decent living for themselves and their families” under Article 7(a)) of the *International Covenant on Economic, Social and Cultural Rights*, and the obligation of Australia to enact legislation to give effect to that right. Compliance with generally expressed human rights requires that the domestic legislation introduced by a country bound by the obligation are reasonable and proportionate to those rights. Similarly, decisions made under that legislation, such as those made by the FWC, need to be reasonable and proportionate to the right that is recognised by the legislation. Because of the connection between the legislation and Australia's international human rights obligations the NMW should give reasonable and proportionate effect to the right that is expressed in the Covenant. The protection provided by the NMW 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 need to be covered.
79. Given the importance of these matters we should expect that the FWC would state its view on the proportionate and reasonable application of the right to a decent standard of living and, in terms of the operational objective, the workers in full time employment who are can reasonably expect a standard of living for themselves and their families that exceeds poverty levels and provides them and their families with an income that will

enable them to purchase the essentials for a decent standard of living for themselves and their families

Words not reflected in decisions

80. ACCER was happy to see this change 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).
81. The 2.6% wage increase awarded in 2013 was the same for high paid and low paid classifications. Poverty was not targeted or prioritised 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 as far away as it was when the FWC did not even mention poverty in 2012.
82. 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, the FWC observed:

"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.)
83. In 2015 and 2016 uniform increases of 2.5% and 2.4%, respectively, when there was again substantial evidence of widespread poverty in wage-dependent families; and when, as we explain later, the FWC had accepted that its first task in an annual wage review was to set the NMW independently of award rates of pay.

Claims for increases that would target poverty rejected by FWC

84. Since 2010 the wage claims made by the ACTU and ACCER have been based on the need to give relatively more, in percentage terms, to low paid workers.

85. In 2010 the ACTU sought a flat money increase across all wage rates, but since 2011 it has sought dollar increases in the NMW and in award minimum wages up to and including the C10 classification rate and percentage increase in all award minimum wages above that level. In 2016 the ACTU's claim comprised an increase of \$30.00 per week to the C10 level (then \$764.90 per week) and a 3.9% in award rates above that level. At the NMW level the claimed \$30.00 per week equated to an increase of 4.6%.
86. The two-tier claims were intended by the ACTU to protect the interests of higher paid workers while providing a little more to the lower paid who were most in need of financial support. In the six years that the ACTU has sought dollar amounts for lower paid workers the C10 wage rate increased by \$119.70 per week (from \$663.60 to \$783.30), compared to an increase of \$102.80 per week in the NMW (from \$569.90 to \$672.70). While the extra amounts in each year would have been small, the difference between the two, \$16.90, is significant, especially for the many working families living in poverty. It was more than the increase of \$15.80 per week in the NMW awarded by the FWC in 2016.
87. In each year from 2011 to 2015 ACCER supported that approach up to the C10 rate, albeit that ACCER's money and percentage claims were lower than the ACTU's. In 2016 ACCER departed from this approach and sought a money increase of \$19.00 per week across all award rates (which was equal to 2.5% at the C10 classification) and an increase of \$25.10 per week in the NMW.
88. Since the first annual wage review under the *Fair Work Act* in 2010, ACCER has argued for the NMW to be increased over time to the base wage rate set for cleaners under the *Cleaning Services Industry Award*, with subsequent adjustments to be based on further research into the needs of low paid workers and their families. The base rate for cleaners is currently \$718.40 per week, or \$45.70 per week more than the NMW.
89. In each of its claims from 2011 to 2016 ACCER asked for an extra increase in the NMW on top of the increases in award rates as a modest first step for those in most need and towards setting the NMW at a rate that would provide freedom from poverty and a decent standard of living; and it would be, as the *Fair Work Act* intends, a sound base upon which the award system could provide wage rates for increases in skills, responsibilities and other relevant factors. Each year ACCER foreshadowed further "bottom up" claims working towards the cleaner's base wage rate, at least. The extra increase in the NMW for the benefit of the lowest paid and the awarding of money

increases for other low paid workers was proposed as a phased attack on poverty, which could be done consistent with economic circumstances.

Framing the issues

90. In 2015 ACCER framed the problem and the solution in the following way:

"The NMW and the rates set for low paid award classifications are not living wages: they do not enable families to provide for their children, to live in dignity and to achieve a basic acceptable standard of living by reference to contemporary national living standards. This assessment is made on the basis of the ordinary and expected situation in which workers find themselves and is not made on the basis of unusual or exceptional circumstances.

Our specific objective is to increase the NMW to the level where it can be rightly described as a living wage. In 2015, as in previous years, ACCER proposes that this be done by way of modest adjustments over the next few years, principally by the awarding of a further increase in the NMW, but also by the awarding of a money increase, rather than a percentage increases, in the wage rates for lower-paid work, i.e. those set for the C10 trade-qualified, or equivalent, classifications. These targeted increases are proposed along with general increases in safety net rates that reflect cost of living increases, productivity gains and the improvements in incomes across the broader Australian community." (ACCER submission, March 2015, paragraphs 13 and 14.)

"Our claim for an extra \$10.00 per week in the NMW is a specifically targeted modest first step in alleviating poverty. Continuing the practice of increasing the NMW, and its predecessor the FMW, by the same amount as the increases in award rates, regardless of the relative needs of the lowest paid, will not target poverty. This is a modest proposal, with similar increases being foreshadowed over the next few years to bring the NMW up to the base wage rate for cleaners which, as we have seen, still delivers a poverty wage. *Our proposal may be criticised for being too modest given the level of in-work poverty, but if it is accepted by the FWC as the first step in a planned principled and realistic evidence-based process, it is more likely to bear fruit than making claims that have no realistic prospects of success.*

The cleaner's base wage rate is our initial target rate for the NMW in the expectation that by that stage there will be a completed research program on Budget Standards from the Social Policy Research Centre at the University of New South Wales." (ACCER March 2015 submission, paragraphs 35-6), emphasis added.

91. ACCER proposed that poverty be targeted over time in a "planned principled and realistic evidence-based process". It did not propose that poverty be "simply targeted" without reference to principle and evidentiary requirements, ie without regard to the range of statutory factors that the FWC must take into account in each annual wage review. We make this point because, as we see in the next paragraph, the FWC suggested in the *Annual Wage Review 2014-15, Decision* [2015] FWCFB 3500 (June

2015 decision) that this was a concession extracted from ACCER during final consultations.

92. We should expect that ACCER's claims in regard to the NMW and the ACTU's and ACCER's claims for relatively larger increases for lower paid workers (below the C10 rate), which were essentially based on social factors, would cause the FWC to consider whether there were any economic reasons for refusing the claim and to indicate how it had balanced the economic and social factors in coming to an answer on these claims. As we shall see, this did not occur because of the position that the FWC took on another matter.
93. Given that the data did not show that full time workers without family responsibilities were living in poverty, ACCER's submissions based on the poverty of wage-dependent workers necessarily focused on those with family responsibilities. ACCER's concern was for the position of workers with family responsibilities and a particular point of reference was the position of single breadwinner families. ACCER also argued that, as a matter of principle, the second parent in a single earner couple parent family should have to seek employment in order for the family to escape poverty; nor should the breadwinner have to work overtime or get a second job in order for the family to escape poverty. ACCER also argued that the FWC's practice of taking into account the relative living standards of a sole parent working full time failed to take into account the very substantial childcare costs that would be incurred and the prospect that those costs could drive the family into poverty.
94. The following paragraphs from the June 2015 decision set out the FWC's response to the priority which ACCER sought to be given to the *fact* of poverty among wage-dependent workers. As we see later, the reason for the rejection of ACCER's claims, as well as the ACTU's claims, lies outside these passages.

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

[333] First, the Panel has an obligation to balance a range of statutory considerations, and cannot simply target poverty of single breadwinner families. So much was accepted by ACCER in its submissions in the consultations.

[334] Relative living standards and the needs of the low paid is one of the statutory considerations we have regard to, both in relation to determining the NMW and in varying modern award minimum rates. The risk of poverty is one relevant consideration in addressing relative living standards and the needs of the low paid. We accept, as we did in the 2013–14 Review decision, that if the low paid are forced to live in poverty then their needs are not being met.

[335] However, relative living standards and the needs of the low paid, must be balanced together with the other considerations which we are required to take into account. The need to balance all statutory considerations brings into play the tension and complexity of the matters we have referred to in Chapter 2. An obvious example is found in the requirement to have regard to the performance and competitiveness of the national economy, including employment growth, when fixing the NMW and the likely impact on business, including employment costs and the likely impact on employment growth of varying modern award minimum rates. Additional increases in minimum wages directed to targeting poverty within single breadwinner families would extend to award-reliant employees without family responsibilities and those who were not sole wage earners within their household. This extended impact of the additional increase may raise potential employment effects, in circumstances where the risk of poverty among unemployed households is far higher than for any wage-earner household type. Other issues arise in respect of other statutory considerations.

[336] Second, in considering measures of poverty as one matter relevant to relative living standards and the needs of the low paid, it is necessary to consider information in relation to the circumstances of all award-reliant employees and the low paid, not simply workers with family responsibilities. Single-earner employees within families with dependent children are one group within the broader group of low-paid workers whose circumstances we consider as part of our consideration of relative living standards and the needs of the low paid."

(Footnotes omitted)

95. There are a number of responses that should be made to these passages:
96. First, it would be an extraordinary thing if the FWC did not give some priority to the elimination of poverty in areas where it has some capacity to do so, i.e. among low paid wage-dependent workers. If it did not give some priority it would be stand alone in a wide range of governmental bodies in its failure to respond to those most in need. In Australia we have a social safety net that is predicated on supporting and giving protection to those most in need. The community expects it and governments expect it and we should expect it of the FWC to focus its attention on those most in need. After all, the purpose of a minimum wage system is to protect those who are in need. The minimum wage system in the *Fair Work Act* is beneficial legislation and, accordingly, should be applied as such. The purpose of a safety net, whether a wage or a social safety net, is to promote the common good.
97. Second, we would expect that the FWC's decisions would demonstrate the balancing of the various factors with the reader being able to understand why, if it be the case, poverty has not been given any kind of priority in the decision made by the tribunal. Paragraphs 334 and 335 emphasise the range of economic factors to be considered, with the comment that the additional increase sought to relieve poverty "may have employment effects". Whether or not that happens and whether or not any negative

employment effect is justified by the protection of families against poverty is a matter for the evidence based process referred to by ACCER in its proposal. In the evidence-based process proposed by ACCER we would expect to see the economic implications of those steps being considered. We should see the consideration of the possible adverse economic effects mentioned in paragraph 335 and some indication of the weighting of those factors compared to the alleviation of poverty.

98. Third, the need to consider a range of factors was the reason ACCER successive modest steps. The modesty of the initial steps is illustrated by the fact that, during the years that ACCER has advocated these changes, the lowest paid, the lowest minimum wage rates set by State industrial tribunals have been, on average, more than \$20.00 per week in excess of the NMW; see Table 12 in Chapter 5. Furthermore, the interim objective was to have the NMW increased to the minimum wage for a cleaner, which could not be regarded unreasonable. In early 2015 it was \$43.40 per week more than the NMW.
99. Fourth, the substance of the FWC position the concluding part of paragraph 335 and in paragraph 336 is that the awarding of wage increases to meet the most basic need of escaping poverty is constrained by the consideration that the increases will flow to those who do not have family responsibilities or who are not sole breadwinners in their families. The FWC is prompting two issues: whether are there enough wage dependent families living in poverty for it to be concerned about and, if so, are any adverse economic consequences of taking action so significant that no action should be taken. This raises questions of principle and economic assessment which require consideration and, we would expect, explicit consideration in the annual wage decisions. The principles concern recognised human rights, the promotion of the common good and the object of the *Fair Work Act* to promote the social inclusion. Given the principle involved, the case against alleviating poverty of those most in need should be made out on sound economic grounds and social grounds.
100. Fifth in emphasising poverty, ACCER has been asking the FWC to give priority to and act consistently with their own words which, as we discussed earlier, amounted to the following: 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. Having stated this position the FWC should have, but has not, identified those workers to whom this level of protection should be provided, save to say, as we noted earlier, that “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, paragraph 338). It can be accepted that his minimum level of protection does not need to extend to the unusual and exceptional circumstances in which workers find themselves, but, in ACCER's view, it does extend to workers with one or two children, whether one of a couple or as a sole parent. This level of protection is, nevertheless, of benefit to those in unusual situations such as, for example, the worker with five dependent children.

101. Sixth, magnitude of the problem of poverty in wage dependent families, with its detrimental impact on children was not disputed. Each year the Australian Council of Social Services has produced evidence to the FWC about the number of people and children living in poverty, with the latest figures in 2015 being for the 2011-12. The estimated number of people living in poverty in households where there was a full time employment was 522,138 at the 50% of median poverty line and 891,343 at the 60% of median poverty line (*Poverty in Australia 2014*, page 16). The number of children living in poverty in these homes was not given, but clearly it was very large. We would expect the extent and unacceptability of child poverty would be acknowledged and responded to in an open and transparent manner.
102. It will become apparent in the next section that the real driver of the FWC's decisions since 2011, with their failure to take any extra measures to alleviate poverty was not alluded to in the paragraphs 332 to 336 from the June 2015 decision just quoted. The real driver was the FWC's policy of maintaining the existing wage relativities within the minimum wage system.

The FWC adopts a policy of preserving wage relativities

103. In the following paragraphs we discuss the FWC's decisions to maintain the relativities between the NMW and award wage rates and between the range of wage rates within the award system. The policy was the reason for the rejection of the successive claims for increased support to low paid workers that were made by the ACTU and ACCER over the past six years.
104. There was a further objective pursued over these years in regard to higher paid award classifications. As a result of minimum wage decisions made over a number of years to provide money increases, and not percentage increases, the higher paid award classifications had become disconnected from relevant market rates. We explain this development in Chapter 3A. Action was required, but there was no reason for it to

compromise the proper targeting of poverty among lower paid workers. The question of whether the objective of one part of the ACTU's claims would compromise the objective of the other part of its claims was not addressed by the FWC.

105. The purpose of the claims by the ACTU and ACCER was to improve the living standards of both higher income and lower income workers, but with relatively more (in percentage terms) being given to the poorest workers. In order that more workers are protected against poverty the ACTU and ACCER are prepared to accept some compression of relativities between lower and higher income groups and within lower income groups.
106. In the FWC's view, to give relatively more to the lower paid would reduce the recognition given in the award system to increases in skills and responsibilities within the workforce. In this view of wage setting, providing relatively more to those who have least (in terms income, living standards and skills and responsibilities) would result in an unacceptable compression of minimum wage relativities.
107. Central to the setting of wage rates for the lowest paid workers is the intended function of the NMW under the *Fair Work Act*. ACCER has argued that the purpose of the NMW is to establish a minimum wage of general application across the workforce based on the need to protect workers against poverty and to provide them with a decent standard of living. This is the base upon which an award system will establish various wage rates to take into account increasing skills and responsibilities; section 139(1)(a) sets out the terms that may be included in an award, which include "terms about ... minimum wages and ... skill-based classifications and career structures". These margins are intended to be additional to the NMW. The statutory intention is that one does not have to find employment in a skill-based award classification in order to get the basic standard of living intended to be provided by the NMW. It is the NMW which is directed at providing a standard of living in excess of poverty and providing an income that will support a decent standard of living.
108. In order to provide the context for these matters it is necessary to refer to the origins of the current award classifications and wage relativities, the establishment of the NMW and the development of the FWC's policy of maintaining existing award relativities by awarding uniform percentage increases.

Award relativities in the early 1990s

109. The current award relativities date back to the early 1990s. At that time the AIRC and all State industrial tribunals, which together had wage setting coverage similar to the

AIRC, agreed to revise existing award classifications and wage rates and to establish new “broadbanded” work classifications. In order to promote consistency between the revised awards, the C10 classification of the *Metal Industry Award 1984—Part I*, which was the base rate for trade-qualified workers, was agreed to be the pivotal point of comparison between awards. Where possible, each award identified a classification that was comparable in work value terms to the C10 classification and set the rate for that classification at the C10 rate determined by the AIRC. For awards covering higher skilled occupations, with all of their wage rates above the C10 rates, other provisions applied. Having determined the C10 rate for an award, each tribunal then set the rates for each of the revised classifications by reference to comparative skills, responsibilities and other relevant factors, taking into account, where applicable, the various rates in the *Metal Industry Award*. The lowest rate in the *Metal Industry Award* was the C14 rate, which covered the first three months of employment. In some awards the C14 rate was used as an introductory rate, but in many awards, especially those covering skilled workers, the lowest wage rate was substantially more than the C14 rate. It is important to note that the C10 rate and other rates in the award had been fixed without any process to establish the financial needs of workers covered by them.

110. The relativities in the *Metal Industry Award* which underpinned this process are now most conveniently found in Schedule B of the *Manufacturing and Associated Industries and Occupations Award 2010*. Clause B.2.2 of the schedule 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 schedule has the C14 rate at 78% of the C10 rate and the C13 rate, which applies after three month at 82% of the C10 rate. The minimum wages in this award do not reflect these relativities in the schedule. The C14 rate is now 85.9% of the C10 rate. The C13 wage, which is currently \$19.40 per week more that the C14 wage, is 88.4% of the C10 rate. The schedule has no practical effect in the award, but it might be used by employers and unions in collective bargaining negotiations.
111. In 1997 the C14 rate was adopted as the rate for the newly introduced Federal Minimum Wage (FMW), which became the NMW in 2010 with the commencement of the *Fair Work Act*. The circumstances of its introduction are discussed in Chapter 2D, which show that this new minimum rate was not only based on a transitional rate, but that it was not set by reference to the needs of low paid workers.

112. From 1997 and into the years following the enactment of the *Fair Work Act* the NMW was treated as an adjunct to the award classification system and adjustments to the NMW were determined together with the changes in award rates of pay. On occasions different money amounts were awarded to various wage levels, but the increases for the FMW and the NMW have been the same as the increases awarded to the classifications up to, at least, the C10 wage rate.

The introduction of percentage increases

113. In the first decision under the *Fair Work Act* in 2010 Fair Work Australia (as the FWC was then known) awarded a flat money increase of \$26.00 per week.
114. The origins of the reason for the FWC's refusal to provide greater assistance to the low paid and to award uniform percentage increases in the NMW and award wages can be found in the *Annual Wage Review 2010-11, Decision* [2011] FWAFB 3400 (the June 2011 decision). The tribunal said:

“[307] Section 134 of the Fair Work Act requires the Panel to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net. The matters which must be taken into account in an annual wage review include relative living standards and the needs of the low paid. *The nature of increases to award rates in annual reviews over the last twenty years has compressed award relativities in the award classification structures and reduced the gains from skills acquisition. The position of the higher award classifications has also been reducing relative to market rates and to average earnings.* Furthermore, while the real value of minimum wages has been maintained at the lower award classification levels, it is clear that the real value of minimum wages above those levels has fallen. On the information available to us at present we accept that many people have their wages set at award rates higher up the scale. *The ACTU's approach, which involves a dollar increase at the lower levels, would involve further compression of relativities below the C10 level.* For these reasons we consider that in this review we should decide on an increase which will not further compress award relativities and which will at least maintain the real value of minimum award wages.” (Emphasis added.)

115. The position evident in the June 2011 decision has not been changed over the succeeding years. It can be appropriately described as the FWC's wage relativities policy. It has operated in a way that constrains the objectives of prescribing wage rates, in particular the NMW, that provide a standard of living in excess of poverty and the income to purchase the essentials for a “decent standard of living” and engage in community life, assessed in the context of contemporary norms. The passage made it clear that even the ACTU's modest proposals to give a little bit more to those most in need, would continue to fail so long as the wages relativity policy continued to operate. Not even a dollar per week for the lowest paid was available under that policy.

Importantly, the policy locked the NMW into the decisions made about award wage increases.

116. The highlighted words in the passage from the June 2011 decision were repeated in the June 2012 decision (at paragraph 27). In its June 2013 decision the FWC once again applied the policy:

“As to the form of the increase, the flat dollar increases in award minimum rates over the last 20 years have compressed award relativities and reduced the gains from skill acquisition. The position of the higher award classifications has reduced relative to market rates and to average earnings and has fallen in terms of real purchasing power. In the *Annual Wage Review 2010–11* decision ... these considerations led the Panel to determine a uniform percentage increase and we have reached the same conclusion in this Review, for the same reasons.” (Paragraph 44, footnote omitted)

117. The policy was repeated in the June 2014 (at paragraph 60) where the first two sentences in the quotation from the June 2013 decision were repeated and were followed by “These considerations led the Panel to determine a uniform percentage increase”. The policy continued to frustrate the claims by the ACTU and ACCER for something more for the low paid.

118. 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. The legal argument is now at Chapter 2C. ACCER foreshadowed the consequences of adopting its submissions:

“This new scheme in which centrality is given to the setting of the NMW is very relevant to the setting of award wage rates and to the consequences of setting a fairer NMW. In some awards there are classifications and wage rates sitting close to the NMW, so that, if the NMW is to be increased by a further amount (such as the extra \$10.00 per week claimed by ACCER), changes will have to be made to some award classifications and the rates prescribed by them. The award classification system has operated to constrain the adjustment of the NMW. Since 1997 the NMW and the C14 award rate appear to have been tied together by a Gordian Knot. The provisions of the current legislation, properly applied, cut that knot.” (ACCER submission March 2015, Attachment, paragraph 95)

119. Emphasising the statutory obligation to fix a fair NMW safety net was intended to have the effect of breaking through the FWC’s policy of applying a uniform percentage increase to all minimum rates. The expectation was that the proper application of the terms of the legislation would result in the linkage of NMW increases to award increases would be broken and that the NMW would rise relative to other award rates, with a positive impact on poverty and disadvantage in low paid wage-dependent families. ACCER asked the FWC to cut the Gordian Knot. It again emphasised the

parlous living standards of many of the low paid in order to secure a modest increase in the NMW of \$10.00 per week over and above the amount awarded to low paid award rates.

120. In regard to the distinction between the two processes, the FWC said:

“[136] As mentioned earlier, the making of a national minimum wage order and the review and variation of modern award minimum wages are separate but related functions. They are related because s.285(2) provides that in exercising its powers to set, vary or revoke modern award minimum wages, the Panel “must take into account the rate of the national minimum wage that it *proposes* to set in the Review.”

[137] It follows that as part of the decision making process in an annual wage review the 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, emphasis in original)

121. The FWC’s June 2015 conclusions regarding the NMW and award rates are in the following paragraphs:

"[72] While we have determined that it is appropriate to increase the NMW, the factors identified above have led us to award a lower increase than that determined in last year’s Review decision. We consider that an increase of 2.5 per cent is appropriate. ...

[73] Having regard to the proposed NMW and the other relevant considerations, we also consider that it is appropriate to adjust modern award minimum wages by a moderate amount.

....

[76] As to the form of the increase, past flat dollar increases in award minimum rates have compressed award relativities and reduced the gains from skill acquisition. The position of the higher award classifications has reduced relative to market rates and to average earnings and has fallen in terms of real purchasing power. These matters have led us to determine a uniform percentage increase. The considerations to which we have referred have also led us to award an increase in modern award minimum wages that is less than last year. We have decided to also increase modern award minimum wages by 2.5 per cent. Weekly wages will be rounded to the nearest 10 cents.”

122. Despite the FWC’s acceptance of the submission, it 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. The Gordian Knot had not been cut. In ACCER’s view, the FWC again failed to give any or any sufficient weight to the greater unmet needs of the low paid and failed to take appropriate action to address poverty among low income working families.

123. The following annual wage review saw a repetition of much of the arguments in the previous review. In the May 2016 decision the same increase, 2.4%, was applied to the NMW and award rates and again the FWC repeated the conclusion on relativities of the previous five years:

“[102] We have determined that it is appropriate to increase the NMW. The factors identified above have led us to award an increase of 2.4 per cent. ...

[103] Having regard to the proposed NMW and the other relevant considerations, we also consider that it is appropriate to adjust modern award minimum wages.

[104] As to the form of the increase, past flat dollar increases in award minimum rates have compressed award relativities and reduced the gains from skill acquisition. The position of the higher award classifications has reduced relative to market rates and to average earnings and has fallen in terms of real purchasing power. A uniform percentage increase will particularly benefit women workers, because at the higher award classification levels women are substantially more likely than men to be paid the minimum award rate rather a bargained rate. These matters have led us to determine a uniform percentage increase. The considerations to which we have referred have led us to increase modern award minimum wages by 2.4 per cent.”

124. In the paragraph regarding award rates the only change from the comparable passage in the June 2015 was the inclusion of the reference to women workers. For reasons we now turn to, this aspect did not strengthen the argument; rather the position of most women was disadvantaged by uniform percentage increases.

Equal remuneration as a factor in awarding a uniform percentage increase

125. In paragraph 104 of the May 2016 decision the FWC observed that a “uniform percentage increase will particularly benefit women workers, because at the higher award classification levels women are substantially more likely than men to be paid the minimum award rate rather a bargained rate”. That observation relates to a discussion on equal remuneration in Chapter 8 of the decision. The chapter includes a consideration of the gender pay gap and the role of minimum wages in reducing that disparity. The FWC is required by section 284(1) and section 134(1) of the *Fair Work Act* to take into account “the principle of equal remuneration for work of equal or comparable value” when setting the NMW and award wage rates, respectively. In concluding the chapter on equal remuneration the FWC pointed out the value of minimum wage increases to *both* lower paid and higher paid female workers:

“[573] An increase in award rates of pay relative to other wages would reduce the gender pay gap in two ways. The first is that it would raise the level of low pay rates relative to median pay rates, and hence particularly benefit women, who disproportionately receive low pay rates. The second is that an increase in the higher levels of award rates will particularly benefit women because, at the higher award classifications, women are more likely to be paid the award rather

than the bargained rate than are men."

126. The text of paragraph 573 also appears as paragraph 75 in the series of paragraphs leading to the conclusion concerning awards in paragraph 104.
127. The FWC recognised in paragraph 573 that an increase in award rates of pay relative to other wages would assist both lower paid and higher paid women who depend on award wage rates. The data show that most award-reliant women are low paid. Table 4.16 of *Research Report 6/2013, Award reliance*, published by the FWC, shows that 74% of all award-reliant women are lower paid. A recent report published by the FWC, *Research Report 1/2017, Award-reliant workers in household income distribution*, found that 56% of award-reliant workers are women and that, of all award-reliant workers, 37% were women living in the bottom half of the household income distribution, compared to 19% in the top half. In the lowest three deciles 25% of award-reliant workers were women, while in the highest three deciles the comparable figure was 10%; see Figure 3, page 10.
128. These figures support the conclusion that a money increase in minimum wage rates is of more assistance to women than a percentage increase in minimum wage rates. The awarding of a uniform percentage increase prefers the interests of higher paid female workers, as it does higher paid male workers, to the interests of lower paid female and male workers. There is no discussion or reasoning in Chapter 8 of the May 2016 decision which would support the conclusion that the interests of women are best served by uniform percentage increase. Nothing leads to the conclusion that the interests of higher paid female workers should be preferred to those of lower paid female workers. The evidence does, however, support the view that the interests of most award-reliant women are promoted by a flat dollar increase, or by the kind of increases sought by the ACTU.

The Gordian Knot remains

129. ACCER's hope that a proper application of the separate purposes of the NMW would break the linkage between the NMW and award rates and permit the NMW to rise to a more appropriate level were again dashed. The awarding of the same percentage in 2015 might have been a coincidence, but its repetition in 2016 demonstrated that the FWC's policy on relativities was being applied without any regard to the different functions of the NMW and award wage rates.

130. In 2016 the requirements for the proper setting of the NMW were again before the FWC. ACCER outlined the structure of the wage setting provisions and made its priorities clear:

"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 ... *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.

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. ... 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.*

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.*" (ACCER March 2016 submission, March 2016, emphasis added)

131. The FWC might have considered whether giving relatively more to the lower paid may have left less available to higher paid workers; but it did not. It may have concluded that giving relatively more to the lower paid would not compromise its ability to award what it regarded as an appropriate increase for the higher paid, but it did not even embark on this course of inquiry. How the differential increases would impact on the relevant economic and social factors was not part of the FWC's reasoning in 2015 and 2016.
132. The only consideration in the May 2016 decision in regard to the amount of increase to be awarded across the range of minimum wage rates was the potential impact on award relativities and the compression of wage rates based on differing levels of skills and responsibilities. The FWC's conclusion on award relativities is not based on any consideration in the decision of the advantages and disadvantages of the compression of relativities that would result from the awarding of money increases to lower paid classifications, as sought by the ACTU and ACCER, and the adjustment of the NMW,

as sought by ACCER. There was no evident balancing of the position of the low paid and the advantage to them of the ACTU's and ACCER's claims against the further application of the wage relativity policy, nor any economic considerations. The passage in paragraph 104 of the May 2016 decision, like the similar passage in the June 2015 decision (and in decisions before that) state a conclusion, unsupported by transparent reasoning.

133. In neither 2015 nor 2016 did the FWC explain how the same percentage increases for the NMW and awards could be determined in accordance with the terms of the *Fair Work Act*. The passages announcing the NMW increase in the 2015 and 2016 decisions (paragraphs 72 and 102, respectively) refer to "factors identified above". The passages announcing the increases in award rates in 2015 and 2016 (paragraphs 76 and 104, respectively) refer to "the proposed NMW and the other relevant considerations". We review those factors and considerations in Chapter 2F.
134. A review of these factors and considerations in the May 2016 decision does not support the view that the 2.4% increase in the NMW and in award rates came as a result of separate investigations into the factors and considerations relevant to the setting of the NMW and award rates. The references to factors and considerations might suggest that there is a different kind of inquiry being undertaken in relation to the two wage setting functions, but a closer examination shows that they were both concerned with the setting of a uniform percentage across the NMW and the award rates. The uniformity in each year comes from the application of the policy of preserving the relativities across the whole range of rates.
135. Given the terms of the *Fair Work Act*, it is not apparent why the FWC felt itself free to apply the same percentage increase to the NMW and award rates in 2015 and 2016. We say 2015 and 2016 because, unlike in previous years, the FWC had accepted that the legislation required two separate processes for the setting of the NMW and award rates. The reasons for the decisions do not explain or justify the same figure being applied to both. This is apparent in our review of the May 2016 decision in Chapter 2F. We return in Chapter 2C to the terms of the legislation and how the FWC saw its obligations in setting the NMW and award rates. The uniform increases in 2015 and 2016 are not, in our view, consistent with the terms of the legislation, nor the FWC's own view of those terms.
136. When we return to the May 2016 decision in Chapter 2F we also consider the FWC's finding in relation to relative living standards: "Our overall assessment is that the

relative living standards of NMW and award-reliant employees have improved a little over recent years, although the relative position of low-paid workers has deteriorated over the past decade" (paragraph 67). If true, it might be a matter that would modify the impact of the application of the FWC's policy of preserving award relativities in preference to decisions that would better support those most in need. Our review shows that there had been no improvement in relative living recent years and that there is nothing that could justify the application of the wage relativities policy.

The FWC's wage relativities policy is contrary to the Fair Work Act

137. The FWC's policy position on wage relativities has been consistent and unbending, which is illustrated by a form of words repeated year after year. These words are conclusions rather than reasons which show how the FWC came to its decision. There may be nothing wrong with a cut and paste of a policy conclusion, but what we should see in the FWC's reasons is some articulation of the considerations that have led to that policy and its continued application. However, there has been no consideration of the factors regarding the balancing of the maintenance of relativities in awards and the calls for it to do something extra to support those most in need, including many wage-dependent families living in poverty.
138. In successive wage cases the FWC has said that it would not adopt a mechanistic rule to wage setting; for example in the May 2016 decision the FWC said "The range of considerations we are required to take into account calls for the exercise of broad judgment rather than a mechanistic approach to fixing minimum wages" (paragraph 151). But the application of the relativities policy is a mechanistic approach to wage setting.
139. A statutory tribunal's policy as to how it will exercise its jurisdiction is not necessarily contrary to law: see *R v Moore; Ex parte Australian Telephone and Phonogram Officers' Association* [1982] HCA 5, (1982) 148 CLR 600. However, it will be contrary to law if it is applied by a tribunal in a mechanistic way without proper regard to the particular circumstances of a matter before it or if the tribunals reasoning is inconsistent with the terms of the legislation under which it operates. These matters were identified in the judgment of Tracey J in *Gbojueh v Minister for Immigration and Border Protection* [2014] FCA 883, at 39:

"At both common law and under statutory judicial review a decision-maker will not commit jurisdictional error merely by having regard to a principle or policy when exercising a statutory discretion. Error, may, however, occur if the decision-maker considers him or herself bound to apply the policy without regard to

countervailing considerations and acts accordingly. In *Elias v Commissioner of Taxation* [2002] FCA 845; (2002) 123 FCR 499 at 506-7 Hely J summarised the position as follows:

“The Commissioner is entitled to adopt a policy to provide guidance as to the exercise of the discretion, provided the policy is consistent with the statute by which the discretion is conferred. Thus if the statute gives a discretion in general terms, the discretion cannot be truncated or confined by an inflexible policy that it shall only be exercised in a limited range of circumstances. A general policy as to how a discretion will ‘normally’ be exercised does not infringe these principles, so long as the applicant is able to put forward reasons why the policy should be changed, or should not be applied in the circumstances of the particular case.”

See also: *R v Moore; Ex parte Australian Telephone and Phonogram Officers' Association* [1982] HCA 5, (1982) 148 CLR 600 at 612; *Tang v Minister for Immigration and Ethnic Affairs* (1986) 67 ALR 177 at 189-190 (Pincus J); *Madafferi v Minister for Immigration and Multicultural Affairs* [2002] FCAFC 220, (2002) 118 FCR 326 at 358.”

140. The FWC’s obligation under the *Fair Work Act* to take into account the “needs of the low paid”, when setting the NMW (see section 284(1) (c)) and award rates of pay (see section 134(1)(a)) are effectively disregarded by this policy. The policy of maintaining relativities set in the past, and based on relativities established prior to the enactment of the *Fair Work Act*, is not based on the terms of the legislation, yet it is a policy that has effectively neutered the FWC's proper consideration of the needs of the low paid, which the legislation specifically requires the FWC to take into account when setting minimum wage rates. The obligation on the FWC is to take into account the needs of the low paid unconstrained by wage relativities within award classifications. In applying the policy the FWC has failed to give any or any proper consideration and weight to the needs of the low paid.
141. Furthermore, the application of the policy has meant that the NMW has not been set independently of the operation of the award system, as the legislation intends. The *Fair Work Act* intends that the NMW will be established as a general wage entitlement upon which awards may provide further minimum wage entitlements covering "skill-based classifications and career structures"; see section 139(1)(a)(i). It would be permissible for the FWC to develop policies about wage relativities within those award classifications, but it would be impermissible for those policies to constrain the setting of the NMW and to constrain the obligation on the FWC to take into account the needs of the low paid, as it is required to do under sections 284(1) and 134(1).
142. For these reasons the relativities policy, as applied by the FWC since 2011, has been contrary to law and, further, the FWC has failed to set the NMW in accordance with the

terms of the *Fair Work Act*.

E. THE SOCIAL SAFETY NET UNDER ATTACK

143. The Australian minimum wages system provides a wages safety net which is the major protector of the living standards of Australia working families. It is complemented by the social safety net provided by government. The origins of public support for workers and their families can be traced back first national income tax legislation in 1936 and to the introduction of child endowment in 1941. The *Income Tax Assessment Act 1936* provided taxpayers with a concessional deduction for dependent spouses and children. The concessional deductions were converted into taxation rebates in 1942.
144. The Commonwealth's Commission of Inquiry into Poverty (Poverty Commission) in the early 1970s was established, in part, to consider the widespread poverty in low income working families. It found that in August 1973 7.7% of the disposable income of a single breadwinner family of a couple and two children in receipt of the lowest male minimum wage came from the public purse through the tax rebate and child endowment; see Table 11 in Chapter 5. The Poverty Commission proposed changes to family payments system. In 1976 child endowment was replaced by the Family Allowance. Substantial changes were made to the family payments system over the following decades. These changes coincided with a campaign by the ACTU to improve the "social wage" in return for some restraint in its wage campaigns. The social wage was increased by the provision of new or better governmental services and by governmental transfer payments. By the time of the introduction of the Goods and Services Tax on 1 July 2000 transfer payments were a substantial proportion of the disposable incomes of low income working families. In January 2001 the disposable income of a comparable Federal Minimum Wage-dependent family was 37.5%; see Table 28 in Chapter 8. As we mentioned in section A this chapter, the proportion of disposable income for this family had barely risen over the 16 years to January 2017, when it (the called the NMW) was 37.7%, after being 39.5% in January 2016; see Table 28 in Chapter 8.
145. The May 2014 Federal Budget proposed the greatest reductions in the living standards of families of any legislation ever considered by the Australian Parliament. Since then, legislation has been enacted to abolish the Schoolkids Bonus, with effect from the end of 2016 and to remove the access of couple parent families to Family Tax Benefit, Part

B (FTB B) once their youngest child turns 13, with effect from 1 July 2016. These changes will have a major impact on families.

146. The abolition of the Schoolkids Bonus has resulted in the loss of \$430 per year for each child in primary school and the loss of \$856 per year for each child in secondary school. It is the reason the disposable income of the NMW-dependent family fell over the year to January 2017, despite receiving a 2.4% wage increase in July 2016. 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 has resulted in a loss of \$62.28 per week (at January 2017). 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 \$16,250.00 (plus expected indexation increases) over the last five years of secondary education. This loss is not reflected in our calculations of family disposable incomes and living standards because they are made on the basis that the older child is not more than 12 years.
147. 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*. 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 \$100,000.00 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.
148. In February 2017 introduced another Bill to implement the changes to family payments announced in the May 2014 Budget. The *Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017*, generally known as the Omnibus Bill, proposed, among a wide range of initiatives, 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. The changes in the FTB A annual supplement would result in losses of \$13.92 per week per child and a further loss of \$6.79 per family per week if the family is still eligible for FTB B. Against this, it is proposed that fortnightly payments be increased by \$10.01 per child. In the single breadwinner couple parent family with two children and in a sole parent family with

two children this would amount to a net loss of \$14.61 per week once fully implemented; see Table 28. These proposals were met with continued opposition.

149. Following discussions with cross bench senators these proposals were abandoned on 22 March 2017 when agreement was reached to freeze the fortnightly FTB A and FTB B payments for two years. This means that there will be no increase in July 2017 and July 2018, as would have been the case if the agreement had not been reached. The provisions were contained in the *Social Services Legislation Amendment Bill 2017*. The Bill was agreed to by the Senate and at the time of writing is currently before the House of Representatives. The *Explanatory Memorandum* stated that the expected savings over the period 2017-18 to 2020-21 will be around \$1,950 million. The current level of these family payments are set out in Table 18 in Chapter 6. In a family with two children, one under 13 years and the other one 13 years or older, the Family Tax Benefit Part A is \$210.35 per week and, if it is eligible, Family Tax Benefit, Part B is \$54.32 per week (where the youngest child is age 5 or more). For a single breadwinner family the freezing of \$264.67 per week will be cause a substantial loss. On the basis of an increase in the Consumer Price Index of 2.0%, the weekly loss as a result of the failure to index the payments would be \$5.29 per week from 1 July 2017.

FTB B: its history and nature

150. 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.
151. 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.
152. 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)

153. 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 in 2000. FTB B was the successor to the HCCA and the earlier dependent spouse with children rebate, and extended to sole parents.
154. It should be noted that the FTB B scheme permits recipients to take on limited employment without losing their entitlement to the payment. The secondary earner in a couple family can earn up to \$5,475 per year without any loss in the payment. Over that amount the FTB B payment reduces by 20 cents for each dollar earned. This is a well-designed system that permits recipients to undertake some employment which may maintain their skills or assist them in dealing with short term financial concerns or help them better understand the costs and benefits of changing or maintaining their role within the family. It facilitates choice.

155. 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.>)

156. 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.)

157. 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 are

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.

158. 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.
159. 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.
160. 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.

F. WAGES AND GLOBALISATION

161. A decent standard of living for workers with family responsibilities cannot be supplied by wages alone in the contemporary globalised economy. This is the reality that has to be addressed by policymakers and decision makers, relevantly Parliament and the FWC. 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 forces 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.
162. 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.
163. 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 and the decline since that time, which were discussed earlier in this chapter: from 7.7% of the family's total disposable income in 1973 to 39.5% in 2016 and down to 37.7% in January 2017, with more to come if proposals currently before Parliament are passed. 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.
164. There is an economic case in support of an increase in family transfers. They keep down the costs of employment and promote 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.
165. 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.

166. 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.
167. 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.
168. 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.

169. Of course, the impact of current and prospective trade agreements on wage levels 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.)

170. 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.
171. 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 in public discourse. The negative consequences of increased globalisation may not appear, but if they do we should recognise the consequences for public policy. The application of the economic law of comparative advantage comes with some moral consequences and obligations.
172. We all know now that there is a high degree of disillusionment in advanced economies with what might be called globalised economics. The basis for this disillusionment has

been emerging for some years. In many countries the social safety nets that have protected families in the past have been weakened, particularly so since the Global Financial Crisis of 2008. Similarly, the capacity of unions to pursue and deliver fair wages has been weakened. The forces working against social safety nets and fair wage outcomes were discussed by Pope Benedict in *Caritas in Veritate* in 2009. It is a very perceptive assessment of what is happening and why.

“From the social point of view, systems of protection and welfare, already present in many countries in Paul VI's day, are finding it hard and could find it even harder in the future to pursue their goals of true social justice in today's profoundly changed environment. The global market has stimulated first and foremost, on the part of rich countries, a search for areas in which to outsource production at low cost with a view to reducing the prices of many goods, increasing purchasing power and thus accelerating the rate of development in terms of greater availability of consumer goods for the domestic market.

Consequently, the market has prompted new forms of competition between States as they seek to attract foreign businesses to set up production centres, by means of a variety of instruments, including favourable fiscal regimes and deregulation of the labour market. These processes have led to a downsizing of social security systems as the price to be paid for seeking greater competitive advantage in the global market, with consequent grave danger for the rights of workers, for fundamental human rights and for the solidarity associated with the traditional forms of the social State.

Systems of social security can lose the capacity to carry out their task, both in emerging countries and in those that were among the earliest to develop, as well as in poor countries. Here budgetary policies, with cuts in social spending often made under pressure from international financial institutions, can leave citizens powerless in the face of old and new risks; such powerlessness is increased by the lack of effective protection on the part of workers' associations.

Through the combination of social and economic change, trade union organizations experience greater difficulty in carrying out their task of representing the interests of workers, partly because Governments, for reasons of economic utility, often limit the freedom or the negotiating capacity of labour unions. Hence traditional networks of solidarity have more and more obstacles to overcome. The repeated calls issued within the Church's social doctrine, beginning with *Rerum Novarum*, for the promotion of workers' associations that can defend their rights must therefore be honoured today even more than in the past, as a prompt and far-sighted response to the urgent need for new forms of cooperation at the international level, as well as the local level.” (Paragraph 25, emphasis added, footnote omitted)

International comparisons

173. One of the most frequent comments heard about Australia's NMW is that it is one of the highest in the world, but headline comparisons say little about the trading capacities of a national economy and the degree of social equity and cohesiveness (which has an economic value) within nations.

174. 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 minimum 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.
175. 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 a 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 8E.
176. 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.
177. 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 capacities and needs.

178. 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.
179. 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 \$66.47 per week or 9.9%, 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. State payroll taxes also operate as a tax on employment.
180. 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 cannot undercut 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. 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.
181. In the earlier parts of this chapter we discussed the increasing levels of inequality and poverty as a result of the failure of safety net wage rates keeping up with the increases in average and median incomes across the nation. It is clear that successive tribunals have been well-aware of these trends, yet they have allowed this socially damaging trend to occur. In support of its application for the FWC to set a medium term target for the

NMW, United Voice made the following observation in relation to the declining relativity between the NMW and measures of median and average wages:

“There is, in our submission, a clear and obvious trend. However this is a trend that has never been the subject of explicit decision nor an acknowledged policy, and has effectively continued under at least four different wage-fixing regimes.”
(United Voice submission, March 2016, page 5)

182. We agree with this observation. We are one of the unexpressed factors in the decisions, if not the critical factor in those decisions, has been the impact and expected demands of a globalised Australian economy. If it was not that, what could it be?
183. There appears to be a damaging element of resignation on the part of some policy makers that these changes are inevitable in a globalised economy and that there is, in a real sense, a race to the bottom. This means that, in effect, a nation's vulnerable workers will beggar, or be beggared by, the vulnerable workers of the nations with which it trades. There is more than a risk that policy makers in each of these countries might accept this attitude by cutting the wages of their own workers rather than promoting the interests of vulnerable workers. Rather than collectively cutting wages and creating a race to the bottom, the relevant national bodies, in our case the FWC, should be protecting their own workers. This requires in all economies a commitment to basic human rights, especially to a decent standard of living, by the institutions that set wages.

2

THE AUSTRALIAN WAGE SETTING FRAMEWORK

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**Working Australia, 2017:
wages, families and poverty**

CHAPTER 2

THE AUSTRALIAN WAGE SETTING FRAMEWORK

A. INTRODUCTION

Key features of the Australian system of wage setting

184. As early as the 1890s legally enforceable minimum wage rates were set in the Australian colonies on an *ad hoc* basis to cover 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 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.
185. In 2005 legislation, generally known as *Work Choices*, introduced a new form of regulation based on the constitutional power to make laws with respect to trading and financial corporations under section 35(xx) of the *Australian Constitution* (the corporations power) to operate in conjunction with a much more limited range of functions under the conciliation and arbitration power. This change greatly extended the national coverage over employment matters.
186. 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 corporations power and, to cover employment by non-corporate employers, the referral by the States (other than Western Australia) of their constitutional power to regulate employment relations, save for some minor exceptions. The minimum wages system is now unconnected to industrial disputation and can be regarded as part of the national social safety net.
187. 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 \$672.70 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 \$738.80 per week and the minimum rate for a shop manager is \$827.30 per week. Of those to

whom a minimum wage rate applies, less than 5% would only be covered by the NMW, but many of these would be paid in excess of that rate. Overall, more than 95% of the Australian workforce is paid more than the NMW.

188. 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; the rest of the compensation in the loading is in recognition of the nature of casual work.
189. 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 only the prescribed minimum wage rate.
190. 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.
191. Australian minimum wage rates have to be reviewed each year. The review 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

192. 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, which manufactured the Sunshine Harvester for the harvesting of wheat, 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.
193. 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 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 (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.
194. 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.
195. 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 federal 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

196. 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.
197. 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 principle propounded a right to laws that would enable the worker and the worker's family to live in dignity. The living wage was both a guiding principle and a goal to be achieved through legislation.
198. 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".

199. 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*.
200. 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."
201. 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.
202. 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.
203. 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

204. 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”, created by the delivery of a letter of demand 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.
205. 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.

Work Choices

206. The *Workplace Relations Amendment (Work Choices) Act 2005*, which was usually known as *Work Choices*, amended the *Workplace Relations Act 1996* and renamed it the *Workplace Relations Act 2005*. The *Work Choices* amendments transferred the wage setting functions of the Australian Industrial Relations Commission (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.

207. 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

208. 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 2005* 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)

209. 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..."

210. *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.

211. 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."

212. The significance of the AFPC's charter was later discussed in a paper by the 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.)

213. 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.

214. 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.)

215. 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 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 *Fair Work Act* and across the Australian community.

B. THE LEGISLATIVE FRAMEWORK FOR WAGE SETTING

216. 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

217. 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 disadvantage. 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)

218. 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):

219. 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 the *Annual Wage Review 2012-13, Decision* [2013] FWCFB 4000 (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)).”

The safety net

220. 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".
221. 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 legislation 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.
222. The Australian Catholic Council for Employment Relations (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, ACCER argues, 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, for example, a worker with nine children.
223. 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 others.

224. 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. Since the June 2013 decision the FWC repeatedly stated that those in “full-time employment can reasonably expect a standard of living that exceeds poverty levels” and 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”. In Chapter 1D we refer to the repetition of these views in the 2014 and 2015 decisions. These views are found in the *Annual Wage Review 2015-16, Decision* [2016] FWCFB 3500 (May 2016 decision) at paragraphs 55 and 352 and at paragraph 429, respectively.

225. From these passages we can draw a basic operational objective of minimum wage setting under the *Fair Work Act*:

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.

226. Although the FWC does not frame these goals in terms of the statutory requirements of the wage safety net, ACCER argues that, subject to the proper consideration and weighting of the other factors required to be taken into account, the FWC is obliged to prescribe a wage safety net that, in the ordinary and expected circumstances, will enable workers to achieve a standard of living that exceeds poverty levels and to purchase the essentials for a ‘decent standard of living’ and to engage in community life, assessed in the context of contemporary norms. These are not merely aspirations, but the essential purpose of a minimum wage system.

227. The FWC’s words can only have meaning when the beneficiaries are specified. We are entitled to ask, which workers with family responsibilities and employed on a safety net wage should 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?

228. 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. The wage setting system needs to identify the workers who are to be afforded this level of support and provide a rationale for those who are not so supported. If there are contemporary economic or other factors which prevent the FWC from providing this kind of support to some or all of those within the scope of protection, the reasons should be evident.

Australia's international labour obligations

229. 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) which have been 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.
230. 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)). The *Fair Work Act* and the basic operational objective (as we describe it) are consistent with that obligation. The question is whether the FWC's decisions are consistent with Convention, the Act and the operational objective.

Modern awards

231. The FWC now sets terms and conditions of employment for the great majority of Australian workers through 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. Although the great majority of Australian workers are covered by an award classification made under this new award system, 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.

232. 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 in contemporary awards are intended to reflect differences in work value (essentially skills and responsibilities) 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.
233. Not all employment rights are contained in awards. Some of the more important 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

234. The *Fair Work Act* establishes a system of collective bargaining that protects a worker's rights to the NMW and any applicable award rights. Typically, collective bargaining operates on the basis of award coverage, but collective bargaining may operate in areas where there is no award coverage. 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.
235. 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. This kind of agreement is also 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.

236. 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 employees 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

237. 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 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 are not intended to be affected by the business cycle in the way that bargained rates are. It is the bargaining system which provides the opportunity for making arrangements that can minimise the impact of an economic downturn and provide for the changing operational needs of the firm.

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

238. 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. In effect, the decision reintroduced the Basic Wage of past years. 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.

239. The FMW was set at the same rate as the C14 classification rate in the *Metal Industry Award 1984*. The C14 rate was the lowest rate in this award and operated as a transitional rate over the first three months of employment, after which workers moved to the C13 wage rate. Importantly, the setting of the FMW did not involve any investigation into the adequacy of the C14 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 scale has remained the same (at the C14 level) or very close to it. The FMW/NMW has been increased in lockstep with lower paid award classifications. Decisions were made about award wage increases and the FMW/NMW was adjusted accordingly.
240. 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 the award system. 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. 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.
241. Despite these new provisions introduced in 2010, the earlier decisions under the *Fair Work Act* show 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, in response to claims for greater increases in the NMW than those in awards (for the purpose of progressively raising the NMW, with consequential adjustments in the award rates that would be overtaken by the adjusted NMW), the FWC has stated:
- "[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." (June 2013 decision)
242. The proper process under the *Fair Work Act* had been reversed, with the effect that the basic question regarding the adequacy of the NMW was not subjected to scrutiny. 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 the *Annual Wage Review 2014-15, Decision* [2015] FWCFB 3500 (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.” (Paragraph 137)

243. As we show in Chapter 1D and in section F, below, the FWC's decisions in 2015 and 2016 to award the same increases are contrary to this distinction.

Relevant provisions of the Fair Work Act

244. To explain this important issue it is necessary to refer to the basic provisions applying to the setting of the NMW and award wage rates. 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).
245. 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)

246. 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).
247. 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:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and
- (e) the principle of equal remuneration for work of equal or comparable value; and
- (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the *modern awards objective*" (Italics in original)

248. Section 139 sets out the terms that may be included in an award. Minimum 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;"

249. 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."

250. 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."

251. This means that the NMW is to be the 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 would be set at less than the NMW given these provisions.

252. 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.

253. 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.

The May 2016 decision on the setting of the NMW and award wages

254. The FWC returned to the separate functions of the NMW and award wage rates in the May 2016 decision:

"[125] The minimum wages objective and the object of the Act apply to the review and making of a NMW order. But the modern awards objective is *not* relevant to the review and making of a NMW order." (Footnotes omitted)

255. The footnotes to each of these sentences explain the basis of the conclusion. In order, they are:

"This follows from the fact that the minimum wages objective applies to the performance or exercise of the Commission's functions under Part 2—6 of the Act (s.284(2)(a)) and the review and making of a national minimum wage order is one of the Commission's functions under Part 2—6. The objects of the Act are also relevant to the performance or exercise of this function (s.578), a point to which we shall return shortly."

"See s.134(2) of the Act. The review and making of a national minimum wage order does not involve the performance or exercise of the Commission's modern award powers and hence the modern awards objective has no application to that function."

256. The following paragraphs are introduced by an issue concerning the relevance to collective bargaining in setting the NMW

"[126] Unlike the modern awards objective, the minimum wages objective makes no express reference to "the need to encourage collective bargaining" (s.134(1)(b)). However, as the Panel observed in the 2014–15 Review decision, the fact that the minimum wages objective does not require the Panel to take this consideration into account does not make much difference, in practice, to the Panel's task. This is so because the Panel is required to take into account the object of the Act and one of the stated means by which the object of the Act is given effect is "through an emphasis on enterprise level collective bargaining" (s.3(f)). While not expressed in the same terms as in the modern awards objective, it is plain from s.3(f) and a reading of the Act as a whole that one of the purposes of the Act is to encourage collective bargaining. It is appropriate that we take that legislative purpose into account in setting the NMW rate.

[127] The making of a NMW order and the review and variation of modern award minimum wages are separate but related functions. They are related because s.285(2) provides that in exercising its powers to set, vary or revoke modern award minimum wages, the Panel "must take into account the rate of the national minimum wage that it *proposes* to set in the Review."

[128] It follows that as part of the decision making process in an AWR the Panel must first form a view about the rate of the NMW it proposes to set in that AWR (taking into account the statutory considerations relevant to that discrete task) and then take the 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.

[129] This does not suggest some sort of bifurcated process whereby the Panel first *makes* a NMW order (which includes setting the NMW), before turning its mind to exercising its review powers to set, vary or revoke modern award minimum wage rates.

[130] As part of the AWR, the Panel considers both the setting of the NMW rate and whether to make any variation determinations in respect of modern award minimum wages. Each of these tasks is undertaken by reference to the particular statutory criteria applicable to each function." (Emphasis in original, footnote omitted)

257. These passages recognise that the setting of the NMW and award rates are separate functions involving separate statutory considerations. They recognise that, although the proposed NMW is to be determined before award rates are determined, there is no requirement for a bifurcated process that completes the inquiry into the NMW before engaging in the issues associated with award rates. Each is undertaken in the annual wage review, but each function to be undertaken by reference to the particular statutory criteria applicable to each function. Paragraph 126 also accepts that the collective bargaining may occur on the basis of the NMW alone, without award coverage. That being so, award considerations, particularly award relativities, should not constrain the setting of the NMW
258. That there was an identical outcome in the separate functions in the two decisions since the FWC accepted this distinction suggests that the statutory distinction has not been observed and that the two processes have been conflated with the decisions being made on the basis of the wages relativities policy, which is a consideration not mentioned in the statutory considerations and, whatever may be its potential operation in award rates, is irrelevant and contrary to the setting of the NMW.
259. 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 further action is taken in respect of them, those award rates would be overtaken or their margins over the NMW will be 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 consequential adjustments being made to award rates, rather than lower paid work classifications being made redundant by being overtaken by an adjusted NMW.

D. THE SUPPORT FOR FAMILIES IN MINIMUM WAGE DECISIONS

260. 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.
261. This was the first time in more than a century of minimum wage setting in Australia that an industrial tribunal had decided that minimum wages should be set on that basis, thereby excluding considerations of the needs of the low paid with family

responsibilities. For more than a century Australian minimum wage decisions had taken into account the circumstances of workers with family responsibilities. The FWC's decision was inconsistent with the living wage principle and recognised human rights.

262. The first of the three paragraphs on this aspect 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."

263. This passage was reproduced at paragraph 365 in the context of a discussion of taxes and transfers and the proposed changes in the May 2014 Budget. The FWC was saying that, despite their potential impact on families, they were not relevant because wages were being set on the basis of the single person household.

264. 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."

265. 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.)

266. The single person benchmark proposed by ACOSS is qualified by the requirement that families not be left in poverty. It was a qualified single person criterion with a very important qualification. It was very different to the recitation appearing in the FWC's decision.

267. 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.

268. 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.

269. ACCER's submissions on the single person benchmark were successful. 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. There was no analysis of the issues raised by ACCER and there was no explanation of the basis for the statements made in 2014. 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.

270. 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." (June 2015 decision, 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.)

271. The reasons given by ACOSS, which are referred to in the first sentence, are reproduced in paragraph 338 of the June 2015 decision. The same points were made by ACOSS in its 2014 submission, but were not put in a way that permitted the setting of a minimum wage that would leave families in poverty. They were the basis of the

ACOSS support for the qualified single person benchmark, which would seek to protect families against poverty.

272. ACCER had opposed ACOSS's view when put in previous wage reviews because it is inconsistent with human rights and has the practical effect of leaving families on the poverty line. If the wages system merely protected families from falling into poverty after taking into account the existing level of government funding to family incomes, then a decent standard of living would be beyond the most vulnerable workers and their families. Government funding for family support has never been, and never will be, based on the objective of bringing wage-dependent families up to a decent standard of living. That is the task of the minimum wage system.
273. The important issue arising from paragraphs 337 and 338 of the June 2015 decision is whether the attention that the FWC proposed to give to the single person household was operational, i.e. an initial step to assist in the broader investigatory processes, or was the basis of the kind of qualified single person wage proposed by ACOSS. Did the FWC move from an unqualified to a qualified single person benchmark? We return to this issue in section F, below, when discussing the FWC's May 2016 decision.

The Safety Net Review Case, 1997

274. To better understand the origins of the ACOSS position we need to return to the introduction of the FMW in *Safety Net Review Case, 1997*. This case 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.
275. 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.”

276. 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.

277. 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

278. 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

279. Vice President Ross’s dissent included a lengthy consideration of the ACOSS submissions. For present purposes the consideration falls into two parts.

280. 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)

281. 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)

282. 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 \$181.90 per week: \$854.60 per week compared to the C14/NMW rate of \$672.70 per week. Any extra increase in the FMW as a result of a re-evaluation of needs would have required either the adjustment of award rates in order to maintain established relativities or some low paid award classifications would have been overtaken and made redundant by the adjusted FMW. The Vice President's proposal for implementation over time, with consequential changes in award rates to retain existing relativities, 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.

283. 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)

284. 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 would include changes in family transfers and taxation rates. This means that a budgetary change might increase or reduce the work to be done by the wage packet in the support of families.

285. 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)

286. 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” (at page 128 of the report of the decision). 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)

287. 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.

288. We agree with the views expressed by Ross VP in these paragraphs. Unfortunately for the low paid, his fears have been realised and the position has worsened over the 20 years since the FMW was introduced:

- 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.

289. 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

290. 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.

291. 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. It was a remarkable change in AIRC’s view of its statutory obligation.
292. 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.
293. 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)
294. In 2003 ACOSS and ACCER asked the AIRC to establish an inquiry into the needs of the low paid. (ACOSS had made similar requests on previous wage reviews 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, not parties, 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)

295. 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.)

296. In the *Safety Net Review Case, 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)

297. 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)

298. 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

299. 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)).

300. 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.)

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

302. 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.

303. 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 and take employment if it became available. The inclusion of the Newstart allowance was inconsistent with the assessment that families could rely solely on single wage; and inconsistent with the objective of enabling workers with family responsibilities to rely solely on a single wage to support their families.

304. 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 to December

2007, from 31% to 22%, was unremarked.

305. The optimistic assessments by the AFPC in 2006 and 2007 were not only undermined by the improper inclusion 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. Again, this was unremarked. Excluding the Newstart allowance, the family was only 2% above the HPL at December 2008 according to the 2009 decision.
306. 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

307. 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.)

308. 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.
309. This 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.
310. 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)

311. 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).
312. 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.
313. 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

314. 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

315. 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. These matters are of more than historical interest because they emphasise the policy and human rights aspects of minimum wage setting.
316. 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).
317. 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.
318. 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.
319. 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.
320. 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.

321. 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.)

322. 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.

323. 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"

324. 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.

325. 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.

326. 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.

327. 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)

328. *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)

329. 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.

330. 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.
331. 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.

F. THE ANNUAL WAGE REVIEW DECISION, MAY 2016

Introduction

332. The purpose of this section is to provide an outline of the May 2016 decision and to deal with some matters which, in our view, require a response. It does not cover all of the issues of importance because some of them are dealt with in context in other sections of this book. In particular, the application of the FWC's policy on wage relativities and the impact of that policy on its decision making is covered in Chapter

1D, which is concerned with the FWC's failure to address poverty in families. The application of the FWC's policy to maintain award relativities has meant that no priority has been given to meeting the unmet needs of the low paid.

333. One issue that arises from the decision by the FWC to apply its award relativities policy is whether the application of that policy might be justified or excused on the basis of some other factors, considerations or circumstances. In this regard, we need to consider the FWC's "overall assessment ... that the relative living standards of NMW and award-reliant employees have improved a little over recent years" (at paragraph 67). This assessment needs to be considered in the context of a major error in the May 2016 decision regarding changes in relative living standards. We will return to this matter after outlining some of the issues raised in the wage review.

The claims and issues

334. The FWC awarded a uniform 2.4% increase in the NMW and award wage rates. This equated to an increase of \$15.80 per week in the NMW. At the base wage rate for trade-qualified workers, the C10 rate in the *Manufacturing and Associated Industries and Occupations Award*, it equated to \$18.40 per week.

335. The ACTU had sought a flat dollar increase of \$30.00 per week in the NMW and award wage rates up to, and including, the C10 rate (at which it was equal to 3.9%) and an increase of 3.9% in all wage rates above the C10 rate. It argued that:

“... a hybrid increase best balances the various considerations that the Panel must take into account. It would ensure that the largest wage rises, in percentage terms, go to the lowest paid workers. At the same time, it would prevent any further erosion of the skill-based wage relativities above the C10 tradespersons’ rate”. (ACTU submission, March 2016, paragraph 12.)

336. ACCER sought dollar, not percentage, increases: \$25.10 per week in the NMW and \$19.00 per week in all award rates, with no award rate to be less than the NMW. This was the first time under the current wage fixing system that ACCER had sought a flat money increase in award wages. It did so against the background of five consecutive decisions to award uniform percentage increases. In 2010 ACCER sought a percentage increase in minimum wage rates and presented a case for the base wage rate for a cleaner to be adopted as an interim rate for the National Minimum Wage, pending the completion of a research program designed to identify the needs of workers and their families. From 2012 to 2015 ACCER had made similar claims to the ACTU, but with a lower amounts being sought. From 2011 ACCER has sought an extra increase in the NMW, with a view to increasing the NMW to the base wage for cleaners.

337. Consistent with its objective of assisting those most in need, in 2016 ACCER flagged its priorities in the event that the FWC had a different view about the economic circumstances:

"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." (ACCER submission, March 2016, paragraph 7)

338. ACCER's concern with the adjustment of the NMW was consistent with the scheme of the *Fair Work Act 2009*. The legislation requires that the FWC first determine the NMW according to specified statutory criteria and to take that rate into account when setting award rates under different, but similar, statutory criteria. The NMW is the floor in the Australian minimum wage system on which award wage rates are then set by reference to skills, responsibilities, work values, etc in the various award classifications. The NMW and award wage rates are conceptually and legally distinct.

339. ACCER's submission relied on passages from the FWC's previous decisions regarding poverty and a decent standard of living which recognise 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; see section B of this chapter and Chapter 1D. We have described this as the operational objective of the NMW.

340. The NMW should be set, subject to a proper weighting of economic considerations, so as to provide full time workers with 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. Further objectives will apply in relation to the setting of award wage rates, with award wages being based on the NMW. In awards covering lower skilled occupations the lowest rate might be the NMW, but for other awards the lowest might exceed the NMW by a substantial margin.

Applying the operational objective: two matters unresolved

341. A further purpose of ACCER's submission was to seek clarification of the application

of the basic operational objective outlined above. There were three matters raised.

342. First, ACCER asked the FWC to identify the workers and the families who it believed have the 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. This followed the FWC's view in its June 2015 decision (at paragraph 338) that it is not possible for the NMW and award rates "to ensure that every employed family, whatever their composition, has sufficient income to meet their material needs". This is clearly the case, but the FWC did not suggest which families would be supported with an income sufficient to meet their material needs, or which families had a reasonable expectation of a standard of living in excess of poverty. ACCER sought a response to this issue and put reasons as to how it should be answered. The May 2016 decision did not acknowledge or address this important issue.
343. Second, ACCER raised an ancillary issue to the first matter. The issue related to a submission by ACOSS which it had made over a number of years, including in each case under the *Fair Work Act*, the origins of this which are discussed in section D above. The substance of its submission was that the minimum wage system should provide the single worker with a decent standard of living, but that it should operate so as to prevent families from falling into poverty. It should be noted that the protection of families against poverty as argued by ACOSS does not identify the families who will come within the scope of that protection; i.e. they do not answer the kind of question posed in the previous paragraph. ACCER could not 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; and it proposes a standard that is inconsistent with recognised human rights. The more fundamental question of whether or not minimum wages should be set by reference to the single person criterion had been resolved in the June 2015 decision against such a test. However, there were no express views in that decision on the questions of whether the reasonable expectation to a decent standard of living extended to workers with family responsibilities and whether workers with family responsibilities would be only be protected against poverty. ACCER sought an express response from the FWC. The FWC did not make an express response, but its response at paragraph 396 of the May 2016 decision about the way in which it goes about setting implies that the distinction drawn by ACOSS has been rejected.

344. Third, ACCER asked the FWC to address is an important question in regard to single breadwinner couple parent families who are within the scope of the protection intended by the formulation, but who are living in poverty and do not have a decent standard of living. In the application of the operational objective and in order for the family to escape poverty and achieve a decent standard of living, is the sole breadwinner required to work overtime or get a second job and/or is the "stay at home" parent required to obtain employment? ACCER had presented the negative case to this question in 2016 and earlier submissions. It has argued that the NMW should be set on the basis that the sole breadwinner is not required to work overtime or get a second job and/or that the "stay at home" parent is not required to obtain employment in order for the family to stay out of poverty and achieve a decent standard of living. The May 2016 decision was silent on this important matter.

A major error in the May 2016 decision.

345. The decision in May 2016 made on the basis of the FWC's policy of maintaining award relativities. However, it appears that the FWC sought to support the decision by reference to its "overall assessment ... that the relative living standards of NMW and award-reliant employees have improved a little over recent years, although the relative position of low-paid workers has deteriorated over the past decade. Many have low levels of disposable income" (paragraph 67). This conclusion is echoed in paragraph 98: "Despite some recent improvement in the relative living standards of NMW and award-reliant employees, the relative position of low-paid workers has deteriorated over the past decade."

346. The basis, or at least the major basis, of the conclusion of rising living standards over recent years is found in Chapter 5 of the FWC's decision, in particular Table 5.7 which compared the disposable incomes and poverty lines for various households at December 2010 and December 2015. Table 5.7 showed that there had been a very substantial increase in the living standards of wage-dependent households over the five years to December 2015. The FWC said:

“It [Table 5.7] shows that over the five years to December 2015, the disposable income of households with a member earning the C14 or C10 award rate has increased by between 7 to 12 percentage points as a portion of the 60 per cent median income poverty line, other than for single-earner households without children where the increase has been 5 to 7 percentage points with NSA [Newstart allowance] and 2 to 3 percentage points without NSA.” (Paragraph 436)

347. On the face of it, this passage could dispel concerns about the application of the uniform

percentage policy because it appeared there were some factors in operation that had given targeted support to low paid workers and their families.

348. However, the conclusion that there had been such an improvement in living standards by reference to poverty lines was patently erroneous to those who have followed the data in earlier decisions by the FWC. The error was caused by the FWC using the wrong figures for December 2010. The poverty lines claimed for December 2010 were in fact similar to those calculated elsewhere for December 2014 (which appear in Table 5.6 of the FWC's decision). This meant that the poverty lines used for December 2010 were substantially higher than the correct figures, which meant that the margins between disposable incomes and relevant poverty lines were overstated by a substantial amount. The extent of poverty among families in December 2010 was overstated. Given that error, the comparison incorrectly showed a substantial increase in relative living standards and a substantial reduction in poverty over the five years to December 2015. This is not a case of errors being buried in a set of figures and having no consequence. In fact, the FWC drew attention to them and relied on them.
349. By a letter dated 24 June 2016 to the President of the FWC, ACCER drew attention to this error and sought a correction:

"Australian Catholic Council for Employment Relations (ACCER) notes that a significant factor in the Panel's decision not to provide further support for low paid workers, whether covered by the National Minimum Wage or award wage rates, was the Panel's 'overall assessment ... that the relative living standards of NMW and award-reliant employees have improved a little over recent years, although the relative position of low-paid workers has deteriorated over the past decade. Many have low levels of disposable income'(paragraphs 67, 98 and 436 refer).

The Panel's conclusion in this regard, is based on erroneous data regarding the ratio for household disposable income to a median income poverty line, which is outlined in Table 5.7 in paragraph 436 of the decision. The error in the table is in the use of incorrect figures for the poverty lines for December 2010. It appears that the figures used were those for December 2014.

ACCER asks that you bring this information to the attention of the Panel and respectfully requests that the figures in Table 5.7 and associated paragraphs are corrected by the Panel issuing an amended or supplementary decision."

(<https://www.fwc.gov.au/documents/sites/wagereview2016/correspondence/accercorro-awr1516.pdf>)

350. By a Statement issued on 26 July 2016 ([2016] FWCFB 5047) the FWC said:

"[6] It is desirable to correct the public record and we express our appreciation to ACCER for drawing the matter to our attention. The Panel is informed by Commission staff that there was an error in the calculation of the figures for the December 2010 poverty lines in Table 5.7 of the Decision. As a result, the

December 2010 ratios to disposable income in Table 5.7 are also incorrect, as is the description in paragraph [436] of the change in disposable income from December 2010 to December 2015 as shown by Table 5.7. Commission staff have advised that the December 2010 poverty lines were calculated with a median equivalised disposable household income figure from the ABS Household Income and Wealth catalogue for 2009–10 that was inflated to 2013–14 dollars by the Consumer Price Index. The error was that the inflation of this figure was not taken into account when the poverty lines were calculated."

"[9] The Panel does not share ACCER's view as to the significance of the error in Table 5.7. The Panel observes that it had regard to a range of factors [footnote] in reaching its "overall assessment ... that the relative living standards of NMW and award-reliant employees have improved a little over recent years, although the relative position of low-paid workers has deteriorated over the past decade." [Footnote] Further, for reasons outlined above, it would not be appropriate to correct the error in the published Table under the slip rule. Nor would it be open to the Panel to issue any amended or supplementary decision even if the Panel had been minded to do so."

351. There are two matters raised by the FWC's response in the July 2016 Statement: the relevance of the error and the process used for the gathering of evidence. We will respond later in this section to the issues raised by the process for gathering evidence. We now turn to the corrected data and the FWC's view on recent changes in relative living standards.
352. The Table in the Statement of 26 July 2016 corrects the errors in Table 5.7 of the May 2016 decision. In the revised table published in the Attachment to the Statement not one of the 12 households reliant on the NMW or the C10 award rate had an increase in their living standards relative to the poverty line as calculated by the FWC and, by extension, relative to the FWC's calculation of the underlying median equivalised disposable household income.
353. The significance of the error is illustrated by the position of the NMW-dependent single breadwinner family of a couple with two children. The erroneous data used in Table 5.7 had the same family as being 19% below the poverty line in December 2010 and improving to 12% below in December 2015. The revised Table in the Statement has the family 11% below the poverty line in December 2010 and 12% below in December 2015. This means that the situation worsened for this family over the five years. In the case of the single NMW-dependent worker the incorrect figures in Table 5.7 had an improvement from 4% above to 13% above the poverty line, whereas the corrected table shows that the margin over poverty fell from 15% to 13% over the five years. In the

case of the single C10-dependent adult the corrected figures showed that the margin over poverty fell from 31% to 28%.

354. Paragraph 9 of the July 2016 Statement has two footnotes. The first is "For example, see [2016] FWCFB 3500 at paras [57]-[66]". The second footnote is "[2016] FWCFB 3500 at para. 67. See also the full range of data and considerations in Chapter 5 Relative Living Standards and the Needs of the Low Pay."
355. This paragraph claims that there was other evidence summarised in paragraphs 57-66 and in Chapter 5 which supports the conclusion that relative living standards had improved. Importantly, it means that the other evidence should be preferred even though the corrected table shows a deterioration in relative living standards.
356. The FWC's Statement of 26 July 2016 does not explicitly address ACCER's view that the FWC's conclusion erroneous data was a significant factor in the Panel's decision not to provide further support for low paid workers, but it implicitly reinforces ACCER's conclusion that the finding of an overall increase in living standards was a significant factor in not providing extra assistance to low paid workers or, to put it another way, in justifying the application of the relativities policy.
357. We now turn to these other matters to see if they support the contention that the relative living standards of NMW and award-reliant employees have improved a little over recent years. The term "recent years" is not precise and the FWC has not purported to use it in a precise way. We will regard the FWC's use of the term to cover the five years to December 2015, but, as a shorter period could still be regarded as recent we will refer to shorter time periods where appropriate.

The format of the May 2016 decision

358. Before turning to the evidence regarding changes in relative living standards we set out an overview of the structure of the May 2016 decision. The decision has a similar format to earlier decisions.
359. Chapter 1 of the May 2016 decision contained a range of preliminary matters (paragraphs 1 to 33) and an overview of the matters that it is required to take into account: the economic environment (paragraphs 34 to 52), social considerations (paragraphs 53 to 76) and whether its decision would have any impact on collective bargaining (paragraphs 77 to 81). The last part of chapter (from paragraph 82) contains a reference to the various submissions by the parties, a summary of some economic and social aspects and finishes with the FWC's conclusions in respect of the NMW and award rates:

[101] The general economic climate is robust, with some continued improvement in productivity and historically low levels of inflation and wages growth. The prevailing economic circumstances provide an opportunity to improve the relative living standards of the low paid and to enable them to better meet their needs. The level of increase we have decided upon will not lead to inflationary pressure and is highly unlikely to have any negative impact on employment. It will, however, mean a modest improvement in the real wages for those employees who are reliant on the NMW and modern award minimum wages.

[102] We have determined that it is appropriate to increase the NMW. *The factors identified above have led us to award an increase of 2.4 per cent.* The national minimum wage will be \$672.70 per week or \$17.70 per hour. The hourly rate has been calculated by dividing the weekly rate by 38, on the basis of the 38-hour week for a full-time employee. This constitutes an increase of \$15.80 per week to the weekly rate or 41 cents per hour to the hourly rate.

[103] Having regard to the proposed NMW and the other relevant considerations, we also consider that it is appropriate to adjust modern award minimum wages.

[104] As to the form of the increase, past flat dollar increases in award minimum rates have compressed award relativities and reduced the gains from skill acquisition. The position of the higher award classifications has reduced relative to market rates and to average earnings and has fallen in terms of real purchasing power. A uniform percentage increase will particularly benefit women workers, because at the higher award classification levels women are substantially more likely than men to be paid the minimum award rate rather a bargained rate. These matters have led us to determine a uniform percentage increase. *The considerations to which we have referred have led us to increase modern award minimum wages by 2.4 per cent.*" (Emphasis added)

360. The FWC's decision to award a 2.4% increase in the NMW and award rates is based on the "factors identified above" in paragraph 102 regarding the NMW and the "considerations to which we have referred" in paragraph 104 regarding award rates. The factors and considerations are in paragraphs 34 to 101 of the decision. The economic factors and considerations leading to the conclusion in paragraph 101 that the "general economic climate is robust" are based on Chapter 4 of the decision, entitled "The Economy". The social factors and considerations referred to in Chapter 1 draw on matters in Chapter 5, entitled "Relative Living Standards and the Needs of the Low Paid".

361. A critical part of the FWC's summary of social considerations is in paragraph 67:

“[67] Our overall assessment is that the relative living standards of NMW and award-reliant employees have improved a little over recent years, although the relative position of low-paid workers has deteriorated over the past decade. Many have low levels of disposable income. Some low paid award-reliant

employee households have levels of disposable income which places them below the poverty line. The current environment of low inflation and low wages growth generally provides an opportunity to provide a moderate improvement in the relative living standards of the low paid and to better meet their needs. 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."

362. The "low paid" are regarded as those with earnings less than two-thirds of median (adult) ordinary time earnings; see paragraphs 358-70. This level was in excess of the C10 rate fixed for trade-qualified workers. It was estimated by the ACTU that up to 75% of all award-reliant workers were below the C10 rate. The term award-reliant is used in a narrow sense: in order to be regarded as award reliant the worker's wage must be only that prescribed in the award, and not a dollar more. There are many more whose higher agreed wage rate is set by reference to the award rate.
363. The low paid could be low paid by reason of them only being paid the NMW or the applicable award rate or because their actual wage rate (set by a collective or an individual agreement) is low paid. A worker and his or her family may be low paid and living in poverty despite being able to secure a wage that is in excess of the minimum safety net wage. While the FWC refers in paragraph 67 to some low paid award-reliant employee households having levels of disposable income which place them below the poverty line, we should recognise that there are workers with family responsibilities who are paid above the award minimum and also living in poverty. The direction in the *Fair Work Act* for the FWC to take into account the needs of the low paid means that our inquiries must extend to those working families who are living in poverty and unable to secure a decent standard of living even though the breadwinner is paid in excess of the minimum wage rate. References to the position of award-reliant workers are useful and necessary in order to identify where the wages safety is currently placed and where it should be placed, but the legislation requires that attention be given to the low paid. It is the needs and relative living standards of the low paid that the FWC has to consider and address.

Chapter 5: relative living standards and the needs of the low paid

364. Chapter 5 of the May 2016 decision, entitled Relative Living Standards and the Needs of the Low Paid, is broadly divided into sections on relative living standards and the needs of the low paid, although there is an inevitable overlap in the consideration of these matters. The section on relative living standards starts at paragraph 371:

"[371] The Panel is required to take into account the relative living standards of those on the NMW and those on modern award minimum wages. This requirement relates to all modern award minimum rates, not just to those that fall below a threshold of low pay. Our consideration of relative living standards focusses on the comparison between award-reliant workers and other employees, especially non-managerial employees, but does not exclude comparison with other groups. We consider measures of both earnings and disposable incomes.

[372] There is no doubt that the low paid and award reliant have fallen behind wage earners and employee households generally over the past two decades, whether on the basis of wage income or household income."

365. The distinction between wage income and household income is reflected in the structure of the following paragraphs, with the FWC first considering a wide range of matters concerning relative wages and their changes over time. The data show that minimum wage rates have lost relativity with average wage rates, but that in recent years the trend has been arrested somewhat. This data is fundamental to the understanding of the relative living standards of the low paid, including those who are low paid and rely on the NMW or an award wage, and their changes over time. Although tax and transfer changes are relevant to the living standards of the low paid, they are typically much less important than wage rates.
366. Of particular importance in providing an understanding of the changing position of low income workers and minimum wage-dependent workers is the relationship between their wages and measures of average or median earnings, which are sometimes referred to as the "bite" of minimum wage rates into the community-wide measures of median and average incomes.
367. Table 5.3 shows that from August 2004 to August 2014 the ratio of the NMW/C14 award rate to median weekly earnings of full-time workers fell from 58.4% to 53.4%. The loss of relativity over the last four years to August 2014 was marginal, 53.6% to 53.4%, but within that time the figures were above and then below that slight trend. Table 5.4 shows that the NMW/C14 award rate fell from 44.7% to 43.8% per cent of Average Weekly Ordinary Time Earnings (AWOTE) over the five year period November 2010 to November 2015. However, in the three years to November 2015 there was a slight increase in the bite: from 43.4% to 43.8%.
368. The median and average figures show that, in regard to the basic determinant of relative living standards, wages, there has been no, or no significant, increase in the relative position of low paid workers over the past three to five years.
369. From paragraph 390 the FWC considers household incomes and the disposable

incomes of award-reliant workers, which involves the consideration of the impact of taxes and transfers on the living standards of workers and wage-dependent households. The following appears under the side heading "Household incomes":

"[397] The relative living standards of employees on the NMW and award-reliant employees are affected by the level of wages that they earn, the hours they work, tax-transfer payments and the circumstances of the households in which they live. The net effect of these factors is summarised in the notion of equivalised household disposable income. It is therefore necessary to have regard to a range of measures of the relative living standards of the low paid and the household circumstances in which they live." (Footnote omitted.)

370. The following paragraphs refer to the composition of households and the households in which low paid workers are living. The FWC then referred to the impact of minimum wage decisions on low paid workers and inequality in earnings.

[411] As the Panel has previously noted, in relation to the slow relative growth of award wages between the longer period of 2002–2012, "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 AWR decisions to rising inequality of earnings*." (Footnotes omitted, emphasis added.)

371. This paragraph accepts a connection between wage review decisions and increasing inequality, to which we return in Chapter 5E. The paragraph is followed by a section dealing with transfer payments and their changes over recent years. It includes the extent to which transfer payments might have offset changes in wage levels in wage-dependent families. Paragraphs 419 to 421 concern parts of ACCER's submission.

372. At paragraph 421 the FWC referred to Table 10 of ACCER's March 2016 submission, which compared changes in the NMW, AWOTE and household disposable income (per head, seasonally adjusted) as calculated by the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute) over the period 2001 to 2016, including data for each of the years in between. The point of paragraph 421 in the decision was that over the five years to January 2016 the NMW increased by more than household disposable income: the increases were 15.3% and 13.5%, respectively. The FWC also referred to ACCER's figures showing that AWOTE increased by 17.7% over the same period.

373. There are two aspects of the FWC's comparison of the changes in the NMW and household disposable income. First, it compares the pre-tax NMW and household disposable income, which is not a pre-tax figure. To compare like with like, we

should refer to the post-tax NMW increase of 13.8%, which is barely above the comparator.

374. Second, the FWC's own calculations of household disposable income are to be preferred to the Melbourne Institute's over the five year period. Melbourne Institute's figures. The FWC's figures are derived from data published every two years by the Australian Bureau of Statistics (ABS). Like the Australian Fair Pay Commission before it, the FWC uses the Melbourne Institute's figures to adjust the ABS figures to cover the periods since the survey years: they provide the basis of estimated current levels, with those estimates being revised following successive releases of ABS data. In the five year period to December 2015 there were two ABS surveys, for 2011-12 and 2013-14, that were the primary measures of changes in median living standards and the changes in the living standards of different kinds of households.
375. The FWC's own figures, based on ABS data, are a better guide to the changes in relative living standards in recent years. FWC's revised table in the July 2016 Statement shows that the poverty line, and therefore median equivalised disposable household income, increased by 14.9%. By comparison the gross NMW increased by 15.3% while the net NMW increased by 13.8%. This was shown in Table 28 of ACCER's March 2016 submission and is shown in Table 28 in Chapter 8 of this book. Comparing like with like, i.e. the NMW after tax and the FWC's measure of community-wide disposable income, the data shows a decline in relative value of the NMW over the five year period.
376. At paragraph 421 the FWC refers to data from the Commonwealth concerning the impact of family assistance measures over the five years to January 2016. The figures showed that for most household types the increase in family assistance had been greater than the increase in the NMW. This is borne out in the corrected table in the July 2016 Statement, which shows that families with children generally fared a little better than a single worker, but the overall effect of wages and family transfers did not maintain the living standards of families over the five years.
377. The FWC's consideration of the needs of the low paid starts at paragraph 423, with a discussion of income inequality within the community generally. From paragraph 428 there is a discussion of poverty lines. At paragraph 434 Table 5.6 shows the position of 12 wage-dependent households relative to their poverty lines at December 2014 and December 2015.
378. Table 5.6 shows that over the year to December 2015 there was no change in the

position of the NMW-dependent single breadwinner of a couple and two children relative to their poverty line. In both years the family was at 88% of its poverty line. Eight of the other households had no change, but three had a one percent increase over this period. At the C10 wage level the single breadwinner of a couple and two children had a one percent increase, from 95% to 96%. Two other C10-dependent households in Table 5.6 had a one percent improvement over that period. Nine households were unchanged over the year to December 2015. In general, Table 5.6 shows no significant improvement in relative living standards over the year to December 2015.

379. Table 5.7, at paragraph 436, covers the same households over the period December 2010 to December 2015. We have discussed this previously. The single adult poverty line was \$504.00 per week in Table 5.7, but the correct figure in the July 2016 Statement was \$455.57 per week. This error of 10.6% infected all of the calculations. The NMW-dependent couple with two children originally shown to have risen from 81% to 88% of the poverty line had actually fallen from 89% to 88% of the poverty line over the five years to December 2015. The same kind of family, but dependent on the C10 award rate, was originally shown to have risen from 88% to 96% of the poverty line had, in fact, fallen from 97% to 96% over the five years. These corrected figures show a decrease in relative living standards for all NMW-dependent households, save for the dual earner couple with no children, who experienced no change. At the C10 level all households recorded a decrease in relative living standards.

380. The next section of Chapter 5 of the May 2016 decision that bears on the FWC's claim in the Statement of July 2016 that the conclusion that there had been an improvement in living standards in recent years could be supported by reference to other matters is in the section dealing with stress and financial deprivation. The evidence here is limited, but clear; and it is to the contrary of the view that there had been an improvement. After reviewing reported changes since 2010 the FWC said:

"[447] The surveys (as variously measured) each show that financial stress is higher for low-paid individuals and households than their higher-paid counterparts. The 2014 data suggests that financial stress reported has risen more for the low-paid than for all households or individuals in the most recent years."

381. The FWC's conclusions in relation to relative living standards and the needs of the low paid are at paragraphs 448 to 463 of the May 2016 decision. The last four paragraphs summarise the pertinent evidence and state the conclusion on changes in

recent years. It is evident that Table 5.7 in its original form was a critical consideration because the text of the commentary on Table 5.7 is repeated in paragraph 460.

[460] Over the five years to December 2015, the disposable income of households with a member earning the C14 or C10 award rate has increased by between 7 to 12 percentage points as a proportion of the 60 per cent median income poverty lines, other than for single-earner households without children where the increase was between 2 and 7 percentage points. However, the ratio of AWOTE to the 60 per cent median income poverty lines has, in each case, increased by more than for the award-reliant households over that period.

[461] New information from financial stress measures for 2014 is available from the HILDA Survey and the GSS survey. The 2014 data finds a slightly higher proportion of low-paid persons or households are reporting financial stress.

[462] Notwithstanding an improvement in their absolute position, the low paid and award reliant have fallen behind wage earners and employee households generally over the past decade, whether measured on the basis of wage income or household income. That conclusion arises from a consideration of movements over the past two decades in real wages, the ratio between the minimum wage and median earnings, increased earnings inequality measured by reference in earnings growth and growth in real household disposable income at various points within the earnings distribution and a rising Gini coefficient.

[463] Our overall assessment is that the relative living standards of NMW and award-reliant employees have improved a little over recent years, although the relative position of low-paid workers has deteriorated over the past decade. Many have low levels of disposable income. Notwithstanding some recent improvement in their position and the operation of the tax- transfer system, some low-paid award-reliant employee households—single-earner couples without children, and single-earner couples with one or two children, earning either the NMW or C10 where the non-earning partner is not in the labour force—have household disposable incomes less than the 60 per cent of median income poverty lines. 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."

382. The error in Table 5.7 is the basis for the errors in paragraphs 436 (which includes Table 5.7) and 460. It is also the basis of the error in paragraph 463, where it is noted that some families who are living in poverty have had some recent improvement in their position. These conclusions in Chapter 5 were the basis of the summary conclusion in paragraph 67 in Chapter 1, to which we referred earlier.

Conclusion regarding the reasons for decision in May 2016

383. There are three conclusions, among others, that we should draw from the May 2016 decision.
384. First, an analysis of the matters in Chapter 5 of the May 2016 decision and the correction of Table 5.7 in the July 2016 Statement do not support the claims in the

decision and in the Statement that the relative living standards of NMW and award-reliant workers have improved over recent years.

385. Second, in deciding that a 2.4% increase should be applied to the NMW and the award wage rates, the FWC conflated what should have been two separate wage setting processes. We referred earlier to the FWC's references to "factors" in regard to the NMW and "considerations" in regard to award increases. A review of the May 2016 decision demonstrates that there is, however, no discernible list of factors relevant to the decision to award a 2.4% increase in the NMW and no discernible list of considerations relevant to the decision to increase award rates by 2.4%. There are no identifiable factors that relate to the NMW and no identifiable considerations that relate to award wages in the summary paragraphs in Chapter 1 and the substantive discussions of the economic and social issues in Chapter 4 and Chapter 5, respectively. It is clear that the FWC was considering the setting of a uniform figure for the NMW and award rates. Although the FWC refers to "factors" in regard to the NMW and "considerations" in regard to award rates, nothing turns on this distinction. This is, in our view, contrary to the requirement of the *Fair Work Act* that the NMW be set independently of award rates of pay.
386. Third, in regard to the decision to maintain existing wage relativities, there is nothing in the FWC's reasons that considers, either explicitly or implicitly, the benefits of such a decision, the benefits of an alternative outcome and the balancing of those considerations. There was no consideration of matters that bear on the continued application of the policy and the obligation to take into account the needs of the low paid.

The FWC's source of evidence

387. We referred earlier to two matters arising from the July 2016 Statement. The first related to the relevance of the error in Table 5.7 and the FWC's assessment about relative living standards over recent years. The second matter arising from the Statement relates to the way in which the FWC gathered evidence in the wage review. It is a matter of general importance because it concerns the evidence upon which the FWC makes its decisions, the access that parties have to that evidence and their capacity to respond to it.
388. The contents of Table 5.7 were of critical importance to an assessment of the relative living standards and the needs of the low paid and the FWC's obligation to take them into account in setting a safety net of fair minimum wages. The first time any party saw

this evidence was when the decision was published. No party had an opportunity to comment on the evidence in that table and to provide alternative data. This is apparent from the Statement.

389. The FWC explained in the Statement that the error had arisen from information supplied by "Commission staff", suggesting that the members of FWC were not responsible for the error, even though its members must have considered this material and its relevance when drafting the commentary on Table 5.7 in paragraph 436, which we quoted earlier. Presumably, the reference to Commission staff is a reference to the Workplace and Economic Research Section of the Tribunal Services Branch of the FWC and not the personal staff of the members of the FWC.
390. It is not unknown for courts and tribunals to make errors in their calculations when drawing together evidence presented to them. The source of the error might be the judge or other arbitrator or it might be the personal staff of the judge or the arbitrator working under direction and for whom the decision-maker takes responsibility, as if the decision was his or her own decision. In explaining the source of the error, the FWC has revealed a process that lacks transparency and prevents parties from having the opportunity to respond to potentially relevant material.
391. The erroneous calculations adopted by the FWC were not part of the evidence formally before the FWC and were compiled by persons who were not on the personal staff of the members of the FWC who were deciding the issues. No party appearing before the FWC had access to this material.
392. Of course, the FWC is entitled to seek out evidence; and it should do so if it believes that further evidence would assist it to carry out its statutory function. Since 2005 the decision making process under the national minimum wage setting has been inquisitorial, not adversarial. The issue is whether and how that evidence should be disclosed and what opportunities the parties should have to comment on it.
393. The obtaining and use of the erroneous material did not, in our view, comply with the relevant provisions of the *Fair Work Act*. Section 289 enables the making of submissions by persons and bodies to the wage review process and provides that the "FWC must publish all submissions made to the FWC for consideration in the review" (subsection (2)). Subsection (5) provides "The FWC must ensure that all persons and bodies have a reasonable opportunity to make comments to the FWC, for consideration in the review, on the material published under subsections (2) and (3)." Section 291(1) of the Act provides "If the FWC undertakes or commissions research for the purposes of

an annual wage review, the FWC must publish the research so that submissions can be made addressing issues covered by the research" and subsection (2) requires that "The publication may be on the FWC's website or by any other means that the FWC considers appropriate". 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 ...".

394. The issue raised is an important one about the way in which the annual wage reviews are conducted. The 2017 decision should include an appropriate response to these issues.

3

SAFETY NET WORKERS HAVE SUFFERED REAL WAGE CUTS

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**Working Australia, 2017:
wages, families and poverty**

CHAPTER 3

SAFETY NET WORKERS HAVE SUFFERED REAL WAGE CUTS

A. REAL WAGE CHANGES 1997 - 2017

395. 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 50.5%. 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.
396. 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.
397. In 2006 and 2007 the Australian Fair Pay Commission (AFPC) gave 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.
398. The seven decisions under the *Fair Work Act 2009* from 2010 have awarded \$26.00 per week, 3.4%, 2.9%, 2.6%, 3.0%, 2.5% and 2.4%, respectively. The six percentage increases have totalled 18.2 % (compound). The continuing effect of the pre-2011 decisions had 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.
399. Table 1 shows that 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 \$650.00 per week, and now paying the modest wage of \$959.50 per week, has had a real wage cut of \$18.75 per week since 2001.

Table 1
Changes in various national safety net wage rates
January 2001- January 2017
(\$ 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
2017	672.70	730.90	783.30	796.50	851.30	906.80	959.50	1016.20	110.0
\$ Increase	272.30	280.90	291.10	296.50	301.30	306.80	309.50	316.20	-
% Increase	68.0%	62.4%	59.1%	59.3%	54.8%	51.1%	47.6%	45.2%	50.5%

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 2016*, 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 \$940.90 in January 2017. 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. The 2011 to 2017 figures for the other columns are also rounded to the nearest 10 cents, consistent with award practice.

400. The increases in Table 1 have been within a narrow band: from \$272.30 to \$316.20 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.

401. From January 2001 to January 2017 real wages were reduced for safety net rates that are now paying \$920.00 or more per week. This means that no productivity increases

have been distributed to wage classifications that now pay \$920.00 or more per week. This is a significant improvement on past figures. In our 2010 submission to the first wage review under the *Fair Work Act* we drew attention to the fact that over the period December 2000 to December 2009 real wages were reduced for wage classifications that then paid over \$645.00.

402. 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, October 2016. 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 1997-2016

403. 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)).

404. The AIRC introduced the FMW in its first wage review after the enactment of the 1996 amendments. That review is discussed in Chapter 2D. 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 same classification structure has been used in each of these awards.
405. In Tables 2 to 5 we show how wage increases have varied, relative to the CPI, over the period 1997 to 2016 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 2016. We have used July in these and other years to provide a better explanation of the changes that have taken place. As the July 2016 rates include the most recent increases awarded in May 2016, they are also the rates that applied in January 2017. 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*.

Table 2

**Increases in safety net wages and the CPI
July 1997 – July 2016
(\$ per week, unless otherwise indicated)**

	July 1997	July 2016	Increase
Federal/National Minimum Wage	359.40	672.70	87.2%
C10 classification	451.20	783.30	73.6%
C4 classification	597.20	940.90	57.6%
CPI	67.1	108.2	61.3%

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 May 2016 decision was for the March Quarter 2016. The CPI numbers are those in *Consumer Price Index, Australia, December 2016*, cat. no. 6401.0, Table 1 (A2325846C).

406. 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.

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.

Work Choices: fairness foregone

407. 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 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.
408. 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.
409. 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.

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.

410. 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.
411. 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.)

412. 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.
413. The *Work Choices* years disturbed the earlier relationship between Federal and State minimum wage rates, with Federal rates falling behind State rates. This is illustrated by a comparison between the FMW and its State equivalents at January 2010, when the average of State rates was \$21.19 per week more than the FMW; see Table 12 in Chapter 5.

The Fair Work reforms

414. 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)

415. 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.
416. 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.
417. Table 5 summarises the changes under the reformed wage setting system and compares recent wage increases with two sets of CPI increases.

Table 5

Increases in safety net wages and the CPI
Post-Work Choices
June 2010 – July 2016
(\$ per week, unless otherwise indicated)

	June 2010	July 2016	Increase
NMW	543.78	672.70	23.7%
C10 classification	637.48	783.30	22.9%
C4 classification	771.40	940.90	22.0%
CPI			
From March 2008	90.3	108.2	19.8%
From March 2009	92.5	108.2	17.0%

See notes to Table 2

418. Table 5 shows that the FWC has been confronted with CPI increases of 19.8%% for the period March 2008 (the most recently published CPI prior to the last wage increase by the AFPC) to March 2016 (the most recent before the FWC's May 2016 decision). The figure from March 2009, 17.0% 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.
419. The decisions in 2010 to 2016 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.
420. 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.
421. 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.
422. The NMW increase from the July 2008 decision to July 2016 of 23.7% was substantially less than the AWOTE increase over a similar period. Over the period November 2007 to November 2015 (the latest available figures at the time of the 2008 and 2016 wage decisions) went from \$1,100.70 to \$1,499.30 per week, a 36.2% 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

423. The percentage increases awarded in the last six 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 57.6% from July 1997 to July 2016, during which time the CPI increased by 61.3%. This is a real wage cut of \$22.38 per week.
424. 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 money value of that percentage at the C10 level for lower paid classifications.

B. WINNERS, LOSERS AND THE AVERAGE OUTCOME

425. What has been the net effect of the re-allocation of compensation for price increases? We know that from January 2001 to January 2017 real wages were reduced for safety net rates that are now paying \$920.00 or more per week. If this is more than the overall average for those workers employed on safety net wages, then they have had real wage increases; and if it is less than the average they have had real wage cuts.
426. 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.
427. 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.

Award classification rates

428. Table 6 sets out a cross section of entry level rates of pay in January 2017. 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.
429. Table 6 shows the impact of the limited wage increases on low paid workers has not been as beneficial as a simple reference to the NMW adjustments would suggest. A rate of \$738.80 per week (the minimum wage for a shop assistant) has been increased by \$282.10 per week, or 61.2%, since January 2001. A wage at the cleaner's base rate, now \$718.40 per week, has increased by \$279.40 per week, or 63.6%, over that time. These increases for two significant groups of low paid workers are substantially less than the 68.0% increase in the NMW over the same period. When making comparisons about the real wage changes over the past 16 years, we must keep in mind that the increase in the NMW is not a good indicator of the change in the positions of low paid workers. Workers on the C10 rate are low paid, and that rate has increased by 59.1% (see Table 1).

Table 6

Lowest classification rates in various awards, January 2017
(\$ per week)

Award	Introductory Rate	Lowest Classification Rate
Miscellaneous	\$672.70	\$718.60
Clerks - Private Sector		\$715.20
Car Parking		\$708.60
General Retail Industry		\$738.80
Cleaning Services Industry		\$718.40
Hair and Beauty Industry		\$738.80
Restaurant Industry	\$672.70	\$692.10
Hospitality Industry (General)	\$672.70	\$692.10
Fast Food Industry		\$738.80
Aged Care		\$715.20
Higher Education Industry - General Staff		\$720.30
Waste Management		\$712.40
Local Government Industry		\$719.20
Manufacturing and Associated Industries and Occupations	\$672.70	\$692.10
Storage Services and Wholesale	\$718.60	\$727.70
Rail Industry - Operations		\$672.70

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.

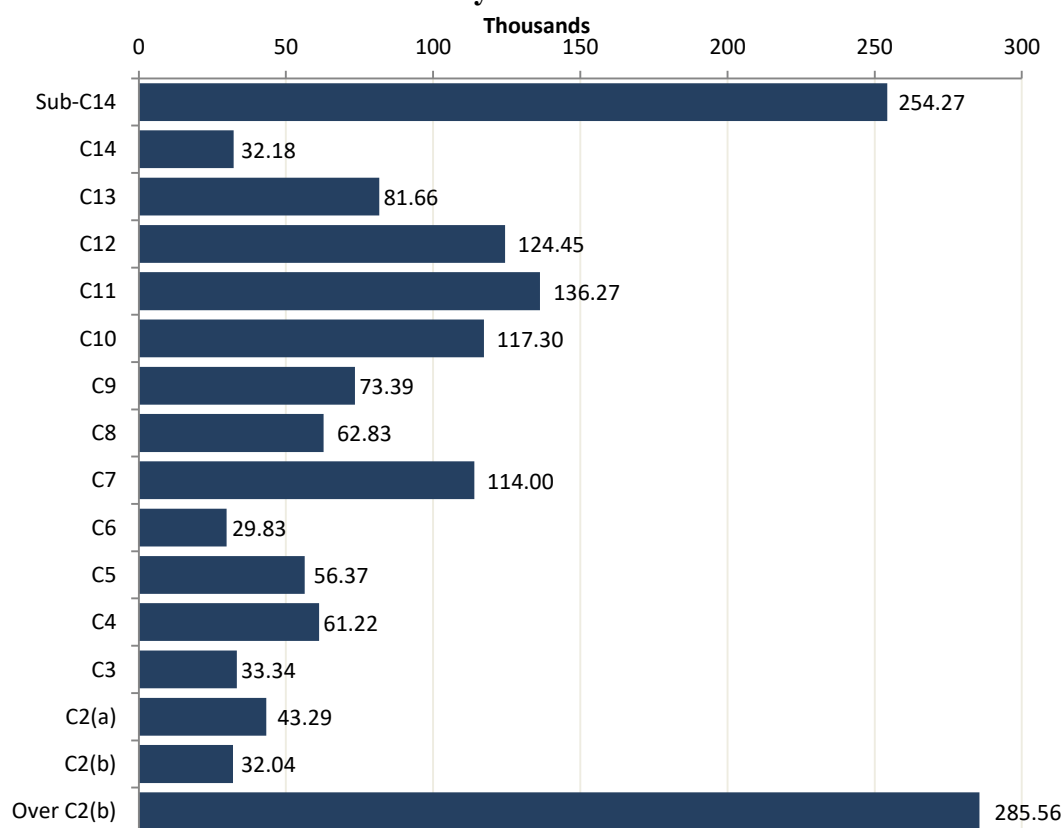
The distribution of safety net workers across wage classifications

430. 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 \$45.90 more than the NMW after the first three months of employment. The other awards have an increase of \$19.40 per week after the transitional period. Why should the NMW, which applies to workers outside the award system, be based on a transitional rate? A first step in improving the NMW safety net would be to remove the connection to transitional rates.
431. 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.
432. 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.

433. 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."

434. A striking feature of Figure 1 is the very high number of workers apparently paid below the lowest minimum wage for adults. Those workers are junior employees paid on junior award rates, but the underpayment of adult workers may explain a small part of that number. 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.
435. Another striking feature of the chart is the high number of income earners on minimum award rates that are in excess of the top rate in the manufacturing award. The ACTU submission explained that "... workers were assigned to the C2(b) classification if they had hourly earnings between \$24.42 and \$25.42 per hour. Those over C2(b) therefore had earnings higher than \$25.42 per hour." This equated to a minimum wage rate of \$965.96 per week for those in the highest paid category. The FWC commented:
- "[372] The ACTU analysis of award reliance by occupation shows that there were 163 800 managers and professionals employed at award rates in 2012 (10.6 per cent of all award-reliant employees) and of these, 40 per cent were health professionals. These health professionals are likely to account for a significant portion of those employed on award rates above the C2(b) rate.
- [373] Although caution is required in drawing conclusions as to the precise extent of award reliance at higher classification levels, the ACTU's analysis suggests a significant incidence of award reliance higher up the classification scale. Given the context of this Review, in which we are reviewing modern award minimum rates of pay, it is appropriate that we take into account the relative living standards of all award-reliant employees." (Footnotes omitted.)
436. 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 increases of 2015 and 2016, there would be a larger number with a real wage increase.
437. 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. 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. After taking into account the number of workers on junior rates, by assuming an average of 70% of the adult rate, there was an average real wage cut.

438. We conceded that the figures involve a degree of informed guesswork 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.
439. We now have to modify that conclusion in order to take into account the fact that the June 2015 and May 2016 decisions delivered a real wage increases. The CPI increases over the two years prior to the May 2016 decision totalled 2.66%, whereas the NMW and award rates were increased by 4.96%. 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 2017. Wage increases have been, on average, greater than the 50.5% CPI increase over that period, but only by a small margin.
440. 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

441. This section has been concerned with two issues.
442. 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.

443. 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 50.5% CPI increase over that period, but only by a small margin.
444. 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/C14 minimum rate. 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.
445. 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 for the FWC and governments is not whether poverty exists among wage earners, because it does, but how poverty in the workforce is to be addressed over time.

4

SAFETY NET WORKERS HAVE NOT RECEIVED PRODUCTIVITY INCREASES

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**Working Australia, 2017:
wages, families and poverty**

CHAPTER 4

SAFETY NET WORKERS HAVE NOT RECEIVED PRODUCTIVITY INCREASES

A. PRODUCTIVITY AND REAL WAGES

446. 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.
447. 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).
448. 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.
449. 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. For many more, their real wage increase has not reflected the substantial increase in productivity.
450. The figures that we come to in this chapter demonstrate the failure of successive tribunals to distribute productivity benefits to workers. This has been accepted by the FWC in the *Annual Wage Review 2013-14, Decision* [2014] FWCFB 3500, (June 2014 decision). At the end of its conclusions on relative living standards the FWC provided a comprehensive overview of the falling relative living standards of all safety net-dependent workers:

"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)

451. This conclusion is more of an aside in the FWC's decisions since 2010 than a sign of any desire to regain for workers the benefits denied to them over a number of years. As we will see, the consideration of issues concerning the distribution of productivity gains have been subsumed by the consideration of changes in relative living standards, which is an issue that the FWC is required by the *Fair Work Act* to take into account.
452. 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 must be secured through productivity improvements.
453. 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 has been 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.
454. What we do know from Chapter 3 is that over the period January 2001 to January 2017 real wages were increased for lower paid workers, but reduced for higher paid workers. The point separating the two over this period was \$920.00 per week. Workers now on a minimum wage rate that is \$920.00 per week or more are employed in a classification that has had a real wage cut over the 16 years.
455. The NMW, now at \$672.70 per week, has increased by 68.0% over the 16 years, substantially in excess of the CPI increase of 50.3%. This means that NMW-dependent workers have had some return for the productivity increases over that time. A more realistic reflection of the impact of wage increases on safety net-dependent workers is at the C10 award level, now at 783.30 per week, where the wage increase over the past 16 years was 59.1%, about half of the increase in the NMW. The benefit from productivity improvements across the wage classifications decreases until it is zero at a wage classification that now pays \$920.00 per week. After that point the worker has had a real wage cut, to the benefit of the employer and with all of the productivity gains going to the employer.

456. Because there was such a small increase in average real wage growth among safety net-dependent workers, 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 16 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. The practice has changed. 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.
457. 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 16 years have not received increases that reflect the increases in labour productivity over this period.
458. 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.

Table 7

**Gross Domestic Product per hour worked
Index
December 2000 – December 2016**

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
81.4	84.8	85.5	87.3	88.2	89.0	89.4	90.6	90.2	93.2	92.3	94.2	96.6	98.3	100.1	100.4	101.9

Source: *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, cat. no. 5206.0, Table 1, A2304364W (GDP per hour worked, trend)

459. Table 7 shows that GDP per hour worked increased by 25.2% over the 16 year period December 2000 to December 2016, averaging a compound rate of almost 1.5% per year.

460. Table 8 shows that Gross value added per hour worked in the market sector increased by 35.8% over the same period, averaging a compound rate of just over 2.0% per year.

Table 8

**Gross Value Added per hour worked - Market sector
Index
December 2000 – December 2016**

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
75.6	79.4	80.8	82.8	83.4	85.1	85.8	86.9	87.3	90.5	90.1	93.5	96.1	98.4	99.7	100.7	102.7

Source: *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, cat. no. 5206.0, Table 1, A3606050F (GVA per hour worked – market sector, trend).

461. Over the past 16 years the NMW has increased by 68.0%, the CPI by 50.5% (Chapter 3, Table 1) and labour productivity has increased 25.2%, by GDP per hour worked, and 35.8%, by GVA per hour worked in the market sector. The distribution of productivity increases falls away until it is zero at the safety net wage of \$920.00 per week.
462. 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).
463. 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 2016*, cat. no. 5206.0, Table 1, A2304364W). Clearly, a large part of the productivity increases were not distributed to safety net workers.
464. 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 and in the living standards of the workers and families who depended on them. All safety net workers were substantially worse off relative to the rest of the community at the end of those four years.

465. 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.
466. Taken in isolation, without regard to the real wage deficit and the disconnection between safety net wages and community standards, the seven decisions of the FWC since January 2010 have delivered real wage increases.
467. Table 5 in Chapter 3 shows 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 should be 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 19.8% up to March 2016, the most recent time for which there was published data prior to the FWC's May 2016 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 \$940.90 per week, has had an increase of 22.0%, compared to an increase in the NMW of 23.7%. The margin between wage increases and the CPI over these years was small, which means that very little of the increase in labour productivity was distributed. If we focus on just the six years to December 2015, GDP per hour worked increased by 7.7% and GVA per hour worked has increased by 11.3%; see Tables 7 and 8. In each of the six years that the FWC made a decision it

was aware of the changes in these indices and the gap that was developing between prices and productivity on one hand and minimum wage rates on the other.

Productivity and minimum wage setting

468. 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 May 2016 decision contains less than four pages on productivity; *Annual Wage Review 2015-16, Decision* [2016] FWCFB 3500, paragraphs 223 to 236. 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.
469. 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.
470. 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 "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.
471. The second question, about how the past failures to award labour productivity increases can be rectified, has not been answered by the FWC, at least expressly. 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 that has emerged between safety net wages and average wages across the workforce
472. A further matter that has been answered by the FWC concerns the question 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.

473. The AIRC had to address this question in the context of the new collective bargaining provisions introduced in 1996, provisions which were based on awards operating as safety net awards. It decided that the distribution of productivity should be at the national level and that such a distribution would not have a detrimental impact on collective bargaining and productivity growth in firms .
474. 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 to find ways in which productivity gains might be achieved. The FWC has followed the earlier view that productivity gains should be distributed at a national level and has found that this would not have a detrimental impact on collective bargaining. The relevant conclusions in the June 2014 decision were:

“[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.’”

475. The potential impact of safety net wage increases on the incentive to bargain was considered again in the June 2015 decision (*Annual Wage Review 2014-15, Decision* [2015] FWCFB 3500, 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.”) (Footnote omitted)

476. In its May 2016 decision the FWC referred to better productivity figures in recent years:

"[36] *Over the five years to 2014–15, labour productivity growth in the market sector was higher than the five years prior.* Over the year to the December quarter 2015, GDP per hour worked fell by 0.4 per cent, following an unusually large increase in hours worked over that year. GDP per hour worked grew over each of the preceding four years. Gross value added (GVA) per hour worked for the market sector grew by 0.9 per cent over the year." (Emphasis added)

477. The FWC is required by section 134(1)(f) of the *Fair Work Act* to have regard to the likely impact of its decisions on business activity, including on productivity. One of the matters that has been touched on in previous decisions was the question of whether minimum wage increase cause increases in productivity; see the June 2014 decision at paragraph 171 and the June 2015 decision at 191-96. The FWC referred to the tentative nature of the evidence on this aspect:

"[234] Evidence of the impact of minimum wage increases on productivity is limited, particularly in relation to increases arising from the AWRs in Australia. In the past, the Panel has noted that research undertaken for the UK’s Low Pay Commission and the OECD suggested that a higher minimum wage was likely to promote productivity improvement.

[235] The Expert Panel Report on the Review of the Future of the National Minimum Wage in the UK noted that employers in the UK’s low paying sectors raised productivity in response to the NMW, with a more marked effect in larger firms and evidence suggesting that this increased productivity was the result of capital-deepening in low wage sectors. The UK Expert Panel Report relied on UK research, some of which was considered in previous AWR decisions. The more recent UK research, by Riley and Rosazza Bondibene (2013), suggested that firms responded to the rise in labour costs that occurred with the introduction of the NMW by raising labour productivity.

[236] The limited evidence before us continues to support a conclusion that increases in minimum wages are more likely to stimulate productivity measures by some employers directly affected by minimum wage increases, rather than inhibit productivity." (Footnotes omitted)

478. This conclusion touches on an important matter, but the assessment is limited, as the reference to "some employers" shows.

B. PRODUCTIVITY, THE TERMS OF TRADE AND WAGES

479. Over the past 16 years the AWOTE measure of average weekly earnings has increased by 91.9% (see Chapter 6, Table 10) while prices, as measured by the CPI have increased by only 50.5% (see Chapter 3, Table 1). Inflation has been contained and CPI increases have generally been within the Reserve Bank's "zone of comfort". The margin of average wages over prices, 41.4 percentage points, shows a very large increase in real wages that is not explained by the substantial increase in labour productivity over the past 16 years: 25.2 %, as measured by Gross Domestic Product per hour worked, and 35.8% in the market sector, as measured by Gross Value Added per hour worked.
480. 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, with the past twelve months showing a significant improvement in the Terms of Trade.
481. The impact of changing terms of trade over the past 16 years can be seen in Table 9. The index figures are at December of each of the years from 2000 to 2016. 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 2011. The decline after December 2011 was substantial, but by December 2016 the index was in excess of the figure for December 2007. In December 2016 the index was considerably higher than the 1996 to 2003 levels.

Table 9

Terms of Trade December 2000 – December 2016

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
67.2	68.0	69.0	73.3	80.0	89.8	96.8	99.6	116.0	100.4	127.3	131.9	116.0	113.4	101.8	89.00	101.0

Source: *Australian National Accounts: National Income, Expenditure and Product, Dec 2016*, cat. no. 5206.0, Table 1, A2304368F (trend).

482. As we have seen, 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)

483. 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 labour's share of real hourly labour income had not kept pace with labour productivity since 2000. 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".

484. 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 at paragraph 160)

485. 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)

486. 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 emphasised 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.

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

488. 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.)

489. 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 FWC FB 3500, emphasis added.)

490. 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 and May 2016 decisions.
491. 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” and that it “included a detailed account of what the key concepts measure and how they are related”; see June 2015 decision, paragraph 182.

492. 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)

493. 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.
494. The last sentence of the passage in the June 2014 decision which was affirmed in the 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.
495. 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)

496. 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.
497. The matters covered in the six previous paragraphs were included in ACCER's submissions of March 2016. ACCER took the view that safety net workers, i.e. those who depend directly or indirectly on the minimum wage rates set by the FWC were being treated unfairly. The four pages of the May 2016 decision covering the productivity question do not deal with that aspect. Those paragraphs comprise a recitation of statistics, followed by the observations quoted earlier in relation to the potential positive impact that an increase in minimum wage rates might have on productivity. The closest we find to a conclusion on the impact that productivity changes have had on the wage decision is found in a very generally drafted paragraph in the FWC's conclusions:

"[101] The general economic climate is robust, with some continued improvement in productivity and historically low levels of inflation and wages growth. The prevailing economic circumstances provide an opportunity to improve the relative living standards of the low paid and to enable them to better meet their needs. The level of increase we have decided upon will not lead to inflationary pressure and is highly unlikely to have any measurable negative impact on employment. It will, however, mean a modest improvement in the real wages for those employees who are reliant on the NMW and modern award minimum wages."

C. PRODUCTIVITY BENEFITS LOST THROUGH WAGE DECISIONS

498. 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 must have had a substantial effect on the labour share of national income. The impact on the labour share of income is not limited to the one-fifth of workers who are only paid the prescribed minimum wage, but extends to those whose collective and individual agreements are set by reference to the minimum wage rates.

499. 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)

500. 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)

501. 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.

502. 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)

503. 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 0.9% 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.

504. 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).

505. 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.

506. 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.

507. 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 159 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”.
508. 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.
509. In its May 2016 decision the FWC awarded a uniform 2.4% increase in the NMW and award rates in the context of a very low annual CPI increase of 1.3% (March 2015 to March 2016). There are a number of factors to be determined in the assessment of the fairness of a decision, but the awarding of wage increases of this magnitude in excess of the increase in the CPI represents a substantial distribution of the annual improvement in productivity. It should be noted, as should the failure to do this in previous years. Given the productivity increases over the previous years it should have been the pattern, rather than the exception.

Capital deepening

510. 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])

511. 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. It is an important matter that requires further consideration.

Conclusion

512. 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. However, the issue may be avoided because the FWC's obligation 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.

513. 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)

514. 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, even in periods of little or no average wage growth. In order to minimise uninformed controversy over such prospective outcomes the FWC should acknowledge and explain the past shortcomings in the setting of safety net wages.

5

SAFETY NET WAGES HAVE FALLEN BEHIND GENERAL WAGE LEVELS

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CHAPTER 5

SAFETY NET WAGES HAVE FALLEN BEHIND GENERAL WAGE LEVELS

A. GENERAL INDICATORS OF INCREASING COMMUNITY INCOMES

515. 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.
516. 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 wage 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

517. 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.
518. The figures show that safety net wage rates have fallen substantially against AWOTE, which increased by 91.9% over the past 16 years. The NMW increase of 64.1% compares unfavourably with the increase in AWOTE. The NMW fell from 50.1% to 43.9% of AWOTE over the 16 years to January 2017. 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 45.2% over the same period. In 2001 it was 87.6% of AWOTE and in January 2017 it was 66.3% of AWOTE.

Table 10

**Safety net rates compared to other wages and incomes
2001-2017**

(\$ per week, unless otherwise indicated)

Year	Cumulative increase in FMW/ NMW	Cumulative increase in trade-qualified rate (C10)	Cumulative increase in Wage Price Index	Average Weekly Ordinary Time Earnings (AWOTE)	Cumulative increase in AWOTE	Household Disposable Income per head	Cumulative increase in Household Disposable Income
2001				798.80		413.61	
2002	3.3%	3.0%	3.4%	843.10	5.5%	455.00	10.0%
2003	7.7%	6.7%	6.9%	882.20	10.4%	451.58	9.2%
2004	11.9%	10.2%	10.8%	929.60	16.4%	477.34	15.4%
2005	16.7%	14.0%	14.9%	964.90	20.8%	512.56	23.9%
2006	20.9%	17.5%	19.6%	1014.50	27.0%	530.84	28.3%
2007	27.8%	23.0%	24.5%	1045.40	30.9%	570.89	38.0%
2008	30.4%	25.1%	29.5%	1100.70	37.8%	619.91	49.9%
2009	35.8%	29.5%	35.0%	1158.50	45.0%	683.90	65.3%
2010	35.8%	29.5%	39.0%	1225.20	53.4%	680.19	64.5%
2011	42.3%	34.8%	44.3%	1274.10	59.5%	722.35	74.6%
2012	47.2%	39.4%	49.6%	1333.40	66.9%	753.39	82.1%
2013	51.4%	43.3%	54.7%	1392.80	74.4%	761.43	84.1%
2014	55.4%	47.2%	58.6%	1437.20	80.0%	795.09	92.2%
2015	60.1%	51.6%	62.7%	1474.50	84.6%	810.18	95.9%
2016	64.1%	55.4%	66.3%	1499.90	87.7%	812.93	96.5%
2017	68.0%	59.1%	69.4%	1533.10	91.9%	824.83	99.4%

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 2016*, cat. no. 6302.0, (Trend, A84990044V), and earlier publications in this series. Wage Price Index figures are from *Wage Price Index, December 2016*, cat. no. 6345.0 (Trend, AA27138851R). Household Disposable Income figures are taken from the Melbourne Institute's *Poverty Lines: Australia September Quarter 2016* and are in respect of December of the preceding year, save that the figure for September 2016 (the latest available) is used for January 2017.

519. If the NMW had increased at the same rate as AWOTE, the NMW would now be \$768.40 per week, \$95.70 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 \$1,343.30 per week, an extra \$327.10 per week. These are startling comparisons.

520. The past 16 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). The reference to more recent years is helpful in understanding the relative changes over the shorter and longer periods, but any progress within recent years should only be seen as progress towards correcting the deterioration over the longer period, including the period since 1997 when the NMW was first introduced (and the known as the Federal Minimum Wage).

521. Table 10 shows that, at the time of the FWC's decision in May 2016, the published AWOTE figures recorded a 29.5% increase over the seven year period, November 2008 to November 2015. Over the same period the NMW increased by only 20.8% (see January 2009 to January 2016 in Table 1). Extending the comparison to January 2017, AWOTE has increased by 32.3% (November 2008 to November 2016) and the NMW has increased by 23.7% (January 2009 to January 2016). The gap between the increases in AWOTE and the NMW fell a little over the year: from 8.7 percentage points to 8.6 percentage points.
522. The FWC's decisions have stabilised the relative value of minimum wage rates, with some very recent improvement. Over the four years to November 2016 AWOTE increased by 10.1% while the minimum wage rates have increased by 10.9% (see Table 1) Over the year to November 2016 AWOTE increased by 2.2% and minimum wage rates increased by 2.4% However, this is very little progress towards repairing the deterioration in the relative value of minimum wage rates.
523. The substantive point to be made is that over the past 16 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.
524. 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.
525. 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.

526. It is apparent that the FWC has largely stopped the collapse in the relative value of minimum wages, but it has failed to address the substantial deterioration of earlier years and to give priority to those workers who are most in need. One of the legacies left to the FWC was the Australian Fair Pay Commission's wage freeze of 2009. This meant that the FWC had to take into account movements in prices and average earning for the year prior to its own establishment. No doubt, it would prefer to be judged by the events and circumstances since January 2010, but it cannot do so.

Wage Price Index

527. The Wage Price Index (WPI) increased by 69.4% over the 16 years to January 2017, rather less than AWOTE, but rather more than the 50.5% increase in the CPI. At each January the WPI figure is the one that was published for 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 introduced in each 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.
528. 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:

"The WPIS measure changes over time in the price of wages and salaries unaffected by changes in the quality or quantity of work performed. A range of procedures have been developed to identify and measure quality and quantity changes and ensure that only pure price changes are reflected in the indexes."
(*Wage Price Index, December 2016*, cat. no. 6345.0, page 16.)

529. 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. However, 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.

530. 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.)

531. 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 section D is that the change in workforce composition does not explain the divergence between minimum wage rates and the WPI.

532. 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; for example 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)

533. The claims that the NMW has "remained close" to the WPI is contentious, but more to the point the gap between increases in the WPI and the increases received by higher paid, but still low paid, minimum wage-dependent workers is substantial.

534. 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. The differential impact was the result of money increases in award rates that took substantial wage growth away from higher paid classifications, but which barely favoured lower paid dependent workers in terms of real wages and disadvantaged them in terms of relative wages. 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 a decade later, in January 2017, it was 1.4 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 2017 it was 10.3 percentage points behind. These are significant figures.

535. 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 five years to January 2017, during which the WPI increased by 13.2% compared to a 14.2% increase in safety net wages; but there is still some way to go in regard to correcting the errors of the past.
536. 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 69.4% in the WPI. Had the C10 followed the WPI it would have been \$833.80, \$50.50 per week higher than it was in January 2017. Had the C4 classification followed the WPI over the same period, it would have been \$1,074.30 per week, not \$940.90 per week, with a shortfall of \$133.40 per week. As Table 1 has shown, the increases for higher paid classifications were much less relative to the WPI. The most disadvantaged from our examples in Table 1 are the modestly paid minimum wage-dependent workers now on \$1,016.20 per week: compared to the 69.4% increase in the WPI since January 2001, the increase in their wage rate has been 45.2%. It cannot be said that any of this loss has been offset by some advantage received by the low paid.
537. 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. In the following paragraphs we take a closer look and discuss the reasons for concluding that the WPI is conservative measure of national wages growth.

More on the nature and relevance of the Wage Price Index

538. 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

539. 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.
540. 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) ..."

541. 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)

542. 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.
543. 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 during the past 16 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.
544. 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

545. Table 10 shows changes in seasonally adjusted household disposable income per head (HDI) over the period 2001 to 2017. 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 moves in line with the changes in the HDI. The HDIs are based on data in *National Accounts* (cat. no. 5206.0), September 2016 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 most recent publication is *Poverty Lines: Australia September Quarter 2016*. We explain in the note to Table 10 that, pending the release of figures for December quarter 2016, we have used the published figures for September quarter 2016. The December quarter 2016 issue is due by April 2016.
546. The 99.4% increase in HDI since January 2001 exceeds other income measures in Table 10. It is substantially greater than the 91.9% increase in the AWOTE over the same period. Unlike AWOTE, which is a pre-tax measure, 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.

Comparing safety net wages and median wages

547. The submissions by the Australian Council of Trade Unions (ACTU) to successive national wage reviews have emphasised the change in the relativity of the NMW to median weekly earnings of full time workers. Table 5.3 of the May 2016 decision (*Annual Wage Review 2015-16, Decision* [2016] FWCFB 3500) shows that over the period August 2004 to August 2014 this minimum wage "bite" fell from 58.4% to 53.4%.
548. In March 2016 United Voice made an application to the FWC to set a medium target by which the NMW would be set at 60% of median earnings. The ACTU supported the

application, which was held over to the 2016-17 wage review. Submissions were filed by various parties prior to the hearing of the application in October 2016. The ACTU's submission included a comparison between the NMW, and its predecessors, and median earning back to 1983. The ACTU's commentary included the following:

“The NMW has fallen from 13.9% above the 60% of median at 1983, or 7.5% thirty years ago in 1986, to 11.0% below the 60% of median at 2016. The 2016 figure for the NMW of 11.0% below the median is slightly less than the 12.1% below 60% of the median in 2012. This flattening is due to a fall in the median after 2012 and then very slow growth in median earnings subsequently.” (Page 14)

“The minimum wage bite as a per cent of median earnings has fallen from 68.3% in 1983 to 53.4% in 2016.” (Page 15)

549. The basis of the claim is summarised in ACCER's submission in reply of 17 October 2016:

"We note that until 1992 the NMW was never less than 7.0% above the 60% of the median. By 1999 the NMW had fallen to less than 60% of the median. Since 2008, it has been at least 9.0% below 60% of the median. In the four years from 2004, a period coinciding with the *Work Choices* years, the NMW dropped by about four percentage points. In each of the three years to 2016 the NMW has been at or very close to 11.0% below 60% of the median.

It should also be noted that in August 1997, four months after the NMW was first set (and then called the Federal Minimum Wage), the NMW was 3.0% above 60% of the median. After 18 years it was 11.0% below 60% of the median. This illustrates the fundamental failure of minimum wage setting in recent Australian history. This downward trend has flowed through to award rates of pay. United Voice has proposed ... that the adjustment to award rates not be linked to the NMW-target, but be the subject of determination in each annual wage review." (Paragraphs 16 and 17.)

550. Relevant to our discussion of the changes over the past 16 years, the ACTU's material shows that the NMW was about 4.0% below the 60% of median line in August 2000, seven percentage points higher than its position in August 2016.

An overview of wages and family support 1973 to 2016

551. 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.

552. Table 11 demonstrates that the family's position relative to 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 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- 2017**

\$ 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	53.47
January 2001	346.38	503.37	413.61
January 2017	606.23	896.79	824.83
Ratio 2001-1973	6.41:1	8.60:1	7.74:1
Ratio 2017-1973	11.2:1	15.3:1	15.43:1
Ratio 2017-2001	1.75:1	1.78:1	1.99:1

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 2016 in *Poverty Lines Australia, September Quarter 2016*. That figure has been used for January 2017. The disposable income figures for January 2001 and January 2017 are taken from Tables 15 and 19, below. Rental assistance, which was available in 2001 and 2017 for the family, is not included. Rental assistance was not paid in 1973.

553. 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 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.

554. 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 HDI and have reduced the progress made by families prior to that time. The change in the position of the single worker relative to 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 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 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

555. 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.
556. 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)

557. 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.
558. 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 AWOTE 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.

559. 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 changes in the Terms of Trade 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 any slowing or downturn 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

560. 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.
561. 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.

562. The differences between State and Federal tribunals are illustrated in Table 12, which compares the FMW/NMW and its State equivalents in January of various years between from 2006 to 2017.

Table 12
Comparison of FMW/NMW and relevant State rates
January 2006-January 2017
(\$ per week)

	2006	2009	2010	2011	2012	2013	2014	2015	2016	2017
FMW /NMW	484.40	543.78	543.78	569.90	589.30	606.40	622.20	640.90	656.90	672.70
NSW	484.40	552.70	568.20	569.90	-	-	-	-	-	-
Qld.	484.40	552.00	568.20	588.20	610.20	630.70	646.50	668.80	688.00	704.50
W. Aust.	484.40	557.40	569.70	587.20	607.10	627.70	645.20	665.90	679.90	692.90
S. Aust.	484.40	546.65	560.65	580.30	600.00	617.40	633.50	652.50	668.80	684.90
Tas.	484.40	546.10	558.10	569.90	589.30	606.00	622.20	640.90	-	-

Note: The South Australian rate, the "Minimum Standard for Remuneration" came into operation on 1 April 2006

563. The national consistency prior to the first decision under *Work Choices* is evident in the first column of Table 12. 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 2017 the average of the three States which set their own rates was \$694.10 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.

564. It should also be noted that the consistency in the lowest minimum wage rate in 2006 was also reflected in the award wage rates across the jurisdictions. National award rates, as well as the FMW fell behind the States over the *Work Choices* period. The end result was a transition to new national awards in 2010 that were essentially based on the *Work Choices* era wage rates. As we can see from Table 12, using the State wage rates as a guide, the cuts of the *Work Choices* era are still with us.

C. THE REGULATION OF COMMONWEALTH EMPLOYMENT

565. 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 PEO Band D classification is now in the range \$332,700 to \$610,370.
566. 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). The Tribunal undertook a review of a range of public offices in 2016, but has not completed the process. By a Statement dated 28 November 2016 the Tribunal advised that judicial salaries would be increased by 4.8% from 1 January 2017, but otherwise it advised that it "does not expect to determine a general increase to remuneration for other public offices in its jurisdiction until mid-2017". As at January 2017, the Band 4 PEO rate had increased by 71.0%.

567. 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 2016 are not yet available, which means that we are unable to insert figures for January 2017.

Table 13

**Remuneration of Commonwealth officers and public sector employees
2000-2017
(\$ 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	1570.60
2016	157487	359030	239880	299878	395599	1616.70
2017	157487	359030				1671.30
% increase	71.2%	71.0%	>81.3%	>86.4%	>103.4%	88.3%

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 salaries are currently under review.

The public sector AWOTE entries are trend figures taken from *Average Weekly Earnings, Australia, November 2016*, 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 December 2015, published in 2016.

568. 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 per week in November 2000 to \$1,671.30 in November 2016, an increase of 88.3%. The increase in the public sector AWOTE over the year to November 2016 was 3.4%. This public sector increase over the past 16 years is 3.6 percentage points less than the combined public and private sector AWOTE that we use in Table 10.
569. 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 2016/19. The salaries were not adjusted in 2016, but are currently under review. 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.
570. 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 88.3% while, for example, the trade-qualified rate increased by 59.1% over the same period. The contrast is even starker in safety net wage classifications that now pay a modest wage; for example we saw in Table 1 that a classification that now pays \$1,016 per week, much less than the public sector average ordinary time wage of \$1,671.30 per week, has had an increase of 45.2%, about half of the public sector increase of 88.3%.
571. 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) stood mute on this matter while the wage system became increasingly less equal and more unfair.

572. 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

573. In this section we concentrate on the FWC's claims in its 2012 and 2013 decisions 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.

574. 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)

575. 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)

576. 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.

577. 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.)

578. The FWC did not consider the question of the changing skills mix in its 2015 and 2016 decisions. We expect that part of the reason for the change was the material set out below, which was put by ACCER in its 2014 and 2015 submissions. 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.

579. Although this issue has disappeared from the FWC's analysis of the reasons for the divergence in minimum wages and average wages, it remains an important issue for wages policy. We repeat below part of ACCER's earlier submissions on these matters because it is important to understand the changes that are taking place in the Australian workforce and their impact on national inequality.

580. 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)

581. 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.

582. 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)

583. 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.”

584. 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)

585. 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”.

586. 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

587. 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.

588. 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.

589. 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.”

590. 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%).

591. 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.
592. 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).
593. 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

594. 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

595. 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 14.1% (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

596. 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. 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".

597. 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.*” (Emphasis added)

598. 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 many safety net workers are employed, it is likely that, on average, little of the productivity increases over the period since 2001 has been distributed to safety net workers, whether they be employed

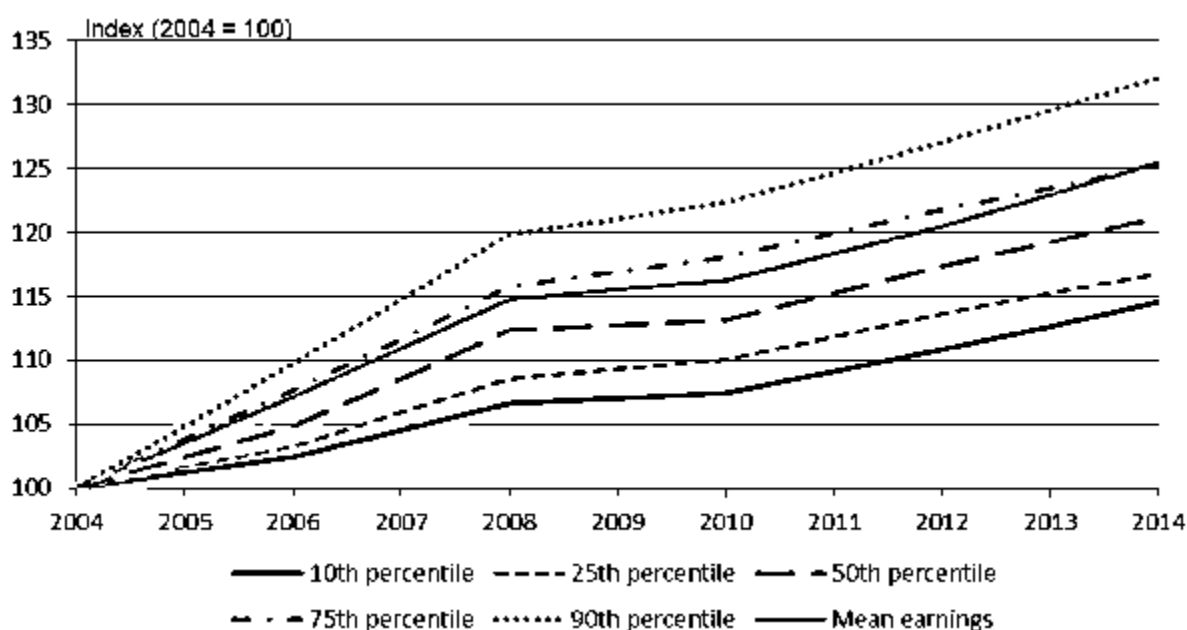
on the safety net wage rate or on a wage rate set by reference to the safety net wage rate.

599. The FWC has continued to acknowledge the contribution that minimum wage decisions have made to rising inequality. In May 2016 it said:

"[411] As the Panel has previously noted, in relation to the slow relative growth of award wages between the longer period of 2002–2012, '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 AWR decisions to rising inequality of earnings'. [Footnote: "[2014] FWCFB 3500 at para. 344."]

600. In both 2015 and 2016 decision the FWC illustrated the 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. Chart 5.4 in the May 2016 decision was the same as Chart 5.3 in the June 2015 decision because the published underlying data had not changed. The ABS publishes this data every two years. The most recent, for May 2016 was released on 17 January 2017; see *Employee Earnings and Hours, Australia, May 2016*, cat. no. 6306.0. Before going to the most recent data we reproduce Chart 5.3 of the May 2016 decision 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 5.4 in the May 2016 decision were:

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

years have been obtained through linear interpolation. Earnings data for 2014 are based on full-time non-managerial employees paid at the adult rate.

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

601. Figure 2 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.

602. In commenting on this chart and other data in the May 2016 decision, the FWC said:

"There is no doubt that the low paid and award reliant have fallen behind wage earners and employee households generally over the past two decades, whether on the basis of wage income or household income. That conclusion arises from the longer-term data relied on by many parties." (Paragraph 372)

"Overall levels of earnings inequality have increased over time. Chart 5.4 shows the growth in real weekly earnings by selected percentiles. Real weekly earnings of full-time workers have become progressively less equal over 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. The increased levels of earnings inequality over the past decade occurred, notwithstanding growth in real earnings even at the lowest decile. While small relative to other deciles, there has been 15 per cent growth in the real earnings at the lowest decile. 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." (Paragraph 388)

603. Following the recent publication by the ABS of *Employee Earnings and Hours, Australia, May 2016* the FWC's research section has updated the income inequality chart; see *Statistical Report* 17 March 2017, Chart 8.2. This new chart covers the period May 2006 to May 2016. It excludes the first two years of the previous chart and adds two more years. The loss of the first two years has removed the effects of a very substantial increase in inequality. It is not necessary for us to reproduce that chart in order to highlight the differences between the two time periods and the context that they provide for a commentary on the relative increases in minimum wages.

604. In order to illustrate how safety net-dependent workers have fared since 2004 we need to notionally overlay on Figure 2 the real wage changes for safety net-dependent workers over the same period. If we did this we would find that safety net-dependent workers were below the increase in the 10th percentile line, which showed a real increase of almost 15% increase over that period. All safety net workers had a real wage increase of less than that received by the least advantaged of the income groups in

Figure 2. Compared to that increase of 15.0%, the NMW had a real increase of 5.3% and the C10 wage rate increase was even closer to the horizontal axis at 1.4%. The position worsened for higher paid employees, as the figures in Table 1 illustrate.

605. The revised chart in the latest *Statistical Report* presents a less troubling picture because it omits two years on increasing inequality between safety net-dependent workers and the workforce as a whole. Nevertheless, it is concerning. In the latest figures the increase for the 10th percentile has fallen from about 15% to about 13% over the previous decade. The increase for the 50th percentile has fallen from about 21% to 17.5%.
606. We know that over the decade to May 2016 the NMW increased by 38.9% (see Table 1), compared to a 26.4% increase in the CPI (over the period March 2006 to March 2016). This represents a 9.9% increase in real wages for the NMW worker, substantially less than the estimated 13% increase for the 10th percentile and much less than the estimated 17.5% increase in the 50th percentile. Because all of the safety net-dependent workers had received smaller increases than the 10th percentile their positions would have deteriorated relative to the rest of the workforce over the decade to May 2016. This comparison demonstrates the shortcomings of concentrating on relatively recent periods, including the past decade.
607. Figure 2 and the more recent data demonstrate that great care should be taken when considering national averages, even when broken into percentiles, because they hide what is really happening to the living standards of safety net-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.
608. Yet a conflation of income inequality between safety net-dependent workers and the rest of the Australian community is evident in the following passage 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." (Emphasis added. This is repeated at paragraph 412.)
609. The only time at which the work to be done by the NMW and by award rates can be reduced is when it can be fairly said that relative living standards have been restored to some appropriate reference point and the operational objective discussed in Chapter 1D

has been achieved, i.e. when the NMW provides a standard of living in excess of poverty and one which will enable workers and their families to purchase the essentials for a decent standard of living and engage in community life, assessed in the context of contemporary norms. Having short term success in arresting increasing inequality among minimum wage dependent workers is necessary, but not sufficient. Clearly, the subduing of growing national inequality in the past few years is no reason to pull back on remedying the income inequality that has been suffered by safety net-dependent workers for more than the past decade. There is still plenty of work to be done by the NMW and award wage rates.

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

610. 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”.

[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.* (Emphasis added)

611. This change appears to be implicit acceptance of the evidence on the skills mix issue, which 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. It seems clear from the context of the passage in the June 2014 that the FWC was referring to annual wage review decisions by the AIRC and the AFPC as well as its own.

612. Rising inequality means falling relative living standards. The point raised in the concluding part of the paragraph is that the FWC's actions were constrained on this matter because it had to take into account other factors. A similar point was made in the June 2015 decision:

"[46] ... 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."

613. In substance, the FWC was saying that relative living standards had fallen because there were other factors, economic factors, that prevented action being taken to arrest the fall in relative living standards and the rise in inequality and that its capacity to redress the situation is similarly constrained. This means that, but for those "many 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.

614. 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.

615. 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.)

616. We should be clear about what the FWC was saying. It was saying that single earner families with children had declines in their living standards which put them into poverty or deeper into poverty and that this was because the FWC had to take into account factors that constrained the FWC's ability to prevent that decline. Furthermore, in the following year the FWC stated that its capacity to ameliorate that situation was constrained by the statutory factors that it had to take into account.

617. The natural conclusion that one would draw from these passages is that economic, rather than social factors were being referred to. However, as we have discussed in Chapter 1D, the key factor over the period since the June 2011 decision has been the policy to maintain award relativities by the awarding of uniform percentage increases. This means that those most in need cannot receive a wage increase that recognises their poverty and greater need for a basic level of support than higher paid workers. The increase for the most needy is determined by the global assessment of what is available for distribution. In that way the constraints are economic, but the policy to maintain relativities is not economic and is not based on requirement of the *Fair Work Act*.

Transparency in decision making

618. Of course, each decision by the FWC 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. A reading of those decisions shows that the FWC's capacity to address the worst features of inequality and poverty has been given insufficient emphasis and weight because the decision making has been determined by the application of a policy to maintain relativities across all minimum wage classifications.
619. The application of the relativities policy has not been grounded on a proper evaluation of the range of factors that the FWC should take into account, including poverty and inequality, when it considers the social and economic factors that it is required to take into account.
620. An essential part of the balancing process involved in the proper exercise of the FWC's powers is an 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.
621. 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.

622. 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.
623. 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 seven years. Save for the policy to maintain relativities, we cannot any proffered justification for the failure to provide extra financial support for those in need. Furthermore, in the consideration of whether or not to maintain relativities there is no consideration given to the balancing of poverty and the maintenance of award relativities. 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, all of the factors relevant to the choice between maintaining relativities and assisting the low paid would be exposed to scrutiny. The ungrounded stating of a policy in essentially in the same form each year is not sufficient.

6

TAX CUTS AND FAMILY PAYMENTS HAVE NOT MAINTAINED LIVING STANDARDS

	Paragraph
A. Tax cuts do not justify real wage cuts	624
B. Family payments have not compensated for wage cuts	649
C. The wage safety net falls below the pension safety net	668

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wages, families and poverty**

CHAPTER 6

TAX CUTS AND FAMILY PAYMENTS HAVE NOT MAINTAINED LIVING STANDARDS

A. TAX CUTS DO NOT JUSTIFY REAL WAGE CUTS

624. Some commentaries on the fairness of safety net wage increases have diverted attention away from declining relative wage levels by pointing 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
2001-2017**

(\$ 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
2017 Gross	672.70	730.90	783.30	796.50	851.30	906.80	959.50	1016.20	1533.10
2017 Net	606.23	648.93	682.48	690.92	725.99	761.52	795.25	831.53	1166.17
\$ increase in Gross	272.30	280.90	291.10	296.50	301.30	306.80	309.50	316.20	734.70
% increase in Gross	68.0%	62.4%	59.1%	59.3%	54.8%	51.1%	47.6%	45.2%	91.9%
\$ increase in Net	259.85	270.56	275.95	278.53	279.86	281.14	280.62	282.65	549.62
% increase in Net	75.0%	71.5%	67.9%	67.5%	62.7%	58.5%	54.5%	51.5%	89.1%
\$ loss in Gross relative to Gross AWOTE	95.67	132.65	161.23	163.00	204.15	244.60	287.85	327.10	-
\$ loss in Net relative to Net AWOTE	48.77	66.57	86.27	88.91	117.64	146.88	177.92	206.40	-

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 2016/17 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.

625. We argue in this chapter that although changes in taxation rates since 2001 have had a significant 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.

626. ACCER made similar calculations to those in Table 15 in its submissions to the Annual Wage Review 2014-15 and the Annual Wage Review 2015-16; see *Working Australia, 2015: wages, families and poverty*, Table 15 and *Working Australia, 2016: 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 two year to January 2017. Over that time the C10 wage rate, for example, has increased by \$37.10 per week, but the net wage has only increased by \$23.76 per week. The C10 worker's net wage as a percentage of the gross wage has fallen from 88.3% in January 2015 to 87.1% in January 2017.
627. Over the 16 years to January 2017 AWOTE increased by 91.9%, up from 87.7% over the 15 years to July 2016. The AWOTE worker's net wage has risen by 89.1%, significantly 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 76.1% of the gross. If the AWOTE worker paid the same percentage of income tax in January 2017 as he or she did in January 2001, the net income in January 2017 would have been \$1,183.55, not \$1166.17 per week. The income tax changes over the past 16 years have left this worker in middle Australia with a tax increase of \$17.38 per week. As we will see later in this chapter, the position of the AWOTE-dependent family with children is quite different.
628. 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

Taxation rates and bracket creep

629. Changes in income tax over time are best measured by the changes in the proportion of income tax paid by various income groups. 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 2017 period is AWOTE.

630. Table 16 shows what has happened to after-tax incomes for various wage groups receiving a wage increase of 91.9% 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 1.891, which represents 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 80.1% will have different outcomes.

Table 16

Net income of groups receiving wage increases of 91.9%
January 2001 – January 2017
(\$ 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
2017 Gross	767.60	863.55	959.50	1151.40	1535.20	2302.80	3070.40	3838.00	4605.60
2017 Net	672.42	733.83	795.25	918.05	1167.55	1641.74	2109.97	2539.36	2930.84
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 2017	87.6%	85.0%	82.9%	79.7%	76.1%	71.3%	68.7%	66.2%	63.6%
% increase in Net	94.3%	93.9%	92.8%	91.1%	89.1%	90.9%	98.3%	99.7%	98.3%
2017 net at 2001 rate	663.97	726.25	791.59	922.27	1185.17	1651.11	2041.82	2440.97	2837.05
\$ value of tax cuts	+8.45.	+7.58	+3.66	-4.22	-17.62	-9.37	+68.15	+98.39	+93.79

Notes: Where applicable the Budget Repair Levy is included. The Budget Repair Levy on the income of \$200,267 per year is \$405.34 per year or \$7.77 per week. At \$240,320 per year the levy is \$1,294.40 or \$23.12 per week. The Budget Repair Levy will be removed at the end of the 2016-17 year.

631. 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. The January 2017 figure of \$1535.30 is almost the same as the most recent AWOTE figure of \$1,533.10. We can see that there

have been tax increases across the range greater than \$925.00 to \$1,650.00 per week. The tax cuts of the past 16 years have not favoured this middle income group.

632. 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 \$3838.00 per week, pays a levy of \$7.77 per week and the taxpayer in the \$2,400 column, now on \$4,605.60 per week, pays \$23.12 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 \$17.38 per week (see the commentary on Table 15), while the taxpayer on three times the AWOTE earner's income (the taxpayer in the right hand column of Table 16) has had a tax cut of \$93.79 per week, with a further \$23.12 per week from 1 July 2017 when the Budget Repair Levy is removed.
633. The May 2016 Budget introduced tax cuts for taxpayers earning in excess of \$80,000 per year, by way of an increase in the marginal tax rate threshold. The 37% threshold was increased from incomes in excess of \$80,000 to incomes in excess of \$87,000. The value of the tax cut for all taxpayers with incomes in excess of \$80,000 was \$315.00 per year or \$6.04 cents per week. This benefit flowed to very high income earners, at a time when there was no tax relief for low and middle income earners.
634. 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 2017. As the reduction in the top marginal rates over this period was from 47% to 45%, the further tax saving on the income over \$4605.60 per week, or \$240,320 per year, is one-fiftieth of the excess.
635. 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 91.9%
January 2001 – January 2017**

\$ per week	2001	2017
\$400/\$767.80	13.5%	12.4%
\$800/\$1535.20	22.8%	23.9%
\$1600/\$3070.40	33.5%	31.3%
\$2400/\$4605.60	38.4%	36.4%

636. Table 17 compares the percentage of tax paid in 2001 and 2016 by four of the income groups in Table 16. In January 2015 the figures for incomes adjusted by reference to the increase in AWOTE since January 2001 were 11.5%, 23.5%, 31.2% and 36.0%, respectively; see *Working Australia, 2015: wages, families and poverty*, Table 17. The increase in the percentage of tax paid by the lower income groups is solely because of bracket creep. The two higher income groups have been affected by bracket creep, but that has been modified in one or two ways. They have benefited from the tax cuts in the May 2016 Budget and the highest income group has suffered a temporary tax increase because of the Budget Repair Levy. 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 tax cuts of 2008 to 2011

637. 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.

638. 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.

639. 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. 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 associated income tax cuts for those on incomes of up to \$80,000 per year came into effect in the 2012-13 tax year.
640. 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 was no adjustment in the 2013 to 2015 Budgets to compensate for bracket creep, with the effect that taxpayers are being taxed on a higher proportion of their incomes. As we noted earlier the May 2016 Budget introduced a tax cut on incomes in excess of \$80,000 per year, by moving the threshold for the 37% marginal tax rate to \$87,001 per year, with the effect that those on incomes of more than \$80,000 per year had a tax cut of \$315.00 per year.

The continuing impact of bracket creep

641. Surprisingly, the marked divergence between the respective tax outcomes for middle and high incomes since the turn of the century has not been the subject of national political, economic and social discourse. At the turn of the century the income taxation rates had been recently reviewed and amended in light of the introduction on 1 July 2000 of the Goods and Services Tax. The current income tax regime is substantially different to the one intended to provide equity to taxpayers who would be adversely affected by the new tax. Perhaps the major reason for the absence of this issue from the political debate is that the key taxation changes since 2000 were agreed to by both major parties in the course of the 2007 Federal election campaign and were implemented by the three Budgets from May 2008. 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 package of changes introduced from 2008. Since the implementation of that package the only changes have been the changes to the marginal tax rates introduced from the 2012-13 tax year and the tax cuts for higher income earners introduced in the May 2016 Budget.

642. It is readily apparent from Table 17 that the major beneficiaries of the tax changes since 2000 have been higher income earners. The reduction in the top marginal rate from 47 cents in the 2000-01 year to 45 cents in the dollar came in the 2006-07 tax year. The threshold at which the top marginal tax rate is paid has been adjusted several times since 2000, from \$60,001 per year in 2000-01 through to \$180,001 per year in the 2008-09 tax year.
643. There is now debate as to whether the pre-Global Financial Crisis revenue and spending initiatives in the Commonwealth Budget are sustainable over the longer term, but that debate has not produced discussion around the differential impact of the income tax cuts during that period. Given that both major parties locked in the changes to the top marginal tax rate in the course of the 2007 election, the effective questioning of that decision in a changed environment is constrained.
644. The Commonwealth will reap a reward from the continuation of the current tax rates, but the burden will fall on those who gained least from the income taxation changes that were a major contributor to the budget's current difficulties. 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.
645. 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. This is an appropriate reference date because it followed the application of the tax cuts introduced in the May 2012 Budget. In January 2017, with the NMW at \$672.70, the net wage was \$606.23 per week, or 90.1% of the gross wage; see Table 15. Had the percentage of tax payable in January 2013 been payable in January 2017, the net NMW would have been \$617.54 per week, or \$11.31 more than it was at the time. Part of the change was caused by the increase in the Medicare levy, equal to \$3.36 per week. The rest can be attributed to bracket creep. This means that if any tax cuts are introduced in the May 2017 Budget, the first \$7.95 per week for NMW-dependent workers would be compensation for bracket creep.

Tax cuts and wage increases

646. 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.)

647. 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.
648. 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

649. 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.

650. 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.
651. 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.
652. FTB B provides an extra payment for families with one main income and replaced, amongst others, the Sole Parent Rebate and the Dependent Spouse 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 removing the eligibility of couple parent families for FTB B once the youngest child has turned 13 and to the legislation freezing the periodic FTB A and FTB B payments.
653. 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.
654. 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, as a result of changes introduced in the May 2009 Budget annual supplements have been frozen at the July 2010 level and the indexation

of payments has been linked to CPI movements, rather than through a mechanism that reflects wage increases, as was previously the case. In the 2013 Budget a number of initiatives were taken to limit changes to eligibility thresholds.

Table 18

Family payments 2001-2017

Start date	Family Tax Benefit Part A				Family Tax Benefit Part B		
	Maximum Rates per Child		Annual Supp. per child	Large Family Supp. Per child	Rate per family		Annual Supp. per family
	Child Under 13	Child 13 and older			Youngest aged under 5	Youngest aged 5-18	
	\$ per week		\$ per year	\$ per week	\$ per week		\$ per year
07.00	58.10	73.64	-	3.99	49.91	34.79	-
07.01	61.46	77.91	-	4.20	52.78	36.82	-
07.02	63.35	80.36	-	4.34	54.39	37.94	-
07.03	65.24	82.74	-	4.48	56.00	39.06	-
07.04	66.78	84.70	613.20	4.62	57.33	39.97	150
07.05	68.53	86.87	627.80	4.76	58.80	41.02	306.6
07.06	70.42	89.88	646.05	4.90	60.48	42.14	313.90
07.07	72.73	94.50	667.95	5.04	62.51	43.54	324.85
07.08	75.67	98.42	686.20	5.18	64.40	44.87	335.80
07.09	78.47	102.06	711.75	5.39	66.78	46.55	346.75
07.10	80.15	104.23	726.35	5.53	68.18	47.53	354.05
07.11	82.32	107.03	726.35	5.67	70.00	48.79	354.05
07.12	84.84	110.32	726.35	5.88	72.17	50.33	354.05
07.13	86.10	112.00	726.35	6.02	73.22	51.10	354.05
07.14	88.41	115.01	726.35	6.16	75.18	52.50	354.05
07.15	89.88	116.97	726.35	6.23	76.44	53.41	354.05
07.16	91.42	118.93	726.35	-	77.77	54.32	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. The large family supplement, which was payable to families with four or more children, was discontinued on 1 July 2016. In addition to these payments are the Energy Supplement, Part A of 70 cents per child (base rate) to \$1.75 per child (maximum rate).

655. 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.

656. 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.
657. 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 parent who stays at home to care for the children and to the single parent regardless of whether he or she is in employment, provided that he or she is not earning more than \$100,000 per year.
658. Table 19 shows the impact of changes in wages, taxation and family transfers since 2001 across various income levels by reference to the single breadwinner family (whether a couple or a sole parent 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.
659. The middle income AWOTE family has had a gross wage increase of 91.9% (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 68.0% and 78.1%, 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.
660. Table 19 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 2017
 (\$ 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
2017 Gross wage	672.70	730.90	783.30	796.50	851.30	906.80	959.50	1016.20	1533.10
2017 Net Wage	619.68	663.55	698.15	706.85	739.55	770.64	800.15	831.90	1166.17
2017 Family Transfers	277.11	277.11	277.11	277.11	277.11	277.11	277.11	274.37	215.62
2017 Disposable Income	896.79	940.66	975.26	983.96	1016.66	1047.75	1077.26	1106.27	1381.79
% Net Wage Increase	75.8%	72.3%	68.7%	68.3%	65.8%	60.4%	55.5%	51.6%	89.1%
% Transfers Increase	83.5%	83.5%	83.5%	83.5%	90.8%	145.3%	225.1%	280.2%	198.8%
\$ Disposable Income Increase	393.42	404.55	410.76	413.08	425.28	454.42	477.38	485.22	693.07
% Disposable Income Increase	78.2%	75.5%	72.8%	72.4%	71.9%	76.6%	79.6%	78.1%	100.6%
\$ Loss per week in Disposable Income of Safety Net family relative to AWOTE family	113.07	134.78	157.13	161.23	169.65	142.47	126.10	139.56	-

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 \$42,613 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 \$13.45 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 at \$5.81 per week. (This supplement is payable to couple and sole parent families with a single income between \$68,000 and \$150,000 per year.) Family transfers in January 2017 also include the weekly value of the annual supplements for FTB A and FTB B and Energy Supplements, Part A and Part B.

661. In past years the Schoolkids Bonus has been included in versions of Table 19. 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, but was discontinued at the end of 2016. In 2016 the payments were \$430.00 for primary students and \$856.00 for secondary students. The payments were included in previous years on the basis that one child was in primary education and one was in secondary education, with a weekly figure of \$24.65 (at 52.18 weeks per year). In the case of the NMW-dependent family, the transfers in January 2016 were calculated at \$297.75 per week, compared to \$277.11 in January 2017.

662. The impact of the removal of the Schoolkids Bonus can be seen in the figures in Table 19 and in the corresponding Table 19 in ACCER's March 2016 submission. Over the course of the year to January 2017 the NMW-dependent family's disposable income has fallen from \$904.64 to \$896.69 per week and the disposable income of the C10-dependent family has fallen from \$983.74 to \$975.26 per week. Despite a 2.4% increase in July 2016, these families are about \$8.00 per week worse off after taking into account the tax payable on the wage increase and the loss of the Schoolkids Bonus. The disposable income of the AWOTE-dependent family has barely changed: a combination of slow wage growth, income tax and the withdrawal of the Schoolkids Bonus meant that over the year to January 2017 its disposable income increased by only 8 cents per week, from \$1,381.71 to \$1,381.79 per week.
663. These figures are based on the family having two children, one in primary school and the other in secondary school. The FWC's calculations in its *Statistical Report* in regard to families with two children are based on both being in primary school. Family circumstances vary, but the loss for each primary student child will be \$8.24 per week and for each secondary student the loss will be \$16.40 per week. In July 2016 the C10 wage rate was increased by \$18.40 per week to \$783.30 per week, an increase of \$18.40 per week. Income taxation reduced this amount to \$12.16 per week. Most of this would have been lost if the worker had only one child in primary school. More than this would have been lost if the worker had only one child in secondary school.

Rental assistance

664. 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

665. Much of the content of this section is summarised in Table 20, which shows the wage, tax and transfer outcomes at four wage levels: the NMW, the C12 rate, the C10 rate and AWOTE.

Table 20

Losses of safety net-dependent workers and their families relative to AWOTE
January 2001 - January 2017
(\$ per week unless indicated otherwise)

Household	Disposable Income 2001	Disposable Income 2017	Increase in gross wage	Increase in Disposable Income
NMW Single	346.38	606.23	68.0%	75.0%
NMW 2+2	503.37	896.79	68.0%	78.2%
NMW 1+2	503.37	896.79	68.0%	78.2%
C12 Single	370.50	641.07	63.5%	73.0%
C12 2+2	528.08	932.55	63.5%	76.6%
C12 1+2	528.08	932.55	63.5%	76.6%
C10 Single	406.53	682.48	59.1%	67.9%
C10 2+2	564.50	975.26	59.1%	72.8%
C10 1+2	564.50	975.26	59.1%	72.8%
AWOTE Single	616.55	1166.17	91.9%	87.7%
AWOTE 2+2	688.72	1381.79	91.9%	100.6%
AWOTE 1+2	688.72	1381.79	91.9%	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.

666. Table 20 demonstrates that, when changes in wages, taxes and family payments over the past 16 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 72.8% in its disposable income, compared to

the AWOTE family's 100.6%. This amounts to a relative loss of \$157.13 per week. In terms of disposable income, the C10 family has fallen from 82.0% of the AWOTE family to 70.6% over the period 2001 to 2016. A major reason for the improvement of the relative position of the AWOTE family has been the 198.9% increase in family payments received by it.

667. There is nothing in the material covered in this chapter that would justify a real wage cut or discounted wage increases for low paid workers on account of changes in transfer payments and taxation rates. Family payments and tax cuts received by low income workers and their families have not made up for the lack of growth in the safety net wage rates set by successive tribunals. The evidence demonstrates that since 2001 low paid working families at or near the safety net wage rates have fallen behind middle income families and living standards generally prevailing in Australia. The relative loss for higher paid safety net workers and their families has been even greater.

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

668. 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. However, this is not a view shared by the FWC, as we explain.
669. 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])

670. 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.)

671. This demonstrated a change from the earlier position when pensions were not a relevant comparator. Despite the acknowledgment by the FWC that pensions were relevant, subject to their weighting, no relevant reference was made to the level of pensions or the living standards of pensioners in the decisions of June 2014 and June 2015. They appeared to be treated as if they had no relevance. In each of those years, and again in 2016, ACCER made the kinds of arguments that appear in the following paragraphs. The FWC responded in its May 2016 decision (*Annual Wage Review 2015-16, Decision* [2016] FWCFB 3500), stating that the comparison is of "very limited relevance". We will return to this in Chapter 8D
672. 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. At September 2016 there were over 2.5 million recipients of the Age Pension; *Media Release*, 12 September 2016, Minister for Social Services, Mr Christian Porter.

The pension safety net reforms of 2009

673. 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."

674. 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. (Since the 2009 reform pensioners have been eligible to receive an Energy Supplement.) 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."

675. 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.
676. 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.

677. The MTAWE linkage guarantees that single and couple pensioners share in improved community living standards as measured by wages and means that the total pension rate will continue to be adjusted by an amount that is close to the MTAWE.
678. 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 2017. The pension rates are the base pension rate and the Total Maximum Periodic Pension-related payments (TMPPP).
679. Table 21 shows that pensions have outstripped both gross and net wage outcomes for safety net workers. The substantial divergence between the wages safety net and the pension safety net over the whole period is caused by the linkage of pensions to MTAWE. From May 2000 to May 2016, the period covered by the most recently released figures prior to the relevant pension increases, MTAWE increased from \$757.60 to \$1,395.10, or 84.1%; see *Average Weekly Earnings, Australia, May 2016*, Table 10C at A85002155K. This is considerably more than the NMW increase over a similar period.

Table 21

Comparison of pensions and safety net wages
January 2001 – January 2017
(\$ 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
2017	398.95	438.55	601.50	661.20	672.70	606.23	783.30	682.48	110.0
% increase	110.6%	117.9%	90.2%	98.5%	68.0%	75.0%	59.1%	67.9%	50.5%

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*.

680. 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, MTAWE, the NMW and the C10 wage.
681. Table 22 covers the period in which the first seven 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 seven years pensions have increased by 6.8 percentage points more than the NMW; and by more than that in comparison with other safety net rates. Over the seven years MTAWE increased by 25.7% while the

NMW increased by 23.7%. In terms of disposable incomes, which enable a comparison of like to like, pensions have increased by 9.3 percentage points more than the NMW and even more compared to the C10 and other higher award rates.

Table 22

**Changes in pensions and safety net wages
January 2010 – January 2017**

		January 2010 \$ per week	January 2017 \$ per week	\$ increase per week	Percentage increase
Single	Base	307.90	398.95	91.05	29.6%
	Supplement	28.05	39.60	11.55	41.2%
	Total	335.95	438.55	102.60	30.5%
Couple	Base	464.20	601.50	137.30	29.6%
	Supplement	42.30	59.70	17.40	41.1%
	Total	506.50	661.20	154.70	30.5%
CPI		92.9	108.6	-	16.9%
MTAWE		1,110.30	1395.10	284.80	25.7%
AWOTE		1,158.50	1533.10	374.60	32.3%
NMW Gross		543.78	672.70	128.92	23.7%
NMW Net		500.04	606.23	106.19	21.2%
C10 Gross		637.48	783.30	145.82	22.9%
C10 Net		575.78	682.48	106.70	18.5%

Pensions are adjusted each March and September. The index figures for the CPI are those at June 2009 and June 2016, 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 2016 (110.0) was 16.6 %.) The Supplements in 2017 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 2016*, cat. no. 6302.0 and earlier publications in this series. MTAWE figures are for May 2009 and May 2016, the most recently published figures prior to the setting, in September of each year, of the rates recorded for January 2010 and January 201. The AWOTE figures are at November 2009 and November 2016; see Table 10.

682. 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. 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.

683. 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 has not been set 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. At that point we will refer to the FWC's view in the May 2016 decision (at paragraph 354) that the comparison with pensioners is of "very limited relevance".

7

POVERTY AND HOW WE MEASURE IT

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**Working Australia, 2017:
wages, families and poverty**

CHAPTER 7

POVERTY AND HOW WE MEASURE IT

A. THE MEANING OF POVERTY

684. 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 even when they are supported by a full time wage earner. 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.
685. 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.
686. 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.
687. 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.
688. 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)

689. 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.”

690. 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)

691. 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

692. 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

693. Before turning to the needs-based 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.
694. 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 have included the Social Exclusion Monitor (2015), a joint project of the Brotherhood of St Laurence and the Melbourne Institute of Applied Economic and Social Research (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). In 2016 the Melbourne Institute published *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 14*. This report notes that:
- "The HILDA Survey seeks to provide longitudinal data on the lives of Australian residents. It annually collects information on a wide range of aspects of life in Australia, including household and family relationships, child care, employment, education, income, expenditure, health and wellbeing, attitudes and values on a variety of subjects, and various life events and experiences." (Page 4)
695. 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)

696. 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)

697. 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 are,

or may be, contributing to the unacceptable degree of poverty and disadvantage in Australia.

Poverty Lines

698. 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 the measures 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.
699. 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.
700. 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: 2015*, published by the Bureau in September 2016. 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. has been required to show that the sponsor can support the relative at 125% above the mandated poverty line.
701. The U.S. Government report also includes 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.
702. 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. 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. The term “abject poverty lines” would be more descriptive of these poverty lines.

Henderson poverty lines

703. 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.
704. 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.
705. The Poverty Commission fixed the HPLs at an “austere low level”. It said that it did this so that “It cannot seriously be argued that those below this austere line, whom we describe as ‘very poor’, are not so.” (*First Main Report*, page 13.) The Poverty Commission calculated the poverty lines for a single person, a couple without children and a couple with two children. The poverty line for a single person was \$33.40 per week, compared to an after tax minimum wage of \$54.00 per week. The poverty line for the couple with children was \$62.70 per week, compared to a disposable income, after tax, tax rebates and child endowment, of \$58.00 per week. The family had a poverty gap of \$4.20 per week; see Table 3.14 of the *First Main Report*. 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.
706. 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, emphasis in original.)

707. 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 Australian Fair Pay Commission (AFPC) in each of its decisions over the period 2006 to 2009. By contrast, the FWC has not been persuaded by them. 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."

708. In the FWC's 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)

709. 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. It is illustrated by the comparison made in the newsletter between the two methods of calculation. If adjusted by the Consumer Price Index the poverty line increase since 1973 would only be 71.8% of the poverty line adjusted by reference to changes in average disposable income. 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 rising community income, such as the Melbourne Institute does for the HPLs, would be acceptable and is preferable.

Using the HPLs to identify changes over time

710. 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 2017. This is summarised in Table 23.

Table 23

Changes in incomes relative to Henderson Poverty Lines
January 2001- January 2017
(\$ 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%
2017 HPL	514.95	967.23
2017 Disposable income	606.23	896.69
2017 DI:HPL	+17.7%	-7.3%

Each of the HPLs for 2001 is calculated by the formula provided in *Poverty Lines Australia, September Quarter 2016*. The 2017 figures are calculated on the figures at September 2016, the latest available figures. Disposable incomes are from Tables 15 and 19, above. The rent assistance to which the family may be entitled has not been included. Maximum rent assistance increased from \$50.43 to \$76.65 per week over the period January 2001 to January 2017 (see Table 28).

711. 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 very 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 2017 it was 7.3% below the poverty line. The single worker without dependants has lost more than half of his or her initial margin over poverty. The fact that these kinds of statistics are 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.

712. 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.

Budget Standards

713. 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.
714. 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.
715. 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*.
716. 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.)

717. 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.
718. 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

719. 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 39.1% from September 2003 to December 2016.

Table 25

**Updated Low Cost and Modest but Adequate Budgets
January 2017
(\$ 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	229.93	229.93	229.93	278.89	328.00
Energy	12.80	12.80	16.70	21.43	25.46
Food	83.19	100.02	182.08	233.83	320.62
Clothing & footwear	39.37	29.91	59.27	81.79	97.93
Household goods & services	49.52	49.52	4.87	79.98	67.74
Health	7.24	10.71	17.67	22.54	26.29
Transport	124.36	123.94	139.52	143.97	148.42
Leisure	46.04	53.28	89.87	95.43	141.88
Personal care	36.85	16.27	46.18	49.52	51.19
Total	629.29	626.37	786.06	1007.37	1207.53
	<i>Low Cost</i>				
Housing	200.026	202.807	202.807	255.668	308.530
Energy	11.825	11.967	15.864	19.052	22.117
Food	78.449	79.698	143.683	183.614	253.161
Clothing & footwear	23.233	23.650	53.277	67.609	85.260
Household goods & services	38.814	39.504	49.380	63.295	96.811
Health	6.68	6.96	11.97	15.44	18.49
Transport	92.91	94.59	107.11	115.17	115.17
Leisure	32.14	32.69	40.91	49.38	61.21
Personal care	8.90	9.04	15.11	21.14	25.04
Total	492.98	500.91	640.12	790.38	985.80

720. ACCER has presented an updated table like Table 25 in all six past wage reviews under the *Fair Work Act*. 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. ACCER has accepted that the basket of goods and services that underpins the Low Cost budget has to be revised and substantially expanded if it is to be used to set a

wage rate that is designed to meet the basic needs of workers and their families. The Australian Council of Social Services (ACOSS) has also relied on price-adjusted budget standards data.

721. ACCER and ACOSS have persisted in their support of the budget standards research because of its integrity and because there is no other Australian research into the needs of low paid workers and their families. This has been put in the context of the rejection of applications by ACOSS and ACCER over many years for the FWC and, earlier, the AFPC and the AIRC to establish some kind of inquiry into the needs of the low paid.
722. The earlier extract from the Safety Net Review Case in 2004 showed 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, which ACCER has sought to rely on.
723. 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.)
724. The tribunal's reasoning was not explained by the words "we were not persuaded". This was no assessment of the strengths and weaknesses of the budget standards material. There is no explanation why the price-adjusted budgets had no weight and were unacceptable for all purposes. This has been the substance of the FWC's rejection of this evidence over the following years.
725. 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. We have persisted in this because at no time have the substantial merits of this evidence been addressed. It is, in our view, no answer to say that it has no contemporary relevance and dismiss it for all purposes.
726. The FWC's June 2014 decision includes the following passage:

"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*)

727. 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.)

728. The June 2015 decision had limited reference to the SPRC's budget standards research and no response to the request for reasons; see *Annual Wage Review 2014-15, Decision* paragraph 391.

729. We made the following point in our March 2016 submission:

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

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." (ACCER March 2016 submission, paragraphs 598-9)

730. In the May 2016 decision the FWC was unmoved:

"We remain of the view that the SPRC budget standards data provide little guidance to the Panel because the original research upon which they are based lacks contemporary relevance." (Paragraph 442)

731. The SPRC's 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. ACCER has argued that the NMW does not have contemporary relevance and that it should be reviewed and adjusted so that it is sufficient to meet the needs of the low paid. 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.

Value judgments

732. 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*)

733. This was not a new issue, although surprising when made on behalf of the then Australian Government which had returned "needs" to the wage setting legislation and had set pensions by reference to a "basic acceptable standard of living" standard.
734. 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)

735. 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, debated and judgments made.
736. 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. We return to this in the next section.

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

737. 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.
738. 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)

739. 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. Increases in the NMW have been constrained by the quantum of increases applied to award wage rates.

740. 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."

741. 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 to some extent, 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.)

742. 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 establish some process to address these questions in an inquisitorial manner.

The continuing failure to assess the needs of the low paid

743. The applications in 2003 by ACCER and ACOSS for the holding of an inquiry into the needs of the low paid failed because 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.
744. 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.
745. 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.

746. 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.

747. 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)

748. 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 (at paragraph 407) that it 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".

749. 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.

750. 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.
751. 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)”
752. 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.
753. 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)
754. 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.

755. 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.
756. 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.)

757. In March 2016 ACCER again sought an inquiry under section 290 of the *Fair Work Act* for the purpose of obtaining evidence about the needs and the relative living standards of the low paid. The FWC responded:

"[657] We also note that in its submission ACOSS referred to the SPRC’s ‘ACOSS, Catholic Social Services and United Voice project’ to update the SPRC 1996 budget standards benchmarks of community living standards. The project aims to update 1996 research into the weekly budgets of low-paid and unemployed workers. In a response to a question from the Panel, United Voice stated that the results of this research “will be used to inform debate and guide decisions about the levels of minimum wages and income support payments required to support healthy living consistent with individual needs and community expectations.”

[658] While the timing for the release of the SPRC report is unknown, it seems to us that the results of this research will be relevant to the issue raised by ACCER. In the event that ACCER wishes to pursue its proposal for a s.290 inquiry it should submit a proposal to the President." (Footnote omitted)

758. For the reasons we have given earlier, ACCER believes that the budget standards research is, at the least, the best starting point for an inquiry into the needs of the low paid. With the prospective release of the updated research ACCER believes that a section 290 inquiry should be established soon after the release of that research, either upon the FWC's own motion or upon application by an interested party. While we see the research as being central to the inquiry, we do not see it as being limited to that research.

Conclusion

759. A wages system designed to provide a fair safety net, partly based on 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.)

760. This was followed by a response in the FWC's June 2013 decision 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.)

761. Also included in the June 2013 decision was a passage that described, in the context of its discussion about the needs of the low paid, what a standard of living in excess of poverty would mean:

"The minimum wages objective and the modern awards objective [in the *Fair Work Act*] both require us to take into account two particular matters, relative living standards and the needs of the low paid. These are different, but related, concepts. The former, relative living standards, requires a comparison of the living standards of award-reliant workers with those of other groups that are deemed to be relevant. The latter, 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. The assessment of what constitutes a decent standard of living is in turn influenced by contemporary norms." (Paragraph 361.)

762. 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 need to be followed by a serious attempt to inquire into what is needed to improve the living standards of those workers

who are living in poverty and unable to secure a decent standard of living for themselves and their families. We trust that the forthcoming release of the updated SPRC research material, referred to earlier, will provide the opportunity for that to occur over the next twelve months.

8

LOW INCOME WORKING FAMILIES HAVE FALLEN BELOW POVERTY LINES

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**Working Australia, 2017:
wages, families and poverty**

CHAPTER 8

LOW INCOME WORKING FAMILIES HAVE FALLEN BELOW POVERTY LINES

A. THE USE AND UTILITY OF RELATIVE POVERTY LINES

763. 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, 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.
764. 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.
765. 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.
766. 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.

767. 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. Rather than using a relative poverty lines, comparisons can be made by reference to the median equivalised household disposable income, from which poverty lines are calculated.

ABS data collection

768. 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.
769. 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)

770. 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)

771. 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

772. 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.

773. 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. The next publication is due for release in late 2017.

774. 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))

775. 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 of Applied Economic and Social Research (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.
776. In Table 26 we have calculated changes in MEDHI over the period January 2001 to January 2017. 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.
777. The median equivalised figures for January 2015 and January 2017 are based on the latest ABS figures adjusted by changes in HDI contained in *Poverty Lines Australia, September 2016*. 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 2017
(\$ per week)

	Median equivalised disposable household income (ABS)	Household Disposable Income per head (Melbourne Institute)	Median equivalised disposable household income
January 2001	413.59	413.61	413.59
January 2002	-	455.00	436.58
January 2003	435.48	451.58	435.48
January 2004	499.98	477.34	499.98
January 2005	-	512.56	544.20
January 2006	568.43	530.84	568.43
January 2007	-	570.89	620.43
January 2008	687.42	619.91	687.42
January 2009	-	683.90	716.28
January 2010	714.27	680.19	714.27
January 2011	-	722.35	756.09
January 2012	790.16	753.39	790.016
January 2013	-	761.43	809.30
January 2014	844.00	795.09	844.00
January 2015	-	810.18	860.02
January 2016	-	812.93	862.94
January 2017	-	824.83	875.57

Household Disposable Income (HDI) per head figures are taken from *Poverty Lines Australia, September Quarter 2016*, published by the Melbourne Institute. The figure used for each January is the published figure for the immediately preceding December quarter, save for January 2017 where the September quarter 2016 figure has been used. The next in this series, covering the December quarter 2016, is due to be published in April 2017. Each newsletter provides revisions of earlier estimates.

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.

The figures for January 2015 to January 2017 are calculated by applying the relevant HDI increases to the ABS calculated figure of \$844.00 per week in 2013-14, which is used for January 2014 in this table.. The estimates of median disposable household income for January 2015 and January 2016 are different to those estimated in *Working Australia, 2016* because of the revisions of HDI in the most recently published newsletter.

C. CONSTRUCTING RELATIVE POVERTY LINES

778. 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 2017. 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.

Table 27

**Poverty lines for workers and families
January 2001 – January 2017
(\$ 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	860.02	516.01	1,083.63	825.62
January 2016	862.94	517.76	1,087.30	828.42
January 2017	875.57	525.34	1,103.22	840.55

779. Table 27 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 2017 the 60% poverty line for a single adult was calculated on a median equivalised disposable household income of \$875.57 per week and was \$525.34 per week. For a family of

two adults and two children the 60% poverty line was \$1,103.22 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 \$840.55 per week, or 1.6 times the single person's.

780. 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 2017
(\$ per week)**

Year	NMW	NMW per year	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
2017	672.70	35,101	606.23	13.45	186.99	55.49	27.84	6.79	76.92	973.71

The figures in Tables 28 to 30 are at January of each year. Family Tax Benefits are taken from Table 19. Family Tax Benefit, Part A includes the Energy Supplement Part A and Family Tax Benefit Part B includes the Energy Supplement Part B. 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.

781. Table 28 shows wage, tax and family payment calculations for NMW-dependent workers and families over the period January 2001 to January 2017. 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.

782. Table 29 shows wage, tax and family payment calculations for C12-dependent workers and families over the period January 2001 to January 2017. Table 30 contains similar data for a worker paid at the C10 trade-qualified wage rate. This family is \$51.04 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.
783. The decline in the disposable incomes over the year to January 2017 shown in Tables 28 to 30 was caused by the withdrawal of the Schoolkids Bonus at the end of 2016. Until then we had included the Schoolkids Bonus on the basis one child was in primary school and the other child was in secondary school. In January 2016 those payments totalled \$24.65 per week.

Table 29

**Wages, taxes and family payments for C12-dependent workers and families
January 2001 – January 2017
(\$ per week)**

Year	C12	C12 per year	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
2017	718.60	37,897	641.07	14.37	186.99	55.49	27.84	6.79	76.92	1,009.47

Table 30

**Wages, taxes and family payments for C10-dependent workers and families
January 2001 – January 2017
(\$ per week)**

Year	C10	C10 per year	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
2017	783.30	40,873	682.48	15.67	186.99	55.49	27.84	6.79	76.92	1,052.18

784. 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 2017.

785. Comparing the changes over the years January 2004 to January 2017, we find:

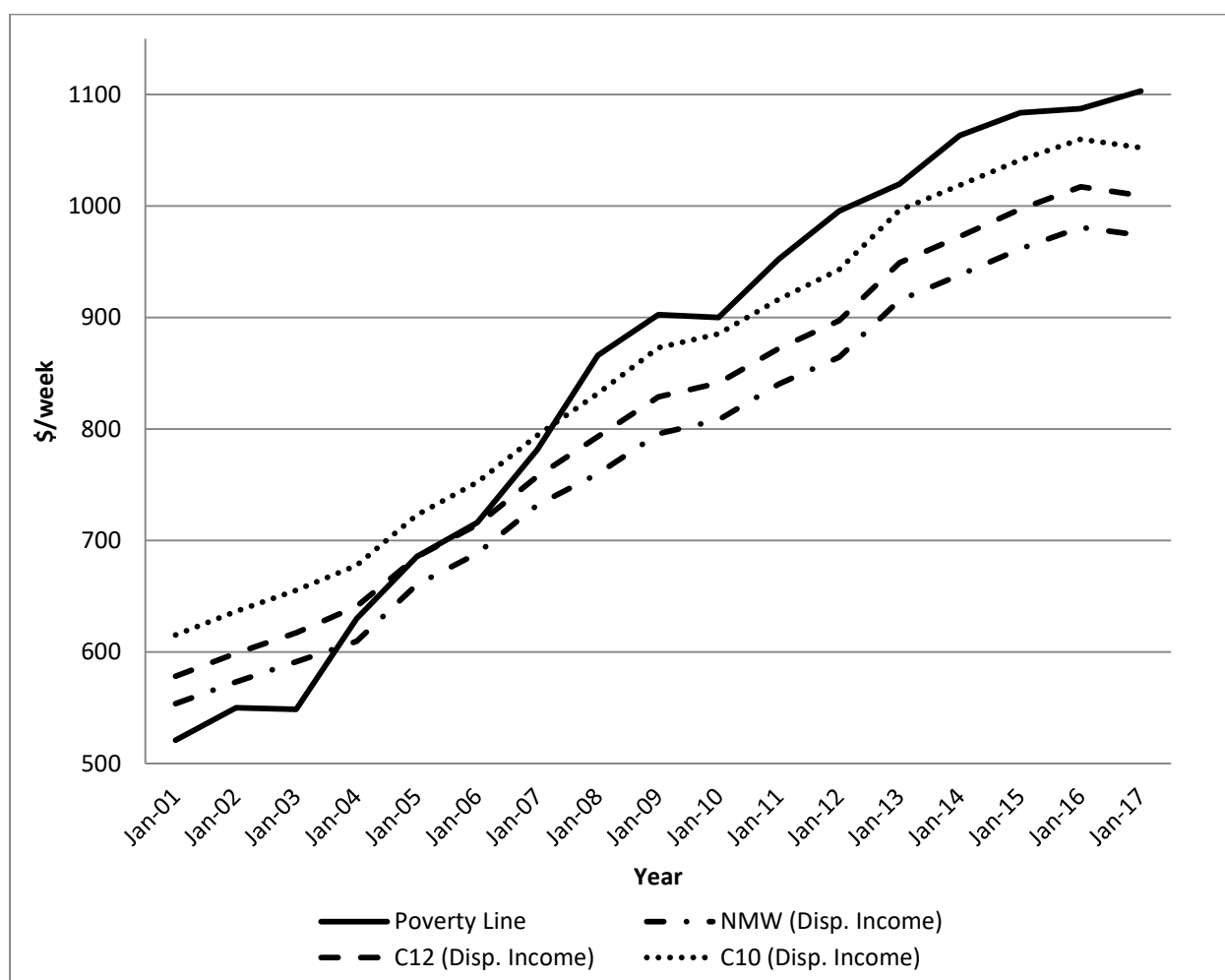
- the NMW-dependent family of four fell further into poverty: from 3.2% below the poverty line, with a poverty gap of \$20.37 per week, to 11.7% below it, with a poverty gap in January 2017 of \$129.51 per week;
- the C12-dependent family of four fell into poverty: from 1.7% above the poverty line, with a margin over poverty of \$11.21 per week, to 8.5% below it, with a poverty gap in January 2017 of \$93.75 per week; and
- the C10-dependent family of four fell into poverty: from 7.6% above the poverty line, with a margin over poverty of \$47.87 per week, to 4.6% below it, with a poverty gap in January 2017 of \$51.04 per week.

786. This change is also reflected in the position of single workers relative to their poverty lines.

In January 2004 the single NMW-dependent worker was 26.0% above the poverty line, but

by January 2017 had fallen to 15.4% above the poverty line. Higher paid work classifications suffered greater relative cuts in their living standards.

Figure 3
Disposable Incomes of Safety Net-dependent Families Relative to 60% Poverty Line
(Couple and two children)
January 2001 – January 2017



787. 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 2017

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
96.7	96.3	96.1	93.3	87.8	88.2	89.8	88.2	86.8	89.8	88.2	88.7	90.2	88.3

More recent changes under the Fair Work Act

788. 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 15.4% in January 2017. In January 2010 the NMW-dependent family of four was 10.2% below the poverty line, compared to 11.7% below the poverty line in January 2017. Table 31 shows the disposable income of the family as a proportion of the 60% poverty line over the period January 2004 to January 2017. The significant decline occurred in the *Work Choices* years, and the numbers have changed little since then.
789. 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.

Sole parent families

790. 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 2017 the NMW-dependent sole parent family with two children was 15.8% above poverty, with a margin over poverty greater than the single person's margin of 15.4%. 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.
791. 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. Furthermore, the publishing of these figures without proper explanation is likely to engender a misleading view that low paid sole parents are doing well.
792. In its March 2016 submission ACCER proposed that, in the alternative to taking full and proper account of child care costs in calculating relative living standards of sole parents, the

living standards of sole parents also be calculated on the basis of part time work of 27.5 hours per week, without the inclusion of child care costs. This proposal has been held over for consideration in the current wage review; see *Annual Wage Review 2015-16, Decision* [2016] FWCFB 3500 (May 2016 decision), paragraph 659.

Data in the FWC's Statistical Report

793. Table 8.6 of the FWC's 17 March 2017 edition of the *Statistical Report* has estimates of the poverty lines and the disposable incomes of a number of NMW-dependent and C10-dependent workers and families at September 2016. The poverty line calculations are the same as those in Table 27, reflecting the HDI calculations by the Melbourne Institute. We have used those figures for January 2017. Both figures will be revised following the next set of figures from the Melbourne Institute, which will cover the end of the December quarter. They are expected in April 2017. After that both sets of poverty lines will be re-calculated, with the *Statistical Report* expected to be using them for December 2016 and ACCER using them for January 2017.
794. Table 8.6 has different household disposable incomes to those calculated by ACCER. There are minor discrepancies of less than a dollar per week in the disposable incomes of single workers on the NMW and C10 wage rates. The estimates of disposable incomes of the NMW and C10-dependent two child families vary. For the NMW-dependent couple and sole parent families with two children family, the report has \$989.42 per week, whereas Table 28 has \$973.71. The principal reason for this is that the Schoolkids Bonus is included in the *Statistical Report* and not in Table 28. This reflects the fact that the Schoolkids Bonus was discontinued at the end of 2016. The notes to an associated table (Table 8.5) in the report reveal that the Schoolkids Bonus calculation is based on two primary school students, which yields a lower weekly figure than that used by ACCER in earlier calculations. Save for this item, there will be no change in taxes and transfers from the end of December 2016 to the start of January 2017. Mostly because of the use of different reference dates, the *Statistical Report* has the NMW-dependent couple parent and two children family at 90% of the 60% relative poverty line and Table 31 has the family at 88.3% of the same poverty line.

Workers and their families have suffered from rising inequality: MEDHI

795. 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 in relative living standards is to describe the position of these families by reference to the changes in

MEDHI. This compares the family's disposable income to a measure of community-wide income, with any issues being raised concerning the measurement of poverty put aside. Like poverty line calculations, this measure can track changes over time.

796. In January 2004, the NMW-dependent family's income was 21.9% above MEDHI, but by January 2017 it had fallen to 11.2% 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 20.2% above it in January 2017. 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 53.0% of MEDHI and the C10-dependent family has fallen from 64.6% to 57.2% of MEDHI.
797. The last seven 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*.
798. Over the period January 2010 to January 2017 the NMW-dependent family's disposable income margin over MEDHI fell from 13.2% to 11.2% or, in equivalised terms, from 53.9% to 53.0% of MEDHI. In January 2010 the single worker had disposable income that was 69.6% of MEDHI and in January that proportion had fallen to 69.2%. These figures show a decline in relative living standards since the *Fair Work Act* came into operation.

HDI figures confirm low paid workers have suffered rising inequality

799. Table 32 compares the changes in the HDI calculated by the Melbourne Institute and the disposable incomes of the couple parent families in Tables 28 to 30 over the period January 2001 to January 2017.
800. 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.
801. The HDIs are a general guide to measure changes in the relative living standards of safety net dependent families and, as such, are relevant to the determination of changes in relative living standards. However, they should be read subject to the periodic surveys conducted by the ABS, on which the earlier figures were calculated. They have the advantage of being able to track changes in relative living standards over a longer period of time than the ABS-derived figures, owing to changes in compilation, by the ABS to which we referred in section B.
802. Table 32 demonstrates 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 16 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 71.0% in its disposable income, compared to a 99.4% increase in the HDI measure of household disposable income. For the NMW-dependent family, the increase was 75.8% and for the C12-dependent family it was 74.5%.

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 2017
(\$ 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	413.61	553.80	133.9%	578.51	139.9%	615.33	148.8%
2002	455.00	573.16	126.0%	599.04	131.7%	636.62	139.9%
2003	451.58	591.41	131.0%	617.37	136.7%	655.59	145.2%
2004	477.34	609.60	127.7%	641.18	134.3%	677.84	142.0%
2005	512.56	660.49	128.9%	685.48	133.7%	722.90	141.0%
2006	530.84	688.40	129.7%	714.28	134.6%	752.36	141.7%
2007	570.89	731.95	128.2%	757.77	132.7%	794.36	139.1%
2008	619.91	760.09	122.6%	793.37	128.0%	831.97	134.2%
2009	683.90	795.93	116.4%	828.89	121.2%	873.07	127.7%
2010	680.19	808.36	118.9%	841.31	123.7%	885.49	130.2%
2011	722.35	840.44	116.4%	872.32	120.8%	916.54	126.9%
2012	753.39	864.41	114.7%	897.12	119.1%	942.89	125.2%
2013	761.43	915.54	120.2%	949.25	124.7%	996.30	130.9%
2014	795.09	938.24	118.0%	972.75	122.3%	1,018.81	128.1%
2015	810.18	961.70	118.7%	997.17	123.1%	1,041.41	128.5%
2016	812.93	980.78	120.7%	1,017.15	125.1%	1,059.88	130.4%
2017	824.83	973.71	118.1%	1,009.47	122.4%	1,052.18	127.6%

The HDI figures are for December of the previous year, save for January 2017, where the figure is for September 2016. The HDIs are taken from *Poverty Lines Australia: September Quarter 2016*. The disposable incomes for families dependent on the NMW, C12 and C10 wage rates are taken from Tables 28, 29 and 30, respectively.

Twenty years in decline

803. 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 Chapters 2D and 7C.

804. 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.

Table 33

Safety Net Wages and Household Disposable Income – Single worker
April 1997–January 2017
(\$ per week, unless stated)

Year	HDI	NMW gross	NMW net	NMW net as % of HDI	C10	C10 net	C10 net as % of HDI
1997	354.73	359.40	305.70	86.2%	451.20	367.96	103.7%
1998	363.86	359.40	305.70	84.0%	451.20	367.96	101.1%
1999	368.07	373.40	316.69	86.0%	465.20	376.43	102.3%
2000	392.90	385.40	326.11	83.0%	477.20	384.03	97.7%
2001	413.61	400.40	346.38	83.8%	492.20	406.53	98.3%
2002	455.00	413.40	354.76	78.0%	507.20	416.81	91.6%
2003	451.58	431.40	366.37	81.1%	525.20	429.14	95.0%
2004	477.34	448.40	377.93	79.2%	542.20	444.77	93.2%
2005	512.56	467.40	396.78	77.4%	561.20	457.78	89.3%
2006	530.84	484.40	412.84	77.8%	578.20	475.40	89.6%
2007	570.89	511.86	449.93	78.8%	605.56	510.94	89.5%
2008	619.91	522.12	467.59	75.4%	615.82	538.06	86.8%
2009	683.90	543.78	494.29	72.3%	637.48	570.03	83.4%
2010	680.19	543.78	497.17	73.1%	637.48	572.90	84.2%
2011	722.35	569.90	521.86	72.2%	663.60	596.56	82.6%
2012	753.39	589.30	537.49	71.3%	686.20	614.52	81.6%
2013	761.43	606.40	556.87	73.1%	706.10	636.14	83.6%
2014	795.09	622.20	569.44	71.6%	724.50	648.47	81.6%
2015	810.18	640.90	581.11	71.7%	746.20	658.72	81.3%
2016	812.93	656.90	573.79	70.6%	764.90	670.70	82.5%
2017	824.83	672.70	606.23	73.5%	783.30	682.48	82.7%

The gross and net wages are figures are at April 1997 and at 1 January in the succeeding years. The HDI figures are for December of the previous year, save for January 2017, where the figure is for September 2016. The HDIs are taken from *Poverty Lines Australia: September Quarter 2016*.

805. 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 2017 the C10 worker's net wage increased by 85.5%, while the HDI increased by 126.7%. For the NMW-dependent worker, the net wage increase was 98.3%.

806. The kind of comparisons in Table 33 were not unknown to the tribunals. 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 16 years.
807. The figures in Tables 32 and 33 showing the relationship between disposable incomes and the HDIs demonstrate 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 restrained in the years since the commencement of the *Fair Work Act*, but the FWC has not addressed these legacies. The substantive points are that the NMW has lost its relativity to average incomes and does not have contemporary relevance.

D. COMPARING THE PENSION AND WAGES SAFETY NETS

808. 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.
809. 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.
810. 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 MEDHI, the measure of median

equivalised disposable household income. 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.

811. Table 34 shows, by reference to the equivalence scales used by the ABS, that the pension safety net for a couple, \$725.20 per week, produces a standard of living that is 2.2 percentage points higher than that of NMW-dependent family of two adults and two children with a disposable income of \$973.71 per week. The family would need an extra \$41.58 per week to have the same standard of living as the pensioner couple.

Table 34

**Relative living standards of pension and safety net-dependent families
January 2017**

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	973.71	2.1	463.67	53.0%
C12-dependent family, second parent not seeking employment, 2 children	1,009.47	2.1	480.70	54.9%
C10-dependent family, second parent not seeking employment, 2 children	1,052.18	2.1	501.04	57.2%
Couple on age pension	725.20	1.5	483.47	55.2%
Single person on age pension	505.59	1	505.59	57.7%
Single person on disability pension	505.59	1	505.59	57.7%

The median equivalised disposable household income (MEDHI) at January 2017 was \$875.57 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 include maximum rental assistance. Maximum rental assistance rates are \$65.30 (single), \$61.50 (couple) and \$76.65 (two children) per week. The pensions and rental assistance have been re-calculated on the basis of a year of 52.18 weeks in order to be consistent with the calculations for the family in Tables 19, 28, 29 and 30.

812. 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 20 March 2015 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.” (This table and the notation do not appear in later editions of the *Statistical Report*.) Furthermore, pensioners are entitled to the pensioner concession card with its wide range of benefits, including health care.

813. The figures show that the pensioner couple has a higher standard of living than the C-12 and NMW-dependent families even before taking into account the costs of work and the value of the pensioner concession card. The contrast between the living standards of low income working families is even starker if we compare them with single pensioners. The C10 family is below the single pensioner’s standard of living: 57.2% of MEDHI compared to 57.7%. Taking into account the costs of work and the value of the pensioner concession card, it would be fair to say that the pensioner couple has a higher standard of living than the C10-dependent family. We observed earlier that something very significant has happened when a family supported by a worker in a skilled trade has fallen into poverty. 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.
814. 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.
815. 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?
816. 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.

The May 2016 decision rejects the relevance of pensions

817. Despite submissions for it to do so, the FWC did not refer to these issues in its decisions from 2010 to 2015. In its May 2016 submissions ACCER again relied on the kind of statistics and reasons which are now in Chapter 6C of this book and in the foregoing paragraphs of this section. It argued that the FWC should take into account the levels of pensions and the living standards of pensions when assessing relative living standards and the needs of the low paid.

818. The FWC's response is at paragraphs 354-6 of the May 2016 decision (*Annual Wage Review 2015-16, Decision* [2016] FWCFB 3500). The FWC's introduction to its response on the pensions issue was:

"Consistent with our past approach, our assessment of relative living standards focusses mainly on the comparison between award-reliant workers and other employed workers, especially non-managerial workers. This focus does not exclude a comparison with other relevant groups, but in our view, a comparison with pensioners for the purpose of assessing the relative living standards of the low paid is of very limited relevance for two reasons." (Paragraph 354, footnote omitted)

819. The two reasons given were:

- "pension movements reflect movements in wages and prices, to which we already have regard in adjusting the NMW and modern award wage rates" (paragraph 355); and
- "the pension is a reflection of society's views on the level of comfort that the aged should have in their retirement years and the level of financial support for people who have a physical, intellectual or psychiatric condition that restricts their capacity to work. The judgments and values that underlie these views can properly be quite distinct from an assessment of the minimum standards of living that are fair for those who are still in employment" (paragraph 356).

820. The first reason does not address the point, illustrated in Table 22, that increases in the wage safety net have lagged increases in the pension safety net since the pension system was reformed in 2009. Over the period January 2010 to January 2017 pensions increased by 30.5% compared to an increase of 23.7% in the NMW. This shows a major difference between the way the pensions safety net responds to increases in prices and rising community living standards, as reflected in increases in average wages, and the way that minimum wages safety net responds to the same factors. Nor does the first

reason address the point made at Table 34 and in the associated commentary that pensioners have a higher standard of living on the pensions safety net than families who are dependent on the wages safety net. That conclusion is reinforced when we take into account the costs of work and the need to provide incentive and reward for work.

821. The second reason is that the basis of pension setting has been different to that of wage setting, emphasising the provision of comfortable life for those in retirement and financial support for those who are unable to work. Those factors do not suggest that the two kinds of pensioners should have a higher standard of living than low income wage-dependent families. The critical point in this is that the pension rates are the same for both groups and that they are based on an assessment of what is needed to achieve a basic acceptable standard of living. They are not based on different objectives or standards as the response suggests. Our submissions in 2016 referred to the *Pension Review* report by Dr Jeff Harmer, the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs and the Government's *Secure and Sustainable Pension Reform* policy, which adopted, among others, the Harmer recommendations on pension rates. The policy was part of the May 2009 Budget; see: www.budget.gov.au/200910/content/glossy/pension/html/pensions_overview_01.htm
822. The *Pension Review Report* of 27 February 2009 made it clear that the essential purpose of the inquiry was to set pension rates at a level that would provide a basic acceptable standard of living, accounting for prevailing community standards and to do by reference to central function was finding and deter
- "The central question for the Review was the level at which the full rate of pension should be set." (Page xii)
 - "The Review's approach to this question was to test whether current rates of pension are providing a basic acceptable standard of living, accounting for prevailing community standards." (Page xii)
 - "As discussed in Chapter 3, the Review has defined adequacy as 'a basic acceptable standard of living, accounting for prevailing community standards'. While the Age Pension, Disability Support Pension and Carer Payment perform a number of roles in the income protection and social protection systems, the Review considers that providing adequate income support to those with little or no private means is the most important role of these payments, both now and into the foreseeable future." (Page 8)
 - "In line with the Review's view that the primary purpose of the Age Pension, Disability Support Pension and Carer Payment is basic income support, the Review's approach to this question has been to test whether current rates of pension are providing a basic acceptable standard of living, accounting for prevailing community standards." (page 22)

823. The same rate was set for age and disability pensions for the common purpose of providing pensioners with a basic acceptable standard of living. The rate set did not reflect different kinds of assessments, as the second reason given by the FWC claims. There is no source cited for the FWC's claims about the nature and purpose of the pension payments.
824. The objective of the Harmer inquiry was to identify an income that was needed to achieve a standard of living like that identified by the FWC in successive wage cases. The essential elements of the basic acceptable standard of living are contained in the words used by the FWC in describing the setting of minimum wages: a standard of living that is in excess of poverty and one which enables citizens to purchase the essentials for a decent standard of living and engage in community life, assessed in the context of contemporary norms.
825. In this regard the result of the inquiry is not just relevant to an assessment about relative living standards, but it provides an assessment about what income is necessary in contemporary Australian society in order to have a decent standard of living or, in similar terms, a basic acceptable standard of living. Furthermore, the assessment made has been accepted by Parliament.
826. ACCER has argued that, in assessing relative living standards for the purposes of wage setting, primary emphasis needs to be given to the wages of other workers across a broad range of incomes (for example, at Chapter 6C). The FWC has concluded that these matters have very limited relevance. For the reasons we have set out above, ACCER requests that the FWC reconsider this conclusion and treat the level of pensions and the living standards of pensioners as having significant relevance and weight in the setting of safety net wages.

E. NATIONAL MEASURES OF POVERTY IN THE LUCKY COUNTRY

827. A number of significant reports on the extent of poverty in Australia have been published in recent years. 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.

NATSEM/UnitingCare

828. *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, emphasis added)

829. 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).

ACOSS Poverty in Australia

830. *Poverty in Australia 2016* was published by ACOSS in October 2016. It was the fifth 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. The reports have been based on data collected by the ABS in its Survey of Income and Housing. *Poverty in Australia 2016* is based on the survey conducted during 2013-14
831. The 2016 poverty report calculates the poverty lines for 2013-14 at both the 50% and 60% of median levels. For the single person the weekly poverty lines are \$426.30 (50%) and \$511.55 (60%). For the couple with two children the poverty lines are \$895.22 (50%) and \$1,074.27 (60%). The 60% of median figures are very close to our calculations for January 2014 in Table 27, being \$506.40 and \$1063.40, respectively.

832. The poverty report found that 2,990,300 Australians were living in poverty at the 50% of median level, with the figure rising to 4,534,700 at the 60% of median level (page 12). The report found that 731,300 children under the age of 15 were living in poverty at the 50% of median level, with 1,048,900 in poverty at the 60% level (page 11). It found that 24.9% of children were living below the 60% of median poverty line at the 60% level and 17.4% of children were below the 50% of median poverty line (page 11).
833. The poverty 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.
834. The report shows that among households with fulltime workers, 4.7% were below the 50% poverty line (page 25). At the 60% poverty line the percentage in poverty rises to 7.9% (page 25). Looking at the profile of those living in poverty, the report finds that 20.8% of those living below the 50% poverty line are in, or rely on, full time employment (page 36). Using the 60% poverty line the figures rise to 23.2% (page 26). The estimated numbers of those living in poverty in households where there is full time employment are 622,700 at the 50% measure and 1,051,100 at the 60% measure (page 15).
835. While the data shows the number of children in poverty and the extent of poverty within households in which there is a fulltime employee, it does not show how many children, particularly dependent children, live in households where there is a full time employee. However, it is clear that there are many.
836. The poverty report estimates the risk of poverty in sole parent and couple households. In sole parent households the rate of child poverty is 40.6% (at 50%) and 54.5% (at 60%). In couple households the rates are 12.5% (at 50%) and 18.7% (at 60%); see page 23. Because there are more couple parent households in poverty than sole parent households the majority of children living in poverty are living in couple parent households. At 50% of median 55.9% of children live in couple parent households, compared to 39.8% in sole parent households and 4.3% in other kinds of households. At 60% of median the figures are 58.5%, 37.2% and 4.3%, respectively; see page 24.
837. Similar statistics to those just quoted were before the FWC in 2013. The FWC referred to *Poverty in Australia 2012* in its decision:

"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)

838. 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 four years from the 2012 report to the 2016 report the figure of 20.5% referred to by the FWC increased to 23.2%. It is of particular relevance to minimum wage setting that 23.2% of those living in poverty are living in poverty in homes that have a full time employee.
839. Poverty in Australia 2016 (like the earlier NATSEM/UnitingCare report) demonstrates that a very significant part of child poverty occurs in homes in which there is fulltime employment. While we know how many children are living in poverty and how many of those who are living in poverty are in households where there is a full time employee, we do not know how many children are living in poverty despite a parent having a full time job. However, the number must be very large. We return to this aspect when considering data from the 2011 Census.
840. The obvious conclusion from these matters 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.

The HILDA report 2016

841. In 2016 the Melbourne Institute published *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 14*. The report, based on the Household, Income and Labour Dynamics in Australia Survey (HILDA), is authored by Professor Roger Wilkins and includes data on the extent of income poverty in Australia.
842. Figure 3.4 (at page 31) compares child poverty rates over the period 2001 to 2014, with reference to sole parent and couple parent families:

"Child poverty is a particular concern for policy-makers because of the damage poverty may do to children's future productive capacity and life prospects more generally. Figure 3.4 presents child poverty rates for all children aged under 18, and separately for children in couple families and children in lone-parent families. The child poverty rate is consistently below the communitywide poverty rate,

averaging approximately 10% over the 2001 to 2014 period. However, this largely reflects the very low poverty rates for children in couple families. The probability of being in poverty is very high for children in lone-parent families, in most years hovering between 20% and 25%." (page 31)

843. The figure shows the total child poverty rate, at the 50% of median level, in 2014 was slightly above 5.0% for couple parent families, about 22.0% for sole parent families and about 9.0% combined.

OECD reports

844. 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.

845. 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)

846. 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)

847. 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.
848. 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.

UNICEF

849. Another significant report on international comparisons of poverty rates was *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.
850. 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.
851. The UNICEF report 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)

852. 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.)

853. 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.
854. The latest UNICEF report covering child poverty is *Innocenti Report Card 13*, with the subtitle *Fairness for Children: A league table of inequality in child well-being in rich countries*, published in 2016. One aspect of the report is income inequality, which is measured by reference to the number of children who are living in poverty among a list of 41 countries, including Australia. The Australian data is derived from the HILDA 2013 data (see page 44), which has now been replaced by the 2014 data in the HILDA 2016 report discussed earlier. The comparison between countries is made on the basis of the 50% of median poverty line. With a 9.3% poverty rate, Australia is 17th in the list of 41 countries: 16 countries have lower child poverty rates than Australia. This is not something of which we can be proud. If we came 17th in the

medals tally at the Olympics the Government of the day would spring into action with a range of policy measures to improve our international standing.

Fact Checks on topical issues concerning poverty and disadvantage

855. 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,"

856. 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?*

857. 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."

858. As the conclusion notes, the verdict based on the three research documents referred to earlier in this section.

859. 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,"

860. 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.

861. 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.
862. The first of the two measures of disadvantage was from the ABS's 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 the late 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.

Conclusion

863. In October 2016 Anti-Poverty Week saw a range of activities designed to inform the public and change the direction of public policy. ACOSS's *Poverty in Australia 2016* was prominent in the discussion during that week, with calls for improved safety net protection for vulnerable groups. However, in substance we learned nothing more than we already knew. The point which must be stressed is that there is no contradiction of the facts that many hundreds of thousands of Australians are living in poverty and that a full time job is not a means of escaping poverty for low income families. A whole of government response is required if we are to see a reduction in

poverty among the working poor, but it is vitally important that wages be set so that work with a decent wage is the primary means by which Australian can escape poverty and achieve a decent standard of living.

864. Unfortunately, if the FWC is not prepared to take action when confronted with hundreds of thousands of adults and children in working families living in poverty, there will be no improvement in the situation.

F. THE WORKING FAMILY PROFILE: ISSUES AND DATA

865. 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, will not do so in the foreseeable future, if ever.
866. 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 workers with family responsibilities. This sometimes leads to the claim that there are better ways to help low paid workers than increasing minimum wage, ie that government transfers to those in most need is a more targeted and effective means of addressing poverty and disadvantage. This is a hollow point if, as is the case now, there is no prospect of increased payments from the public purse.
867. 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 couple parent 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.
868. 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.
869. 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

870. 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.)

871. 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.

872. 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.
873. 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.
874. 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.
875. 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.
876. 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

877. Because couple parent families are living in poverty on a single full time wage we can expect that there will be increasing frequency of part time and casual work by the parent who is the primary carer of the children. 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”. 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.
878. 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. 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.

The FWC's questions

879. 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.

880. 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. It was different because it asked about award-reliant workers, not low paid workers. The term award-reliant was used in the sense that it covered workers who were exactly the award rate.

881. The Government responded with information on the position of low paid families:

"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.)

882. 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* (June 2013 decision), paragraphs 363 and 387.

883. 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)

884. 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.*" (June 2013 decision, paragraph 409, emphasis added)

885. 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, but still low paid. This included those on the base trade-qualified award wage. 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.

886. 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.

887. Second, 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.

888. Third, the FWC also had evidence from a research report by the ACOSS, similar to that which we discussed in the previous section, 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” (June 2013 decision, paragraph 408). Despite this clear and accurate conclusion, no action was taken. Nor was there any apparent interest in following through the implications of this.
889. So when 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, 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? The reason was that the FWC was committed to maintaining award relativities and giving priority to helping those most in need was inconsistent with that policy.
890. In both 2014 and 2015 ACCER submitted evidence from the 2011 Census on the profile of low income working families. The substance of that evidence is set out in the following section. There was no reference to the Census data in the June 2014 decision, but reference to was made to it in the June 2015 decision.
891. The FWC's reference to the Census data in its June 2015 decision came in the context of a reference to the “family types among those on the NMW or modern award minimum wages”. 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, emphasis added.)

892. The first point to be made about this passage relates to the second last sentence. The FWC states that it "is important that our consideration of any proposals to address ... the needs of the low paid is better informed by some understanding of the incidence of award-reliant household types". However, information about the needs of the low paid is gained by looking at the circumstances of the low paid, including their family responsibilities. Too concentrate only on those who are award reliant is far too narrow.

893. The FWC was obviously aware of some unpublished data in the Australian Workplace Relations Survey (AWRS). 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.

894. The coverage of these matters in the May 2016 decision is in the following paragraphs:

"[439] Data from the Australian Workplace Relations Study (AWRS) suggests that single-earner couple households without children where an award-reliant employee is the sole income earner make up 4.5 per cent of all household types of all award-reliant employees and single-earner couple households with one or two children where an award-reliant employee is the sole income earner make up 2.1 per cent of all household types of all award-reliant employees.[Footnote:

Statistical Report at p. 33, Table 8.4.] That suggests that the single earner couple households at or below the 60 per cent median income poverty line are a relatively small group, although we accept ACCER's contention that this figure is limited to those in receipt of the award and there are other single earner couple households earning not much more than the minimum award wage who are below the 60 per cent median income poverty line.[Footnote: Transcript of Proceedings, 10 May 2016, at para. 395.] Whilst we have not been presented with data on the extent of single-earner couple households not in receipt of NSA with one or two children and single-earner couple households without children, the available data suggests that they are not a large proportion of wage earner households. Nonetheless, their circumstances cannot be ignored.

[440] We remain of the view 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 households at risk of poverty."

895. In paragraph 440 we again have the view expressed in the June 2015 decision, but in slightly different terms: the FWC states that its "consideration of any proposals to address ... the needs of the low paid is better informed by some understanding of the incidence of award-reliant *households at risk of poverty*", emphasis added. In 2015 the concluding words "understanding of the incidence of award-reliant household types". In May 2016 the nature of the inquiry was identified: to understand those at risk of poverty. So far as it goes, this is a better form of words because it emphasises why the inquiry is being undertaken.
896. But the basic question remains: how can you better understand the position of the low paid who may be living in poverty or at risk of poverty by looking only at those who are only paid the applicable minimum wage rate and not one cent more? If the words "of NMW and award-reliant employees" were omitted from paragraph 440 and the words "incidence of award-reliant households at risk of poverty" in the same paragraph were replaced with "incidence of low paid households at risk of poverty", it would be free of the unnecessary limitation on the inquiry into the relative living standards and the needs of the low paid. The inquiry would better reflect the intention of the *Fair Work Act* that account be taken of relative living standards and the needs of the low paid.
897. Not only is it unnecessary to limit this kind of inquiry to award-reliant workers, it is potentially unrepresentative of those who are low paid. Because the proportion of the workforce that is award reliant is about one fifth, the number of low paid, but not award reliant, may be four times more than the number who are award-reliant. The award-reliant cohort may be very different to the low paid. The AWRS data referred to by the FWC covered 1,269 employees out of a total survey of 7,883 employees; see *Statistical*

Report, 17 March 2017, Table 8.8 and *First Findings report: consolidated content from online publication*, 29 January 2015, page 3. The sample represents only 16.1% of the employees surveyed and we have no information about them. Furthermore, the sample of 1,269 covers all income groups and is not limited to the low paid.

898. The FWC's continued emphasis on award-reliance is hard to understand given that it accepted in paragraph 439 that, as ACCER had argued, there would be single earner families living in poverty who are not award-reliant. Not only had ACCER argued the obvious point accepted by the FWC, but it had produced relevant evidence from the 2011 Census. ACCER had specifically gone to detailed data on families with two children and said that:

"... 106,223 families, or 13.5% of the total [of couple parent families with two children], 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)." (March 2016 submission , paragraph 729)

899. We return to the Census material in the following section, with further details provided about the circumstances of low paid couple parent and sole parent families who are wage-dependent and living in or at risk of poverty.
900. The concluding part of paragraph 439 refers to "single-earner couple households not in receipt of NSA". This relates to the question of whether the partner of the breadwinner is in receipt of the Newstart allowance, which is payable to a job seeker and is not paid to a parent who chooses to stay out of the workforce and care for his or her children. If payable, the NSA would bring the low income family's disposable income up to or above the poverty line; see *Statistical Report*, 17 March 2017, Table 8.6. The FWC stated that it did not have evidence on how many couple families might be in receipt of the NSA. The primary question is whether it should matter and be a barrier to setting a wage that frees a family from poverty. There is a matter of principle which we have addressed in the opening paragraphs of this section. However, it does have evidence on the matter from the 2011 Census. Table 35 of ACCER's March 2016 submission showed that only 3.6% of low income couple parent families with two children had a full time worker and an unemployed worker. Table 36, below, covers the full range of low income couple parent families, with 3.3% of them comprising a full time and an unemployed worker. families. The unemployed worker would be eligible to apply for

the Newstart allowance. The proportion of couple parent families in receipt of the Newstart allowance is so small that it can be disregarded, if any more is needed beyond the principle discussed earlier in this section.

901. In 2016 there was, therefore, evidence of very large numbers of wage-dependent families living in poverty. This was reinforced by the ACOSS data that showed that hundreds of thousands of people were living in poverty even though there was a full time breadwinner in the household. In 2016 the FWC had evidence that estimated the people living in poverty in a household where there was a full time breadwinner was 522,138 at the 50% of median level 891,343 at the 60% of median level.
902. In 2016 it was demonstrated, once again, that a full time job was not a pathway out of poverty for many low income families and that many children were living in poverty even in homes that had a full time breadwinner; and many were still living in poverty where there was a secondary breadwinner. Furthermore, the FWC had the calculations in the *Statistical Report* that wage-dependent families can be left in poverty even when the breadwinner is in receipt of a wage substantially more than the NMW. Similar calculations appear in Table 8.6 of the latest *Statistical Report*.
903. The FWC concluded paragraph 439 with "... the available data suggests that they [single earner couple households with one or two children] are not a large proportion of wage earner households. Nonetheless, their circumstances cannot be ignored." Clearly, their circumstances were ignored by the decision to apply the wage relativities policy and award low paid workers the same percentage increase as all other groups received.

G. THE 2011 CENSUS AND THE WORKING FAMILY PROFILE

Introduction

904. This purpose of this section is to use data found in the national 2011 Census to address two matters: the work patterns of low paid working families and the number of low paid working families in or at risk of poverty.
905. Unlike some of the material which we referred to earlier in this chapter, this section is not limited to low paid workers who are award-reliant, i.e. workers only paid the minimum wage prescribed by law. Workers can be low paid and living in poverty whether they are only paid the minimum wage rate or they are paid something above that rate. A focus on low paid workers is consistent with the object of the *Fair Work Act* to promote social inclusion (section 3) and is necessary for the FWC to carry out its obligation to establish and maintain a safety net of fair minimum wages, taking into

account, among other matters, "the needs of the low paid" (section 284(1)). The personal, social and economic impact of poverty are immense and require those institutions that can alleviate poverty to do so; and no institution is more capable of dealing with this issue than the FMW.

906. We know from various sources that many families are living in poverty even when there is a full time worker within their homes. This has been canvassed in section E, above. Included in that section is the NATSEM/UnitingCare report which found that in the same year as the Census was held about 2.6 million Australians lived under the 50% of median poverty line. Of these, almost one-quarter, 618,000, were dependent children aged less than 25 years of age and 494,000 aged less than 15 years of age. About 11.5% of children under 25 years and 11.8% of children under 15 were living in poverty. The ACOSS report *Poverty in Australia 2016*, which was based on research carried out in 2013-14, also found that a large number of those living in poverty were in households where there was full time employment: 622,700 at the 50% measure and 1,051,100 at the 60% measure. *Poverty in Australia 2016* also found that 731,300 children under the age of 15 were living in poverty at the 50% of median level, with 1,048,900 in poverty at the 60% level.
907. The reports do not, however, tell us how many children were living in poverty in wage-dependent households where there was full time work, part time work or a combination of both. The Census provides this kind of data.
908. Our inquiry of the Census data is child-centred. It looks at the families in which dependent children live, the incomes of those families and the working patterns of the parents in those families. We use this data to identify the circumstances of children living in poverty, so as to better understand the needs of low paid workers with family responsibilities. This is particularly relevant to the proper discharge of the FWC's statutory obligation to take into account the needs of the low paid.
909. Low paid workers include those who are on the NWM of \$672.70 per week through to, at least, those who are on the base wage for a trade-qualified worker, which is \$783.30 per week and \$110.60 per week more than the NMW. We know, for example, that a worker on the trade-qualified wage is unable to support a spouse and two children at a standard of living in excess of the poverty line; see *Statistical Report*, 17 March 2017, Table 8.6. The position is worse for lower paid workers with similar family responsibilities. The position of low paid workers is compounded by the fact that many workers cannot secure full time work of 38 hours per week, which is the basis upon

which minimum wage rates are prescribed. So we would expect to find that some of the parents of these children would be earning income at a rate in excess of that fixed for a trade-qualified workers.

910. The Census data presented in the following paragraphs covers couple and sole parent families with one, two and three or more children. The FWC has rightly said: "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, paragraph 338). The evidence shows that many families with only one or two children are not able to meet their material needs and provide a decent standard of living for themselves and their children.
911. There are, of course, many wage-dependent adults without dependent children who are living in poverty because of low paid and/or insufficient work. We do not forget them; but we are conscious of the fact that a wage that is sufficient to support a worker with family responsibilities at a decent standard of living will also be a wage that can support a single worker at a decent standard of living.

The 2011 Census

912. The 2011 Australian Census was held on 9 August 2011. Included in the Census were questions about the income and composition of households. The data in respect of families with dependent children are set out in Appendix A. The tables in the appendix cover couple and sole parent families, with each data set identifying the income levels of those families by reference to the number of dependent children in those families. The data also provide information about the labour force status, or the absence from the labour force, of each of the couple parents and of the sole parents.
913. Respondents to the Census form were required to state the incomes of all members of their households from among a number of 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, so that the figures extracted from the Census include gross, and not net, taxable income. Included in the Census income columns were the weekly amounts of \$600.00 to \$799.00 per week, \$800.00 to \$999.00 per week and \$1,000.00 to \$1249.00 per week. Because the information sought pre-tax income the disposable incomes of many low income individuals and households was substantially less than the recorded gross income in the Census. Of course, in some low income households no income tax is payable.

914. At the time of the 2011 Census the median equivalised disposable household income was \$780.00 per week (rounded to the nearest \$10.00); see Table 27, above. Applying the equivalence scales used by the ABS, the 60% of median relative poverty line can be calculated for various kinds of households. This is a measure of disposable income and does not include income taxation.
915. The ABS used the data in the Census to generate estimated income levels. At the national level the Census estimated that the family median income was \$1,481.00 per week and that the median household income was \$1,234.00 per week; see http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/0
916. The calculation of these averages required the conversion of data that had been entered into columns into specific dollar amounts. The ABS states:
- "As it is not possible to aggregate personal income ranges, a specific dollar amount was imputed for each personal income range selected by each family or household member. For the 2011 Census processing, the weighted median estimates of gross weekly personal income from the 2009-10 Survey of Income and Housing (SIH), adjusted for inflation to mid 2011, were calculated for each of the reported ranges in the Census. These medians were then allocated to each person who reported an income range in the Census."
(<http://www.abs.gov.au/websitedbs/censushome.nsf/home/factsheetsuid?opendocument&navpos=450>)
917. At the time of the Census the taxation payable on the National Minimum Wage (then \$589.30 per week) was \$51.81 per week; see Table 28. At the base trade-qualified wage rate (then \$686.20 per week), income tax was \$71.68 per week; see Table 30. These figures should be taken into account when assessing the degree to which the cut-off points that we have used reflect the 60% of median poverty line.
918. Precise estimates of the number living below the poverty line are impossible given the way in which the income data was collected. The maximum income ranges used in the following tables are the best fit, but adjustments to those tables may be made by reference to the wider range of data provided in Tables 1 and 2 of the Appendix A.
919. The families covered by the following data will not coincide neatly into those who have a disposable income above or below the 60% poverty line, but the workers in these families can be regarded as low paid workers. These tables are about the low paid and their dependents who are in or at risk of poverty.
920. The estimated relative poverty lines at the time of the Census, rounded to the nearest \$10.00, and the highest income in the Census return used in the following calculations are as follows:

Table 35
Census Income Levels and Estimated Poverty Lines
August 2011
(\$ per week)

Family	Poverty Line	Maximum income range in Census	ABS imputed median
Couple and one child	840.00	800.00 - 999.00	896.00
Couple and two children	980.00	800.00 - 999.00	896.00
Couple and three or more children	1,120.00	1,000.00 - 1,229.00	1,107.00
Sole parent and one child	610.00	600.00 - 799.00	698.00
Sole parent and two children	750.00	600.00 - 799.00	698.00
Sole parent and three or more children	890.00	800.00 - 999.00	896.00

The poverty lines for the families with three or more children are calculated on the basis of three children only.

921. According to the 2011 Census, there were 2,086,270 couple families with dependent children and 600,892 sole parent families with dependent children; see Appendix A, Tables 1 and 2. The highest income column in each table, \$2,500.00 or more, aggregates a number of income columns in the Census data up to \$5,000.00 or more per week. The term "dependent children" covers children less than 15 years or dependent students aged 15 to 24 years. Each of those figures for families with dependent children can be broken down by the number of dependent children (up to six and more), the incomes of the families and the labour force status of the couple or sole parent. Because the calculations in Appendix A do not specify the number of children in all families our calculations are on the basis of there being no more than six children in a family. The Census also records that there were 448,133 couples with children who were not dependent children and 300,748 sole parent families with non-dependent children.

The work profiles of low income families

922. In the Table 36 we have collated the data in Tables 3 to 5 of Appendix A on the working patterns of low income couple parent families: Table 3 covers couples with one child, Table 4 covers couples with two children and Table 5 covers couples with three or more children. Table 4 was Table 35 in ACCER's March 2016 submission. The couple households do not include the households in the columns in Table 1 of the Appendix recording "negative or nil income" and "partial income stated and all incomes

not stated". The same exclusion applies in our later reference to sole parent families.

Table 36

Working patterns of low income couple parent families

	One child		Two children		Three or more children		All low income families	
	N	%	N	%	N	%	N	%
1. One full time and other not in labour force	26,994	26.2	28,300	26.6	31,362	29.7	86,656	27.5
2. One part time and other not in labour force	14,327	13.9	13,942	13.1	12,827	12.2	41,096	13.1
3. One away from work and other not in labour force	2,968	2.9	3,038	2.9	3,529	3.3	9,535	3.0
4. One unemployed and other not in labour force	5,309	5.1	5,061	4.8	5,703	5.4	16,073	5.1
5. Both not in labour force	17,274	16.8	14,197	13.4	16,156	15.3	47,627	15.1
6. Both full time	4,881	4.7	5,937	5.6	4,577	4.3	15,395	4.9
7. One full time and other part time	11,041	10.7	15,580	14.7	16,359	15.5	42,980	13.7
8. Both part time	6,569	6.4	6,712	6.3	4,698	4.5	17,979	5.7
9. Both (employed and) away from work	673	0.7	731	0.7	648	0.6	2,052	0.7
10. One away from work and other unemployed	527	0.5	431	0.4	335	0.3	1,293	0.4
11. One part time and other away from work	1,234	1.2	1,276	1.2	1,038	1.0	3,548	1.1
12. One full time and other away from work	1,392	1.4	1,407	1.3	1,420	1.3	4,219	1.3
13. One full time and other unemployed	4,070	3.9	3,796	3.6	2,681	2.5	10,547	3.3
14. One part time and other unemployed	3,138	3.0	3,164	3.0	1,944	1.8	8,246	2.6
15. Both unemployed	1,831	1.8	1,794	1.7	1,343	1.3	4,968	1.6
16. Status of one or both not stated	860	0.8	857	0.8	911	0.9	2,628	0.8
Totals	103,088	100.0	106,223	100.0	105,531	100.0	314,842	100.0

923. As we explained in section F, above, the FWC has raised questions about the extent of single breadwinner families among low income families. In particular, it wanted more evidence on the extent of single breadwinner family poverty.

924. Table 37 presents the data on labour force participation, or non-participation in the labour force, in a different format. We use the term "labour force" by convention, but it has to be remembered that a lot of the economic and social wealth of the nation is the produced in households.

Table 37**Employment status of adults in low income couple parent families**

	Households	Full time	Part time	NILF	AFW	UN	Not stated
1. One full time and other not in labour force	86,656	86,656		86,656			
2. One part time and other not in labour force	41,096		41,096	41,096			
3. One away from work and other not in labour force	9,535			9,535	9,535		
4. One unemployed and other not in labour force	16,073			16,073		16,073	
5. Both not in labour force	47,627			95,254			
6. Both full time	15,395	30,790					
7. One full time and other part time	42,980	42,980	42,980				
8. Both part time	17,979		35,958				
9. Both (employed and) away from work	2,052				4,104		
10. One away from work and other unemployed	1,293				1,293	1,293	
11. One part time and other away from work	3,548		3,548		3,548		
12. One full time and other away from work	4,219	4,219			4,219		
13. One full time and other unemployed	10,547	10,547				10,547	
14. One part time and other unemployed	8,246		8,246			8,246	
15. Both unemployed	4,968					9,936	
16. Status of one or both not stated	2,628						5,256
Totals	314,842	175,192	131,828	248,614	22,699	46,095	5,256

NILF: not in labour force; AFW: away from work; UN: unemployed

925. Tables 36 and 37 show that the great majority of these low income couple parent families were engaged in some kind of employment. In 15.1% of these households both parents out of the labour force. As for the rest of the households:

- 27.5% had one parent employed full time and the other parent not in the labour force;
- 13.1% had one parent employed part time and the other parent not in the labour force;
- 8.1% had one parent unemployed or temporarily away from work and the other parent not in the labour force;
- 4.9% had both parents employed full time;

- 13.7% had one parent employed full time and the other employed part time;
- 5.7% had both parents employed part time;
- 3.7% had one parent employed part time and the other parent unemployed or away from work; and
- 2.3% had both parents unemployed or away from work.

926. Overall, in 50.7% of these families at least one parent was working full time and in 73.2% of these families there was at least one parent in full time or part time employment. Leaving aside the families where both parents were out of the labour force, 59.8% of these low income families had at least one parent working full time and 86.3% had at least one parent in full time or part time employment.

927. The figures demonstrate that the single breadwinner family with a full time working parent and a "stay at home" parent is more common than other arrangements. Single breadwinner families (where the parent is working full time or part time) are substantially more common than dual breadwinner family: 40.6% (rows 1 and 2) compared to 24.3% (rows 6 to 8). This is despite the inevitable economic pressure on the parents for both of them in employment. However, even with extra income many families still find themselves living in poverty.

Children in or at risk of poverty: couple parent families

928. Table 38 is based on the data in Table 36, with some further details being supplied in respect of the couple parent families with three or more children from Table 1 of Appendix A.

929. All of the families covered by Table 38 are low income families. Almost all of them are living in poverty. The uncertainty about the actual number in poverty comes from our limited selection of data from the Census. We have used the term "in or at risk of poverty" to reflect this uncertainty. However, the degree of uncertainty varies across the families covered in Table 38.

930. The position of couple parent families with two children does not, however, raise these kinds of questions. In our assessment, all of them will fall below the 60% relative poverty line.

931. In regard to couple parents with one child, the data in Table 36 and 38 is drawn from Table 3 in Appendix A. Having regard to the matters in Table 35, we can conclude that a small minority of these one child families will be slightly above the 60% of median poverty line. Table 18 of Appendix A provides a more restricted number of couple

families with one child than Table 3, with a maximum income of \$799.00 per week, rather than \$999.00 per week. Table 18 would not capture all couple parent families with one child who are living in poverty and, in our assessment, would exclude more of those in poverty than Table 3 would include those who are not in poverty. Using Table 3 as the source is preferable.

Table 38
Total number of children and adults in low income couple parent families in or at risk of poverty

	No. of families	Number of children	Total in or at risk of poverty
Couple and one child	103,088	103,088	309, 264
Couple and two children	106,223	212,446	424,892
Couple and three children	73,069	219,207	365,345
Couple and four children	23,908	95,632	143,448
Couple and five children	5,730	28,650	40,110
Couple and six or more children	2,827	16,962	22,616
Total	314,845	675,985	1,305,675

The numbers of families with three or more children are from Table 1 in Appendix A. The number of children in the couple plus six or more children, is calculated on the basis that there are only six children in the family. From Table 1 of Appendix A we find that at the time of the Census there were 4,035,047 dependent children in couple parent families, assuming again that the maximum number is six per family.

932. Couple parents with three or more children is a more diverse cohort. The poverty for this family in Table 35 is \$1,120.00 per week. This is the figure for three children and it increases by \$140.00 for each extra child. The maximum weekly figure that we have used is \$1,249.00 per week. After taking income taxation into account, we can conclude that a minority of three children families in Table 38 are above the poverty line, i.e. the total figure of those living in or at risk of poverty is less than 365,345. However, all of those living in families of four or more children are living in poverty; and there will be some higher income families who are living in poverty and not included in these numbers.
933. Table 38 identifies 1,305,675 people as living in or at risk of poverty in recognition of the fact that the source data does not yield figures that coincide with poverty lines for the different kinds of households. It includes some who are not in poverty by the 60%

of median measure and does not include others who are also living in poverty.

934. Taking all of these matters into account we can conclude that more than a million Australians living in couple parent families were living in poverty, not just at risk of poverty and that there were over half a million children living in poverty in those families.

935. Having regard to the matters in Table 36, we can also conclude that half of the adults and children who living in poverty were living in families where there was a parent working full time. In almost three quarters of these families there was at least one parent in full time or part time employment.

936. This material demonstrates that full time employment, and even full time employment supplemented by part time employment, is not a pathway out of poverty for many low paid workers and their families.

Sole parent families: work patterns and poverty

937. Table 39 presents data from the 2011 Census regarding the employment status of sole parents in low income families. Those in employment are low paid. Because of the cut-off points used, the tables do not capture all low paid workers who are sole parents.

Table 39
Working patterns of low income sole parent families

	One child		Two children		Three or more children		All families	
	N	%	N	%	N	%	N	%
1. Employed, full time	20,668	13.4	9,913	9.9	4,824	7.9	35,405	11.2
2. Employed, part time	47,515	30.7	32,828	32.9	14,374	23.4	94,717	30.00
3. Employed, away from work	4,314	2.8	2,518	2.5	1,283	2.1	8,115	2.6
4. Unemployed	15,707	10.1	9,550	9.6	5,039	8.2	30,296	9.6
5. Not in labour force	65,900	42.6	44,532	44.7	35,659	58.1	146,091	46.2
6. Labour force status not stated	692	0.4	382	0.4	218	0.4	1,292	0.4
Totals	154,796	100.0	99,723	100.0	61,397	100.0	315,916	100.0

938. The data in Table 39 is drawn from Appendix A at Tables 15, 16 and 17, supplemented by Table 2. It shows that in low income sole parent families:

- 11.2% of the parents were employed full time;
- 30.0% were employed part time;
- 2.6% were employed, but away from work;

- 46.2% were not in the labour market; and
- 9.6% were unemployed.

939. Although the major cause of poverty in sole parent families was the lack of employment, reflected in the number not in the labour force and the number unemployed, a total of 55.8%, over 40% of these sole parents are in employment.

940. Table 40 shows the number of dependent children and adults in low income sole parent families in or at risk of poverty by reference to family size. The basis of the selection of the numbers of low paid sole parent families is set out in Table 35. The coverage of the selection is explained in the next two paragraphs.

Table 40

**Total number of children and adults in low income sole parent families
in or at risk of poverty**

	No. of families	Number of children	Total in or at risk of poverty
Parent and one child	154,796	154,796	309,592
Parent and two children	99,723	199,446	299,169
Parent and three children	43,481	130,443	173,924
Parent and four children	13,117	52,468	65,585
Parent and five children	3,645	18,225	21,870
Parent and six or more children	1,146	6,876	8,022
Total	315,908	562,254	878,122

The number of children in the couple plus six or more children, is calculated on the basis that there are only six children in the family. The numbers of families with three or more children are from Table 2 in Appendix A.

941. In regard to sole parents with one child, we expect that a significant number of those now appearing in Table 40 would not be strictly under the 60% poverty line, though clearly they would be low paid. We were confronted with a choice between a cut-off income of \$599.00 per week and \$799.00 per week when the poverty line was \$610 per week, plus an adjustment for any income tax. We have used the higher cut-off point but included in the Appendix is Table 19, which has the lower cut-off point.

942. In regard to sole parents with two children the Census data and the poverty line calculations are effectively aligned when taxation is taken into account. In regard to sole parents with three or more children, the comments we made earlier in regard to couple parent families with three or more children could be repeated. For sole parents with three children the cut-off income of \$999.00 per week is a little high after taking

into account income tax. For larger families the cut-off is lower than the poverty line, which rises by \$140.00 per week with each extra child. The effect of this is to exclude a small number of sole parent families in higher income households who are living in poverty.

943. Appendix A, at Table 2, shows that there were 600,891 sole parents with dependent children at the time of the Census. Table 40 shows that 315,908, or 52.7%, of these families were living in or at risk of poverty at the time of the Census. There were 562,254 children in or at risk of poverty, along with 315,908 sole parents. Most were in families where the parent was not working: only 11.2% were employed full time and 30.0% were employed part time.
944. These figures are very troubling. While they raise important issues far beyond the scope of the FWC's responsibilities they provide important information about the workers and their families who should be of very great concern to the FWC when it sets safety net wage rates for low paid work classifications.
945. In general terms, we can say that about 10% of the estimated number of sole parents and their children who are living in or at risk of poverty depend on full time work and that another 30% depend on part time work. The low incomes of working sole parents are compounded by the costs of child care.
946. For these low paid sole parent families who rely on full time or part time work, the minimum wage decisions of the FWC are vitally important; and increasingly more important because of the cuts to, and freezing of, various family payments. The FWC must accept that their poverty will not be alleviated unless it decides to increase the wage rates for low paid workers.

9

ACCER SUBMISSION TO THE ANNUAL WAGE REVIEW, MARCH 2017

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**Working Australia, 2017:
wages, families and poverty**

CHAPTER 9

ACCER'S SUBMISSION TO THE ANNUAL WAGE REVIEW 2016-17

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Fair Work Commission

Fair Work Act 2009

Annual Wage Review 2016-17

Living Wage claim and Submission by the Australian Catholic Council for Employment Relations 29 March 2017

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This chapter reproduces the principal part of ACCER's March 2017 submission. The paragraph numbers have been changed to reflect its insertion as Chapter 9 of this book. The foregoing eight chapters were an attachment to the submission.

A. INTRODUCTION

Living Wage and award wages claim

947. 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 \$710.00 per week and \$18.70 per hour.
- Award rates of pay be increased by \$30.70 per week.
- No award rate shall be less than the NMW.

948. The claims are made having regard to the following objectives.

(a) A money increase, rather than a percentage increase, is claimed in respect of award rates of pay so as to provide relatively more to those most in need, including the hundreds of thousands of workers and their families who are living in poverty as a result of low wage rates and/or as a result of irregular and insecure work. At the same time the amount claimed will maintain the real wages of those workers on higher paid work classifications; for example if the latest published annual increase in the Consumer Price Index prior to the annual wage review decision is 2.0%, an increase of \$30.70 per week will maintain the real value of award rates up to about \$80,000 per year. There are few award classifications above that level and the ones that are above that level have had the benefit of annual percentage increases since 2011.

(b) The claim in respect of the NMW is for an increase of \$37.30 per week. The NMW is not a living wage: it is not one that provides a standard of living in excess of poverty and one that is sufficient to achieve a decent standard of living in contemporary Australia. Using a similar term, the NMW does not provide a basic acceptable standard of living. ACCER seeks this further increase in the NMW of \$6.60 per week as the first step in a process that will adjust the NMW to a level where it can be reasonably called a Living Wage.

(c) The annual wage review has two distinct functions: to set the NMW by the making of a national minimum wage order and to vary award wages. The NMW applies to workers who are not covered by an award. The

proposed increase will have an immediate benefit for those workers who are award free and who are paid by reference to the NMW. The claimed increase will have no significant impact on award classification structures because award rates that are aligned to the NMW (of which there are very few) are generally transitional rates covering the first three months of employment and the next highest award rate is typically \$19.40 per week more than the NMW. That rate is generally known as the C13 rate and is designated as such in the *Manufacturing and Associated Industries and Occupations Award 2010*. ACCER intends to apply for further increases in the NMW in future wage cases which would raise the NMW above the C13 level. ACCER will seek the adjustment of the NMW to not less than the base wage rate set for cleaners under the *Cleaning Services Award 2010*, which is currently \$45.70 per week more than the NMW. In the next annual wage review it will address the award classification issues arising from these proposed increases in the NMW and asks that the FWC invite submissions from interested parties on the issues and options regarding the adjustment of the NMW to a level where has an impact on lower paid award classifications. The same issues would arise in the current wage review if the FWC decides, in a decision which is currently reserved, to set a medium target for the NMW, as requested by United Voice and supported by the Australian Council of Trade Unions (ACTU).

949. The claims are made in a proceeding which requires that the FWC maintain a safety net of fair minimum wages that takes into account, among other matters, relative living standards and the needs of the low paid. The claims take into account:

- the needs and relative living standards of workers who depend, either directly or indirectly, 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 families with an income that is sufficient to achieve a standard of living that exceeds poverty levels;
- the fact that many low paid workers and their families are dependent upon wages that are insufficient to enable them to purchase the essentials for a

decent standard of living and to engage in community life, assessed in the context of contemporary norms;

- the social and economic impacts of the claimed increase;
- the substantial loss of the relative value in the NMW since it was first set, as the Federal Minimum Wage, in 1997;
- the fact that the Schoolkids Bonus was withdrawn from Australian working families at the end of and the need for minimum wage rates to start to take into account that loss; and
- increases in cost of living, productivity and community-wide wages since the handing down of the decision in the *Annual Wage Review 2015-16* in May 2016.

950. ACCER submits that the claims are economically prudent. However, if the FWC finds that there are reasons not to grant the claims as sought, ACCER seeks that priority should be given to increasing the lowest wage rates, i.e. to supporting those most in need. This priority is consistent with the FWC's statutory obligations to set a NMW as a safety net upon which higher wage rates may be set by awards and/or by collective bargaining agreements and to take into account relative living standards and the needs of low paid workers across the range of wage classifications. This means that priority should be given to adjusting the NMW. The NMW should be a Living Wage, but it is not.

951. At the time of writing this submission legislation is currently before Parliament to freeze Family Tax Benefit payments for two years, commencing 1 July 2017. The impact of this change has not been included in the grounds upon which the wage claims are based. ACCER will address these matters following the expected passing of the legislation. Given the size of the cuts compensation for the loss of the Schoolkids Bonus and the freezing of family payments cannot be fully achieved in the current wage review.

Other matters for determination

Sole parents

952. In section G we refer to issues concerning childcare expenses and the working hours of sole parents. These matters were raised in the *Annual Wage Review 2015-16* and held over to the current review: see *Annual Wage Review 2015-16, Decision* (May 2016 decision) [2016] FWCFB 3500, paragraphs 659.

Budget Standards research

953. In the Annual Wage Review 2015-16 ACCER sought the establishment of a process under section 290 of the *Fair Work Act* to obtain evidence about the needs and relative living standards of the low paid. The request was refused. In refusing the request the FWC referred to research being conducted by the Social Policy Research Centre at the University of New South Wales to update 1996 research on budget standards for low paid and unemployed workers and to advice given to it that this research will be used to "inform debate and guide decisions about the levels of minimum wages and income support payments required to support healthy living consistent with individual needs and community expectations". It said that "it seems to us that the results of this research will be relevant to the issue raised by ACCER. In the event that ACCER wishes to pursue its proposal for a s.290 inquiry it should submit a proposal to the President"; see May 2016 decision, paragraphs 657-8. The research has not been published. ACCER believes that the budget standards research will be the best starting point for an inquiry into the needs of the low paid and that a section 290 investigation or some similar process should be established soon after the release of that research. This could be done upon the FWC's own motion or upon application to the President by an interested party. While we see the budget standards research as being central to the inquiry, we do not see it as being limited to that research. We would expect that any application to the President would be accompanied by an outline of the way in which the inquiry might proceed.

The scope of the operational objective

954. In section C we refer to statements made by the FWC in the last four annual wage reviews that "those in full-time employment can reasonably expect a standard of living that exceeds poverty levels" and "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". These are described in this submission as the operational objective of the minimum wages system. The proper scope of the protection and benefit intended by the operational objective is discussed in section C. ACCER seeks the FWC's

opinion on the scope and ambit of the protection and benefit of each of the two descriptions used by it.

Pensions

955. In section D we refer to the relevance of the pensions safety net to the setting of the wages safety net and the FWC's conclusion on this matter in the May 2016 decision. We ask for the reconsideration of the conclusion.

Wages relativities policy

956. In section E we refer to the FWC's wages relativities policy which has been applied in the six annual wage review decisions from 2011. It is submitted that the application of this policy is contrary to law.

ACCER

957. ACCER is an agency of the Australian Catholic Bishops Conference. ACCER's advocacy is informed by the Catholic Church's experience as a major employer in Australia, with about 225,000 employees in health, aged care, education, welfare and administration; but it essentially arises from the belief, based on Catholic social teaching, that workers have the right to wages that will support themselves and their families at a decent standard of living. It is a standard that has wide community support and, for reasons explained in the submission, is consistent with and required by the practical application of the protection in the *Fair Work Act* and relevant human rights instruments.

B. 20 YEARS OF THE AUSTRALIAN MINIMUM WAGE

958. This year's wage review will mark the 20th anniversary of Australia's modern national minimum wage. It was first set in April 1997 by the Australian Industrial Relations Commission (AIRC) and was then known as the Federal Minimum Wage (FMW). In 2010 the FMW became the NMW when the *Fair Work Act 2009* came into operation. However, the antecedents of Australia's national wage are found in the *Harvester case* of 1907. The 20th and 110th anniversary of these important dates can prompt a serious discussion about the nature and purpose of the minimum wage in a globalised economy so different to 110 years ago and in a more unequal society than it was only 20 years ago.

959. The legislation under which the AIRC operated in 1997 had no requirement for the setting of a federal minimum wage, but it was agreed that one should be set

so as to ensure that no award rate fell below it. The FMW was set at the C14 wage rate in the *Metal Industry Award 1984-Part 1*, which only applied in the first three months of employment, after which the worker covered that award would move to the C13 rate. The C14 rate, like all other award wage rates at the time, had not been the subject of any assessment regarding its adequacy and the standard of living that it would support. The FMW was not a general individual entitlement, but it was great importance to award-covered workers.

960. The AIRC was divided, however, on the meaning of legalisation introduced in 1996 which required it to "have regard to ... when adjusting the safety net, the needs of the low paid"; *Workplace Relations Act 1996*, section 88B(2). The majority of the AIRC found that the legislation did not relate to an assessment of the material needs of the low paid. 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" (*Safety Net Review-Wages-April 1997*, (1997) 70 IR 1, at 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. This view was abandoned in the *Safety Net Review Case, 1998*. The only member of the bench who made a decision on the basis of a different view of the legislation was Vice President Ross (as he then was). His view was that the needs of the low paid included their living costs, the view which was accepted a year later.
961. Because of the Vice President's analysis of the legislation, he gave close consideration to the needs of the low paid and, in particular, the extent of poverty among wage-dependent workers. The inadequacy of the C14 and other award wage rates is evident from the Vice President's analysis of the evidence and his conclusions from that evidence, which included:
- "... I agree with the submission by ACOSS [Australian Council of Social Services] that as the proportion of wage earning families with children that is actually living in poverty has increased in recent a years there is a role for the HPL [Henderson Poverty Line] 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)

- “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 maintaining 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)

962. Unfortunately for the low paid, the Vice President's fears have been realised and the position has worsened over the 20 years since the FMW was introduced:

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

963. The Australian Council of Social Services (ACOSS), which had played a prominent role in the 1997 wage review, sought to re-agitate the question of the adequacy in the Safety Net Review Case of 1998. The barrier it met was that it was an intervener in a series of industrial disputes that would be arbitrated in the AIRC by an adjustment to award wage rates which were then viewed as a package of agreed relativities between a wide range of wage rates. Because the parties to the disputes did not support an investigation that might lift the floor in the award system, ACOSS's proposal failed. The AIRC said:

"In deciding in this case to continue to relate the level of the federal minimum wage to that of the C14 classification rate, the Commission is not precluded from taking into account different considerations, unrelated to the C14 rate, in deciding the level of the federal minimum wage in the future." (*Safety Net Review April 1998* (1998) IR 37, 76)

964. Despite this comment, the FMW and the NMW have been tied to the C14 award rate ever since; and requests to successive tribunals to inquire into the adequacy of the wage have failed. In 2003 ACCER was represented by Frank Costigan QC in its attempt to have the needs of the low paid investigated, but again the proposal failed. Since then, including 2006 to 2009 under the *Work Choices* legislation, it has remained tied to the C14 rate set in the award system.
965. The linkage between the NMW and the C14 continued under transitional legislation regarding the introduction of the *Fair Work Act 2009*, which set the NMW at the start of 2010 at the same rate as the FMW at the end of 2009. The award classification structure on which the FMW was set in 1997 (the *Metal Industry Award 1984-Part 1*) is now found in the *Manufacturing and Associated Industries and Occupations Award 2010*.
966. In each year since the first annual wage review in 2010 ACOSS and ACCER have proposed an inquiry into the needs of the low paid, but have failed. The arguments advanced for breaking the nexus between the NMW and award rates generally have been based on increasing levels of poverty and the failure of the NMW to provide a contemporary national minimum wage of general application independent of award classifications.
967. The failure of the NMW to maintain contemporary relevance is evident in a number of ways. In Table 33 of the Attachment hereto we compare the increases in the FMW/NMW with changes in average household disposable income (HDI) as calculated by the Melbourne Institute of Applied Economic and Social Research. Over the period January 1998 to January 2017 the after-tax FMW/NMW increased by 98.3%, whereas HDI increased by 126.7%. The margin was even greater in the case of a trade-qualified worker on the C10 award rate, whose after-tax increase was only 85.5%.
968. In the current wage review United Voice, supported by the ACTU, has made an application for a medium term target to be set for the NMW at 60% of median wages. In support of the application are statistics which show that in 1997 the FMW was about 3.0% above 60% of median wages and that the NMW was about 11.0% below 60% of median wages in 2016; see ACTU submission, 10 October 2016, Figure 9. The same trends appear in a comparison of FMW/NMW increases with changes in average weekly earnings. The NMW

and award rates have become disconnected from the greater increases in community-wide income levels. The NMW has lost contemporary relevance.

969. It is inevitable that lower relative wage rates will impact on relative living standards and push more into poverty, including workers with family responsibilities and single workers who rely on irregular and/or part employment. This has affected all low paid workers, whether they are only paid the award rate or some inadequate amount above the legal minimum.

C. WAGE SETTING UNDER THE *FAIR WORK ACT*

The NMW is a personal right set by legislation

970. Although the origins and the quantum of the NMW are to be found in the FMW and in the award system, the nature and function of the NMW under the *Fair Work Act* and quite different to the nature and function of the FMW under the *Workplace Relations Act 1996*. The NMW is a general legal right conferred on Australian workers independent of, and not ancillary to, the award system. The right applies to workers who are not covered by an award, albeit that the vast majority of workers are covered by an award. The NMW is a safety net entitlement upon which awards and/or collective bargains may be based. As a general safety net entitlement the NMW should not set by reference to wage relativities that may be set by awards and/or collective bargains.
971. The FWC is required by section 285(1) to conduct an annual wage review each financial year in which it must review modern award minimum wages and the national minimum wage order. Each function is performed by reference to different, but similar, statutory factors. Included in the matters that may be covered by awards are "skilled-based classifications and career structures"; section 139 (1). Section 285(2) provides that in exercising its powers to vary modern award minimum wages, the FWC must take into account the rate of the national minimum wage that it proposes to set in the review.
972. It would be inconsistent with the scheme of the legislation for considerations arising in regard to award relativities to be taken into account when setting the NMW, which operates as a general entitlement independent of any award entitlements. The separate wage setting functions were first raised by ACCER in its March 2014 submission, which included, at paragraph 2(a), a request for "A ruling that the *Fair Work Act 2009* requires that the NMW be set without being constrained by the rates of pay prescribed by awards made under the legislation.

The reasons in support of this application are in Chapter 2B". Chapter 2B in the 2014 submission was in similar form to Chapter 2C of the Attachment hereto. The purpose of the submission was to break what ACCER called a Gordian Knot that had tied the NMW to award rates:

"This new scheme in which centrality is given to the setting of the NMW is very relevant to a point raised in the previous chapter about the fact that in some awards there are classifications and wage rates sitting close to the NMW, and if the NMW is to be increased, changes will have to be made to them. The award classification system has operated to constrain the adjustment of the NMW. Since 1997 the NMW and the C14 award rate appear to have been tied together by a Gordian Knot. The provisions of the legislation, properly applied, cut that knot." (ACCER submission, paragraph 258)

973. There was no response by the FWC to this matter. The submission was repeated in 2015 with the FWC accepting the distinction, but, despite doing so, in both 2015 and 2016 it still awarded a uniform percentage increase to the NMW and award wage rates. In Chapter 2F of the Attachment we review the May 2016 decision in order to identify how the separate but similar factors and considerations relevant to each process could have led to the same conclusion. We find that the factors and considerations were conflated and that there was no relevant distinction made between the factors and circumstances of each process, with a uniform increase being the outcome. So, despite ACCER's efforts to use the terms of the *Fair Work Act* to break the award-based restriction on the NMW dating back to 1997, the position did not change. Workers in Australia are blessed by having a unique wages system based on the notion of a fair basic wage and, where appropriate, margins for acquisition of skills, yet we have seen a particular view about relativities in the award system compromise the setting of the NMW.

Basic operational objective.

974. In each its last four decisions the FWC has said :

- "[T]hose in full-time employment can reasonably expect a standard of living that exceeds poverty levels."
- "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."

975. These are not merely aspirations, but the essential purpose of a minimum wage system. From these passages we can draw what can be described as the basic operational objective of minimum wage setting under the *Fair Work Act*:

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.

976. ACCER has argued that this is an appropriate formulation of the NMW safety net. It would be contrary to the intention of the legislation in establishing the NMW for that standard of living to be only achievable by finding work covered by an award classification that provides a higher wage rate. Because the setting of safety net wage rates through the NMW and awards requires the assessment of economic as well as social factors, the basic operational objective may not be met in any one year. If, as is the case now, there is a substantial gap between the NMW the wage which is necessary to meet the objective, the gap will have to be closed over time.

Human rights

977. The objectives identified by the FWC are consistent with, and required by, the *Fair Work Act 2009*, which has as one of its principal objectives the promotion of social inclusion and a wage-setting system based on the establishment and maintenance of a "safety net of fair minimum wages". They are also consistent with, and required by, the objective in the *Fair Work Act* to establish a framework for workplace relations that "take[s] into account Australia's international obligations". 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. The terms and requirements of *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights* are discussed in Chapter 1C of the Attachment.

978. Generally expressed human rights and the rights of workers, such as those found in the Declaration and the Covenant in regard to wages have to be applied in a variety of circumstances, taking into account a range of factors. The test for the 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 by the FWC, must be reasonable and proportionate to the power conferred. The right that is recognised does not extend to the setting of a minimum wage for unusual or exceptional cases, such as the setting of a wage that would be needed to support a family with nine children.

The practical application of statutory and human rights

979. The practical application of these rights, according to the reasonable and proportionate test, will cover the ordinary and expected circumstances in which workers live. Those covered will include single workers and workers with family responsibilities, whether as sole parents or as workers with a partner. In the contemporary Australian context, having two children is within the scope of the ordinary and expected circumstances. A safety net wage should be sufficient to support couple parent and sole parent families with one or two children. It would not be acceptable to set a wage that is sufficient for one of these workers, but not for the others. In considering the application of rights a critical question is: which employed workers with family responsibilities should 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?

980. The FWC alluded to this kind of question when it observed in its June 2015 decision that it is not possible "to ensure that every employed family, whatever their composition, has sufficient income to meet their material needs"; *Annual Wage Review 2014-1, Decision* [2015] FWCFB 3500, paragraph 338. However, the FWC did not indicate which families would be supported with an income sufficient to meet their material needs, or which families had a reasonable expectation of a standard of living in excess of poverty. The FWC's words can only have meaning, and workers will only know how their rights have been recognised, when the beneficiaries are identified. In its March 2016 submission ACCER stressed the need for the identification of the workers and families

intended to receive the benefit of the objectives identified by the FWC. ACCER identified those workers and families who would be covered by the objectives.

981. ACCER raised a question in regard to single breadwinner families living in poverty that involved a matter of principle: when a family is living in poverty on a wage that 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? The submission referred to ACCER's consistent view that it should not be necessary for this extra work to be undertaken, which is now set out in Chapter 8F of the Attachment hereto. The submission continued:

"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." (Paragraph 33)

982. The May 2016 decision did not refer to or address these important issues. The FWC has not identified those workers for whom the safety net is intended to provide a standard of living that exceeds poverty levels and the income needed to purchase the essentials for a decent standard of living. It is a fact that many Australian workers with family responsibilities are not able to escape poverty and achieve the standard of living identified by the FWC. The wage setting system needs to identify the workers who are to be afforded this level of support and provide a rationale for those who are not so supported.
983. This is not a matter of academic interest or just a topic for economists and policy makers, but is a matter of vital concern to millions of low paid workers and their families, many of whom are alienated from the economic system that seems unable to provide jobs that pay a decent wage. This alienation of so many is one of the defining features of our age. Tribunals like the FWC have a social obligation, if not a strict legal obligation, to spell out their decisions in terms that can be fairly understood by those who are most affected by their decisions. If there are contemporary economic or other factors which prevent the FWC from

providing the kind of support identified by it to some or all of those within the scope of protection, the reasons should be evident.

984. ACCER therefore requests that the FWC identifies the workers and their families who are within the objectives stated by it, i.e. those who have a reasonable expectation of standard of living that exceeds poverty levels and the income that is needed to purchase the essentials for a decent standard of living
985. ACCER also asks the FWC for its opinion on a question in regard to single breadwinner couple parent families with dependent children who are living in poverty or who are unable to achieve a decent standard of living: is the sole breadwinner obliged to work overtime or find another job and /or the primary carer of the children obliged to seek employment in order for the family to have an income that will enable it to escape poverty and achieve a decent standard of living?

D. INCREASING POVERTY AND INEQUALITY

986. Many low income wage-dependent families are living in poverty and the principal cause of this had been the failure of safety net wages to reflect rising community incomes over the past 20 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.

Macro data on poverty

987. Each year the FWC has had data which have demonstrated high levels of poverty in Australia. The critical point about this data is that it has not been contradicted. There may be some debate about which poverty line should be used as a measure of poverty: whether the appropriate poverty line is at 50% or 60% of the median, or at some percentage between the two. However, that debate is peripheral to the substance of the evidence. The 60% of median poverty line is, at least, a risk of poverty line and, ACCER has argued, it represents the minimum income needed to achieve the objective identified by the FWC: a standard of living for workers that is in excess of poverty and one which enables them to purchase the essentials for a decent standard of living and engage in community life, assessed in the context of contemporary norms.
988. The data has established, and the FWC has accepted, that many homes are in poverty even where there is full time employment. In 2013, for example, in

referring to statistics in *Poverty in Australia 2012* the FWC :

"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)

989. A NATSEM/UnitingCare report, which was before the FWC in 2014, found that in 2011-12 about 2.6 million Australians lived under the 50% of median poverty line. Of these, almost one-quarter, 618,000, were dependent children aged less than 25 years of age and 494,000 aged less than 15 years of age. About 11.5% of children under 25 years and 11.8% of children under 15 were living in poverty. The ACOSS report *Poverty in Australia 2016*, prepared by the Social Policy Research Centre at the University of New South Wales and published in November 2016, which was based on research carried out in 2013-14, also found that a large number of those living in poverty were in households where there was full time employment: 622,700 at the 50% measure and 1,051,100 at the 60% measure. *Poverty in Australia 2016* also found that 731,300 children under the age of 15 were living in poverty at the 50% of median level, with 1,048,900 in poverty at the 60% level.
990. *Poverty in Australia 2016* (like the earlier NATSEM/UnitingCare report) demonstrates that a very significant part of child poverty occurs in homes in which there is fulltime employment. While we know how many children are living in poverty and how many of those who are living in poverty are in households where there is a full time employee, we do not know from these reports how many children are living in poverty despite a parent having a full time job. In Chapter 8G we draw data from the 2011 Census on the number and the family circumstances of children who are living in or at the risk of poverty. Again, it is demonstrated that full employment is not a pathway out of poverty even in families of one and two children. We return to this Census data later.
991. The latest UNICEF report covering child poverty is *Innocenti Report Card 13*, with the subtitle *Fairness for Children: A league table of inequality in child well-being in rich countries*, published in 2016. It reported that, with a 9.3% child poverty rate, Australia is 17th in the list of 41 countries: 16 countries have

lower child poverty rates than Australia. This is not something of which we can be proud. If we came 17th in the medals tally at the Olympics the Government of the day would spring into action with a range of policy measures to improve our international standing.

992. The point which must be stressed is that there has been no contradiction of the various research reports which show that many hundreds of thousands of Australians are living in poverty and that a full time job is not a means of escaping poverty for low income families. A whole of government response is required if we are to see a reduction in poverty, but it is vitally important that wages be set so that work with a decent wage is the primary means by which Australian can escape poverty and achieve a decent standard of living. Unfortunately, if the FWC is not prepared to take action when confronted with hundreds of thousands of adults and children in working families living in poverty, there will be no improvement in the situation.
993. The obvious conclusion from these matters is that the current wage levels are part of the reason for child poverty and the wages of low paid workers must be increased if child poverty is to be minimised and eliminated. Yet nothing has been done by the FWC. The passage quoted earlier from 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 has failed to target or prioritise the alleviation of poverty despite compelling data on the presence of poverty among working families. The objectives that the FWC has identified in the last four annual wage decisions have not been matched by its decisions. As we will see, not one *extra* dollar has been given to low income families living in poverty since 2011.

Micro data on poverty

994. We should not be surprised by these national figures because we can estimate poverty lines for different kinds of wage-dependent families and compare the relative changes in poverty lines and disposable incomes over time. Since 2008 the research sections of the FWC and the Australian Fair Pay Commission before it have calculated the living standards of various kinds of households by reference to the 60% of median poverty line. Detailed calculations like those in Tables 27 to 30 in Chapter 8 hereto have been included in ACCER's submissions since 2014. In comparing the changes over the years January 2004 to January

2017, we find:

- the NMW-dependent family of four fell further into poverty: from 3.2% below the poverty line, with a poverty gap of \$20.37 per week, to 11.7% below it, with a poverty gap in January 2017 of \$129.51 per week;
- the C12-dependent family of four fell into poverty: from 1.7% above the poverty line, with a margin over poverty of \$11.21 per week, to 8.5% below it, with a poverty gap in January 2017 of \$93.75 per week; and
- the C10-dependent family of four fell into poverty: from 7.6% above the poverty line, with a margin over poverty of \$47.87 per week, to 4.6% below it, with a poverty gap in January 2017 of \$51.04 per week.

995. Most of this deterioration occurred prior to the commencement of the *Fair Work Act* in 2010. Part of the purpose of the legislation was to restore fairness to wage setting and the FWC has had a legacy from its predecessor national tribunals that it has had to address. Some may wish to judge the FWC by the events since January 2010, but we cannot deny the legacy and the fact that many low paid workers and their families are living in poverty. Tables 27 to 30 allow us to quantify the changes in poverty gaps since January 2010 when the *Fair Work Act* came into operation. In January 2010 the single person was 16.0% above the poverty line, compared to 15.4% in January 2017. In January 2010 the NMW-dependent family of four was 10.2% below the poverty line, compared to 11.7% below the poverty line in January 2017. These figures confirm the view that decisions under the *Fair Work Act* have not improved the relative position of the lowest paid in our community, let alone address the fall in living standards and increasing poverty levels during earlier years. The critical point is that far too many wage-dependent families are still in poverty. Even if there was some marginal improvement, it would not lessen the priority to be given to these families who are living in poverty.

The 2011 Census

996. In Chapter 8G we present an analysis of data from the 2011 Census which focuses on the families in which children live. Relevant data is not yet available from the 2016 Census. The purpose of Chapter 8G is to use data found in the

national 2011 Census to address two matters: the work patterns of low paid working families and the number of low paid working families in or at risk of poverty. This data cover low paid workers without any distinction being made between whether they are award reliant (i.e. only be paid the minimum award rate and not a dollar more) or they are paid a higher wage rate that still leaves them low paid and in or at risk of poverty. The data show the household income of couple parent and sole parent families and the employment status of those families who are in or at risk of poverty. It covers 675,985 children in couple parent families and 562,254 in sole parent families. The number of children who are living in poverty should raise very serious concern in annual wage reviews and substantial and evident consideration in wage setting decisions.

997. One of our criticisms of the FWC's past search for data on poverty and work patterns is that it has concentrated its inquiry on those who are only in award-reliant families. We explain the FWC's search for the award-reliant in Chapter 8F and explain why the focus should be on the low paid and not those who are only paid the award rate. Many workers are low paid and living in poverty even though they are paid something above the minimum legal wage rate. A focus on low paid workers is consistent with the object of the *Fair Work Act* to promote social inclusion (section 3) and is necessary for the FWC to carry out its obligation to establish and maintain a safety net of fair minimum wages, taking into account, among other matters, "the needs of the low paid" (section 284(1)). Furthermore, if we focus only or primarily on those who are award-reliant we will not get a true picture of those living in poverty because of inadequate wages. Limiting the search to award-reliant workers and their families has the effect of limiting the number of families and children who are living in poverty.
998. This Census data allows us to see the employment patterns which are associated with poverty in Australian households. It gives us a picture of the similarities and differences between couple and sole parent families, the extent of full time work and of part time work and some information about the labour force status of parents in both kinds of households. It shows, for example, that sole breadwinner couple families, where the second parent is out of the workforce is much more common than couple households in which both parents work. Full time employment is not a path out of poverty.

Inequality and declining relative living standards

999. The public debate income and wealth inequality we have seen in Australia and internationally over the past decade or so has paid particular attention to the relative gains made the highest income earners relative to other income groups. The FWC's consideration has focussed on the differences between the wage increases of various segments of the population by reference to changes in the relationship of various deciles and quartiles relative to each other and relative to median income. Figure 2 in Chapter 5D, which is copied from the FWC's May 2016 decision, covers the period 2004 to 2014. The limitation of this document is that, for example, it plots the relative position of the 10th percentile over the relevant period and says nothing about the change in the relative position of safety net-dependent workers who have not shared in the community-wide increases shown in the Figure. In order to illustrate how safety net-dependent workers have fared since 2004 we need to notionally overlay on Figure 2 the real wage changes for safety net-dependent workers over the same period. If we did this we would find that safety net-dependent workers were below the increase in the 10th percentile line, which showed a real increase of almost 15% increase over that period, the lowest increase among the income groups covered. All safety net workers had a real wage increase of less than that received by the least advantaged of the income groups in Figure 2. Compared to that increase of almost 15.0%, the NMW had a real increase of 5.3% and the C10 wage rate increase was even closer to the horizontal axis at 1.4%.
1000. Figure 2 and the more recent data demonstrate that great care should be taken when considering national averages, even when broken into percentiles, because they hide what is really happening to the living standards of safety net-dependent workers. The reality 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. Yet a conflation of income inequality across all sectors of the workforce and income inequality between safety net-dependent workers and the rest of the workforce community is evident in the following passage 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." (Emphasis added. This is repeated at paragraph 412.)

1001. The only time at which the work to be done by the NMW and by award rates can be reduced is when it can be fairly said that relative living standards have been restored to some appropriate reference point and the operational objective mentioned earlier has been achieved, i.e. when the NMW provides a standard of living in excess of poverty and one which will enable workers and their families to purchase the essentials for a decent standard of living and engage in community life, assessed in the context of contemporary norms. Having short term success in arresting increasing inequality suffered by minimum wage-dependent workers is necessary, but not sufficient. Clearly, any arresting of growing national inequality in the past few years is no reason to pull back on the remedying the income inequality that has been suffered by safety net-dependent workers for more than the past decade. There is still plenty of work to be done by the NMW and award wage rates.

Pensions

1002. In each year since 2010 ACCER has argued that the assessment of relative living standards and the income is needed for an acceptable standard of living can be informed by the amounts paid to pensioners under the pensions safety net, which was reformed after a substantial inquiry and public debate in 2009. The central issue concerned the setting of an income that would provide a basic acceptable standard of living for single and couples on the age pension or a disability pension. The rate that was set by Parliament made no distinction between age and disability pensions. The data in Chapter 6C and Chapter 8D respectively cover the relative increases in pensions and minimum wage since the 2009 pension reforms and the resultant standards of living of pensioners and wage-dependent families. Table 22 compares the outcomes of the reformed wage setting system and the reformed pensions system. It shows, for example, that over the seven years to January 2017, pensions increased by 30.5% while the gross NMW increased by 23.7% and the net NMW increased by 21.2%. Table 34, which uses the same equivalence scales as those used by the Australian Bureau of Statistics compares the living standards of pension-dependent and wage-dependent households without regard to the costs of work. The Table shows that a NMW-dependent family of a couple and two children have a lower

standard of living than couple and single pensioners. When the costs of work are taken into account, even the C10-dependent family would have a lower standard of living. Something is wrong when the minimum wage for a trade-qualified skilled worker cannot support a family at a higher standard of living than that provided to those on the pension.

1003. ACCER has argued that, although primary emphasis should be given to other wage earners when assessing relative living standards, the relative living standards of pensioners and the basis upon which their pensions have been set should be given significant weight. It has argued for the need to take into account a comparison of the pension safety net and the wage safety net.
1004. In its May 2016 the decision FWC concluded (at paragraph 354) that the comparison with pensioners is of "very limited relevance". The reasons are reviewed in Chapter 8D of the Attachment, with relevant references being given to the report into living standards upon which the Government and Parliament acted. The critical part of the report was the conclusion about the income needed to provide a basic acceptable standard of living. The May 2016 decision shows that the basis upon which the pensions were reviewed in 2009 was not considered by the FWC and that its own views about the basis on which the pensions have been set are not supported by that report. Upon the basis of the matters in Chapter 8D we ask that the FWC reconsider its assessment and treat the level of pensions as having significant relevance and weight in the setting of safety net wages for low paid workers.

E. THE FWC's WAGES RELATIVITIES POLICY

1005. In each Annual Wage Review since 2011 ACCER and the ACTU have made claims that have sought to give relatively more to the lowest paid workers. The ACTU has sought to do this by way of a money amount up to that set as the base wage for a trade-qualified worker (the C10 rate which is now \$783.30 per week) and to convert that amount into a percentage for the adjustment of higher paid classifications. The claims were designed to strike a balance between the interests and rights of workers across a wide spectrum of work classifications by, significantly, the peak body representing higher paid and lower paid workers. ACCER generally supported this kind of proposal (although with lower money and percentage claims) and sought to increase the NMW by modest annual steps

up to, at least, the base wage rate for cleaners, which is now \$718.40 per week, or \$45.70 per week more than the NMW.

1006. All of these claims for relatively more for the low paid have been rejected and uniform percentage increases have been awarded in the last six wage decisions. Low paid workers have not received \$1.00 per week more than the percentage increases awarded to all work classifications. They have received the same percentage increase as, for example, professional engineers, pharmacists and airline pilots and have received considerably smaller money increases. There is no doubt that prior to 2011 the wage rates for these higher skilled workers had fallen relative to the market rates for work in these higher skilled positions, but that cannot explain the failure to address the more pressing and basic needs of the low paid and wage-dependent workers who are living in poverty.
1007. In the last six decisions by the FWC low paid workers with family responsibilities who are living in poverty and unable to earn enough to provide their families with a decent standard of living have received the exactly same percentage increases as those set for, for example, captains of wide body–double deck aircraft under the *Air Pilots Award 2010*, which in money terms for the lowest paid is just a fraction of the award increase for pilots who have effective access to collective bargaining to further improve their incomes. The decisions have taken no account of relative needs and the fact that the lowest paid are unable to gain a decent standard of living.
1008. The decisions have resulted from the adoption of a policy to maintain award relativities as they were in 2011. In Chapter 2C of the Attachment we have traced the history and application of this policy from the June 2011 decision. The origin of the policy is in the following paragraph from the June 2011 decision:.

“[307] Section 134 of the Fair Work Act requires the Panel to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net. The matters which must be taken into account in an annual wage review include relative living standards and the needs of the low paid. *The nature of increases to award rates in annual reviews over the last twenty years has compressed award relativities in the award classification structures and reduced the gains from skills acquisition. The position of the higher award classifications has also been reducing relative to market rates and to average earnings.* Furthermore, while the real value of minimum wages has been maintained at the lower award classification levels, it is clear that the real value of

minimum wages above those levels has fallen. On the information available to us at present we accept that many people have their wages set at award rates higher up the scale. *The ACTU's approach, which involves a dollar increase at the lower levels, would involve further compression of relativities below the C10 level.* For these reasons we consider that in this review we should decide on an increase which will not further compress award relativities and which will at least maintain the real value of minimum award wages.” (Emphasis added.)

1009. Safety net wage cases prior to this time had given priority to helping those most in need by awarding money increase in the full knowledge that relativities were being compressed. Despite that extra assistance the NMW and low paid award rates had fallen well behind community wage movements. Furthermore, the real wage increases for those in the lower paid classifications did not match the labour productivity increases over this period; see Chapters 3A and 4 of the Attachment.

1010. The FWC made it clear in the foregoing passage that further compression of relativities between low paid workers was unacceptable, even though the body representing the interests of workers sought it. The ACTU's hybrid claim, which sought a very modest compression in the award relativities for low paid workers on the basis of providing relatively more to those most in need, was rejected. In Chapter 2C we follow the consistent articulation of this policy from year to year. With this position being taken any claimed increase in the NMW was bound to fail because it would narrow the relativities between the lowest award rate and the C10 rate.

1011. What was obvious in 2011, and some years earlier, was that the minimum wage system was in need of repair by addressing both the level of the NMW and the wage rates set for award classifications. The inherited and inherent problem with the NMW was never acknowledged and, as a result, never addressed.

1012. For six years the NMW has been locked into a fixed percentage relationship to the C10 rate and, beyond that, to a fixed percentage of the award rate for higher skilled positions. For so long as the FWC's relativities policy continues, the position of the low paid will not improve. Their wage increase will be determined by a global assessment of what the FWC concludes should apply to all award classifications. The FWC has repeatedly said that it "reject[s] a mechanistic or decision rule approach to wage fixation" (May 2016 decision at paragraph 151), but the relativities policy has been mechanistic and rule driven.

1013. The policy of maintaining award relativities has meant that any consideration of the needs of the low paid, and of the alleviation of poverty in particular, has been thwarted. It explains why the NMW has continued to be tied to the C14 award rate. Even after 2015, when the FWC accepted ACCER's submissions about its separate functions in setting the NMW and award rates (see Chapter 2C), the policy has continued, with no suggestion by the FWC in the June 2015 and May 2016 decisions as to how it can justify continued uniform percentage increases in the face of the terms of the legislation.

1014. The policy has meant that award considerations have entered into the setting of the NMW, which is a separate function of the FWC, and have prejudiced the interests of those workers who are not covered by an award and whose wage rate is based directly or indirectly on the NMW. For policy reasons the NMW locked into a rate that applies in a limited number of awards and then only for the first three months of employment. This connection, established within the award system in 1997, has no contemporary relevance.

The relativities policy is contrary to law

1015. The application of the wage relativities policy raises the issue of whether the decisions have been made in accordance with the FWC's statutory obligations, which include taking into account the needs of the low paid (section 284(1)). A statutory tribunal such as the FWC is entitled to adopt policies to guide the way in which it exercises its jurisdiction. In regard to award wages, it would be permissible for the FWC to have a policy on award relativities, but it must not be inconsistent with the terms of the legislation, which includes for award decisions (as well as NMW decisions) the obligation to take into account the needs of the low paid. The wage relativities policy is not required by the terms of the legislation.

1016. The application of principles and policies is acceptable, and may be very desirable, when a decision-maker is provided with a range of considerations that must be taken into account in coming to a decision. The application of a policy will be contrary to law if it is applied by a tribunal in a mechanistic way without proper regard to the particular circumstances of a matter before it or if the tribunal's reasoning is inconsistent with the terms of the legislation under which it operates. Both aspects were identified in the judgment of Tracey J in *Gbojueh v Minister for Immigration and Border Protection* [2014] FCA 883, at 39:

“At both common law and under statutory judicial review a decision-maker will not commit jurisdictional error merely by having regard to a principle or policy when exercising a statutory discretion. Error, may, however, occur if the decision-maker considers him or herself bound to apply the policy without regard to countervailing considerations and acts accordingly. In *Elias v Commissioner of Taxation* [2002] FCA 845; (2002) 123 FCR 499 at 506-7 Hely J summarised the position as follows:

“The Commissioner is entitled to adopt a policy to provide guidance as to the exercise of the discretion, provided the policy is consistent with the statute by which the discretion is conferred. Thus if the statute gives a discretion in general terms, the discretion cannot be truncated or confined by an inflexible policy that it shall only be exercised in a limited range of circumstances. A general policy as to how a discretion will ‘normally’ be exercised does not infringe these principles, so long as the applicant is able to put forward reasons why the policy should be changed, or should not be applied in the circumstances of the particular case.”

See also: *R v Moore; Ex parte Australian Telephone and Phonogram Officers’ Association* [1982] HCA 5, (1982) 148 CLR 600 at 612; *Tang v Minister for Immigration and Ethnic Affairs* (1986) 67 ALR 177 at 189-190 (Pincus J); *Madafferi v Minister for Immigration and Multicultural Affairs* [2002] FCAFC 220, (2002) 118 FCR 326 at 358.”

1017. The FWC’s obligation under the *Fair Work Act* to take into account the “needs of the low paid”, when setting the NMW (see section 284(1) (c)) and award rates of pay (see section 134(1)(a)) are effectively disregarded by this policy. The policy of maintaining relativities set in the past, and based on relativities established prior to the enactment of the *Fair Work Act*, is not based on the terms of the legislation. The obligation on the FWC is to take into account the needs of the low paid unconstrained by wage relativities within award classifications. In applying the policy the FWC has failed to give any or any proper consideration and weight to the needs of the low paid.
1018. Furthermore, the application of the policy has meant that the NMW has not been set independently of the operation of the award system, as the legislation intends. The *Fair Work Act* intends that the NMW will be established as a general wage entitlement upon which awards may provide further minimum wage entitlements covering "skill-based classifications and career structures"; see section 139(1)(a)(i). It would be permissible for the FWC to develop policies about wage relativities within those award classifications, but it would be impermissible for those policies to constrain the setting of the NMW and to constrain the obligation on the FWC to take into account the needs of the low

paid, as it is required to do under sections 284(1) and 134(1).

1019. For these reasons the relativities policy, as applied by the FWC since 2011, has been contrary to law and, further, the FWC has failed to set the NMW in accordance with the terms of the *Fair Work Act*.

Are there any countervailing factors?

1020. It may be said in support of the FWC's decisions that there were other facts or circumstances that could be taken into account which would justify the application of the policy. If, for example, the needs of the low paid were not as pressing as some might argue, or the position of the low paid, especially those with family responsibilities, had actually improved, there might be some justification for the application of the policy. In this regard it is necessary to refer to the FWC's conclusion in its May 2016 decision that its "overall assessment [was] ... that the relative living standards of NMW and award-reliant employees have improved a little over recent years, although the relative position of low-paid workers has deteriorated over the past decade. Many have low levels of disposable income"(see paragraphs 67, 98 and 436 of the May 2013 decision).

1021. The most significant matter referred to in support of the conclusion that there had been an improvement in relative living standards over recent years was Table 5.7 of the May 2016 decision. The commentary on that table was:

"[Table 5.7]shows that over the five years to December 2015, the disposable income of households with a member earning the C14 or C10 award rate has increased by between 7 to 12 percentage points as a portion of the 60 per cent median income poverty line, other than for single-earner households without children where the increase has been 5 to 7 percentage points with NSA [Newstart allowance] and 2 to 3 percentage points without NSA".

1022. This appeared to be very good news for the working poor: for example, over just five years the NMW-dependent family of four had moved from being 19% below the poverty line to being 12% below the poverty line. This claimed a very substantial improvement in the living standards of low paid workers living who were living in poverty. It was incorrect. ACCER wrote to the FWC seeking a correction. ACCER noted that a significant factor in the Panel's decision not to provide further support for low paid workers, whether covered by the NMW or an award wage rate, was the FWC's "overall assessment" in respect of the changes in relative living standards in recent years.

1023. The error in Table 5.7 of the May 2016 decision was corrected by a Statement of

26 July 2016 [2016] FWCFB 5047. It showed that, in fact, that there had been no increase in relative living standards as measured by the relative poverty lines. For the NMW-dependent family the five years saw a slight decrease in living standards: falling from 11% below the poverty line to 12% below the poverty line over the first five years of decisions under the *Fair Work Act*.

1024. In response to ACCER's claim that the assessment of improved living standards was based on erroneous data, the FWC responded in the Statement that there was other evidence to support the conclusion. Chapter 2F of the Attachment provides an analysis of the decision for the purpose of ascertaining whether there was any evidence recited in the May 2016 decision that would support the proposition that living standards had improved in recent years; and to contradict the revised Table 5.7 which showed there had been no such improvement. The conclusion in Chapter 2F is that there was no such evidence: there was no evidence that might be relied upon to justify the application of the wages relativities policy. We also include in Chapter 2F commentary in the light of the FWC's advice that the error was made by "Commission staff" and the consequent failure of the FWC to give the parties an opportunity to comment on that material prior to the May 2016 decision, as required by the *Fair Work Act*.
1025. Apart from the erroneous conclusion that the low paid workers and their families had received significant increases in their relative living standards, there is nothing in the May 2016 decision that seeks to justify the failure to alleviate their poverty. There is no consideration of economic considerations which might have precluded it from accepting the ACTU's proposal for a money increase across the lower paid classifications. Nor is there any suggestion that to give the low paid more would limit the amount available to other classifications.
1026. The reality is that unless and until the FWC abandons its relativities policy any party which is trying to get a little extra to alleviate poverty among wage-dependent families is wasting its time and resources in participating in annual wage reviews.
1027. This is not the outcome that we expected when the *Fair Work Bill* was first proposed. 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.)

1028. This promised to address the concerns expressed by the Australian Catholic Bishops in their Statement of 25 November 2005 about the *Work Choices* legislation:

"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."

1029. It was apparent in 2008 that the minimum wage system was in need of reform. The FMW was not a wage that could provide a decent living for working families and the award-based relativities, which had been further compressed by the Australian Fair Pay Commission under the *Work Choices* system, failed to give adequate recognition for the skills and responsibilities of workers employed in higher paid work classifications. In its submission to the first annual wage review under the new legislation ACCER stressed the need for a research program to assess the needs of the low paid:

"Our optimism is tempered, however, by the belief that no progress will be made on behalf of low paid workers and their families unless the major parties to the Annual Wage Review, and FWA [Fair Work Australia, as the FWC was then named], proceed with an enquiring mind. Close attention should be given to questions such as: how much income does the worker and his or her family need to live a decent life? There are no simple answers to that question, but it is the kind of question that must be answered in order to discharge the overriding statutory task to provide a *fair safety net*." (ACCER submission, paragraph 27, emphasis in original)

1030. The people who are on the lowest award wages and are most in need have been held back by a policy to maintain award relativities as they were set in early

2011 and not to give the lowest paid even one dollar more per week to alleviate their poverty and improve the lives of and opportunities of their children. The decisions since from 2011 have not given practical recognition of poverty or unmet needs, let alone fairness. The "one size fits all" policy is inconsistent with the obligation to promote social inclusion and set a safety net of fair minimum wages that takes into account the needs of the low paid, among other factors.

F. THE SOCIAL SAFETY NET UNDER ATTACK

1031. For the last three decades minimum wage increases have been reduced on account of improvements in the social safety net. Now that the benefits provided by the social safety net are being cut, minimum wages must be increased to compensate for those cuts. The May 2014 Federal Budget proposed the greatest reductions in the living standards of families of any legislation ever considered by the Australian Parliament. Continued opposition in the Senate since 2014 has caused the Government to abandon a number of the proposal first put forward in that Budget. However, legislation was enacted to abolish the Schoolkids Bonus, with effect from the end of 2016. At the time of writing this submission there is legislation before the House of Representative, and already passed by the Senate, that will freeze family payments for two years from 1 July 2017.
1032. The improvements in the social safety net started as a result of the recommendations in 1975 of the Commonwealth Commission of Inquiry into Poverty, chaired by Professor Henderson. It was given added impetus in the 1980s by a series of prices and incomes accords between the Australian Government and the ACTU. The impact of these changes has been very substantial. The Poverty Commission reported that in August 1973 the minimum wage-dependent worker with a spouse and two children received family payments (tax rebate and child endowment) equal to 7.7% of the family's disposable income; see Chapter 1F. By January 2001 the proportion had increased to 37.5% and, as a result of initiatives by Coalition and Labor Governments, the proportion had reached 39.5% by January 2016; see Table 28 in Chapter 8. In January 2017 it had fallen back to 37.7%, principally as a result of the abolition of the Schoolkids Bonus.
1033. The increase in targeted family support over the last few decades has resulted in the conscious discounting of wage increases by wage-setting tribunals. This is a

reason, but not the only reason, why minimum wages have lost their relativity to median and average wages, which we described in Section B, above. There is an economic case for increasing the contribution of the public purse to the support of families, but tax has to be paid if it is to be done.

1034. The Schoolkids Bonus entitled parents to \$430.00 per year for each primary school student and \$856.00 per year for each secondary school student. The calculations in Table 28 of the Attachment (as well as those in Tables 29 and 30) were made that the family had one child at each level, with the weekly value of the payments being \$24.65 per week (at 52.18 weeks per year). Table 28 shows that the disposable income of the family covered by Table 28 fell by \$7.07 per week from January 2016 to January 2017 despite the FWC's decision to increase minimum rates by 2.4% in July 2016. Similar losses were suffered by the families covered by Tables 29 and 30. By comparison, the FWC's calculations of disposable incomes in two child families are based on both children being in primary school; see *Statistical Report* 24 March 2017, Table 8.5.
1035. The loss that workers with family responsibilities have suffered as a result of the abolition of the Schoolkids Bonus will vary from family to family. The loss should be considered on the basis of a family having two children, but it should take into account the distribution of children across pre-school, primary school and secondary schools. On average, the loss would be not less than the amount calculated in the FWC's estimates: \$860 per year. On that basis, the loss would be \$16.48 per week (at 52.18 weeks). These are after-tax dollars, which would require a higher wage increase for them to be covered. This is not the kind of amount for which compensation can be reasonably expected in one year. Of course, some parties will argue that the amount should be diluted by reference to the number of workers who do not have children in primary or secondary school.
1036. On the basis of these considerations ACCER has included in its claims for increases in the NMW and award wage rates the amount of \$8.00 per week as *interim* compensation for the loss of the Schoolkids Bonus. Because this amount would attract income taxation, families would still be considerably worse off. ACCER will seek further compensation for this loss in the next annual wage review.
1037. On 22 March 2017 the *Social Services Legislation Amendment Bill 2017* was agreed to by the Senate and at the time of writing is currently before the House

of Representatives. The Bill provides for the freezing of Family Tax Benefit Part A and Family Benefit Part B fortnightly payments. The *Explanatory Memorandum* states that the expected savings over the period 2017-18 to 2020-21 will be around \$1,950 million. The current level of these payments are set out in Table 18 of the Attachment. In a family with two children, one under 13 years and the other one 13 years or older the Family Tax Benefit Part A payment is \$210.35 per week. The Family Tax Benefit, Part B, the payment is \$54.32 per week (where the youngest child is age 5 or more). For a single breadwinner couple family or a sole parent family the legislation would freeze payments of \$264.67 per week.

1038. In the absence of a freeze, these family payments would have increased by 1.5% on 1 July 2017, because of the 1.5% annual increase in the Consumer Price Index at December 2016. The weekly loss of 2.0%, the weekly loss as a result of the failure to index the payments would be \$3.97 per week from 1 July 2017. This is substantial when compared to, for example, the after tax increase in the NMW of \$12.48 per week as a result of the FWC's May 2016 decision. Just to compensate for this loss will require a gross wage increase of \$4.90 per week for low paid workers earning between \$18,201 and \$37,000 per year and it will require a gross wage increase of \$5.88 per week for those earning above \$37,000 per year. These calculations do not take into account the Medicare Levy, which may not be payable by some workers. ACCER will respond further to these currently pending changes when agreed to by the House of Representatives.
1039. These losses should also be seen in the context of relatively lower after-tax incomes as a result of bracket creep. As we explain in Chapter 6A, if there are any tax cuts introduced in the May 2017 Budget, the first \$7.95 per week would just cover the bracket creep for NMW-dependent workers.
1040. From a combination of bracket creep, the loss of the Schoolkids Bonus and the freezing of family payments, the position of Australian families has worsened considerably in recent years. This trend must have an impact on the setting of minimum wages for working Australians. As we have accepted in relation to the compensation for the Schoolkids Bonus, compensation for these losses cannot be achieved in only one annual wage review. An ongoing process is need to address these matters. Some targets need to be set. We will make further

submissions following the FWC's decision on United Voice's application for the setting of a medium target for the NMW based on median incomes.

G. SUPPORTING SOLE PARENT WORKING FAMILIES

1041. In its March 2016 submission ACCER asked the FWC to consider the appropriateness of it 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 8.6 of the FWC's *Statistical Report* of 24 March 2017 and in the FWC's reference to those kinds of calculations in Tables 5.6 and 5.7 in the May 2016 decision. The *Statistical Report* shows that a NMW-dependent sole parent with two children is 18.0% above the 60% relative poverty line, a greater margin than the 15.0% calculated for the single person on the NMW.
1042. The equivalence scales used in the calculation of living standards of sole parents do not take into account the costs of childcare. ACCER proposed that, in the absence of data on the costs of childcare, the calculations on living standards should include a calculation on the basis of part time work for 27.5 hours per week. ACCER also raised the possibility of some investigation by the FWC into the costs of childcare for sole parents who work full time. It suggested that the data on the costs of childcare in the *Statistical Report* would provide a starting point for this inquiry. The matter was held over to the current review; see paragraph 659.
1043. The high cost of childcare for working sole parents is illustrated by Table 12.1 of the FWC's *Statistical Report* of 24 March 2017. The table provides data from the Australian Workplace Relations Survey research in 2014 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 importance 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".
1044. In the past week a new childcare funding scheme has been agreed to which will have an impact on the childcare costs of sole parents and other workers with

family responsibilities. The setting of minimum wages should take into account the costs of work and childcare costs in particular. In order for the FWC to better understand the impact that child costs have on living standards of workers and their families after taking into account these new arrangements, ACCER proposes that the FWC commission research from its own research section or otherwise on these matters for the purpose of modelling a number of sole parent working scenarios. These would include pre-school childcare, before and after school care and vacation care. ACCER also proposes that, upon the release of that research, applications for further investigation under section 290 of the *Fair Work Act* be made to the President.

1045. In support of the application to include estimates of the living standards of sole parents working part time, ACCER relies on the data from the 2011 Census which shows that almost three-quarters of working sole parents are engaged in part time; see Table 39 in Chapter 8G and the associated commentary. The costs and resources required to do this calculation are negligible and the calculations would present a realistic position of the many working sole who are not able to work full time because of their family responsibilities.

THE ATTACHMENT

1046. 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 2017

- B. 16 years of increasing affluence and poverty
- C. A decent wage is a human right
- D. The FWC's failure to address poverty
- E. The social safety net under attack

Chapter 2. The Australian wage setting framework

- B. The Legislative framework for wage setting
- C. The NMW: the foundation of the wage setting system
- F. The Annual Wage Review Decision, May 2016

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

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

Chapter 7. Poverty and how we measure it

B. Measures of poverty

C. Safety net wages have not been based on workers' needs

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

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FURTHER SUBMISSIONS BY THE ACCER TO THE ANNUAL WAGE REVIEW 2016 - 17

	Paragraph
A. Introduction	1047
B. ACCER's reply submission, 13 April 2017	1052
C. ACCER's post budget submission, 12 May 2017	1069
D. ACCER's oral submissions, 18 May 2017	1128

**Working Australia, 2017:
wages, families and poverty**

CHAPTER 10

FURTHER SUBMISSIONS BY ACCER TO THE ANNUAL WAGE REVIEW 2016-17

	Paragraph
A. INTRODUCTION	1047
B. ACCER'S REPLY SUBMISSION, 13 APRIL 2017	1052
C. ACCER'S POST-BUDGET SUBMISSION, 12 MAY 2017	1069
D. ACCER'S ORAL SUBMISSIONS, 18 MAY 2017	1128

A. INTRODUCTION

1047. This chapter includes the extracts from submissions made by the Australian Catholic Council for Employment Relations (ACCER) to the Annual Wage Review 2016-17 following its initial submission of 29 March 2017 and a commentary on the decision of the Fair Work Commission (FWC) on 6 June 2017.
1048. The extract from the Reply submission covers three aspects: the changes to family payments introduced by the *Social Services Legislation Amendment Bill 2017*, the impact of the withdrawal of the Schoolkids Bonus on calculations of relative living standards and the FWC's decision on the application by United Voice for the setting of a medium term target for the National Minimum Wage (NMW).
1049. The extract from the Post-Budget submission covers the May 2017 Budget, the updating of calculations of relative living standards and a response to the FWC's medium term target decision.
1050. The extract from ACCER's submissions at the FWC's consultations on 18 May 2017 cover ACCER's introductory submission about the significance and continuing relevance of the *Harvester* minimum wage case on its 110th anniversary and the need for the FWC to address the issue of child poverty in wage-dependent families.
1051. The response to the FWC's decision of 6 June 2017 is made by reference to the way in which the FWC has responded to the fact of an unacceptable level of child poverty in wage-dependent families. As we pointed out to the FWC during the consultations, this is the principal reason for ACCER's involvement in minimum wage cases. Of course, the alleviation of child poverty cannot be the exclusive objective of minimum wage decisions, but a wages system that fails to take reasonable steps to alleviate poverty in wage-dependent families is a wage system in need of reform. The substance of the FWC's decision is that it would be unreasonable for it to do more to alleviate child poverty in wage-dependent families. The analysis of the decision does

not show any proper basis for the failure to provide more for those who are most in need.

B. ACCER'S REPLY SUBMISSION, 13 APRIL 2017

1052. ACCER's initial submission refers to the *Social Services Legislation Amendment Bill 2017* which was, at the time of writing, before the House of Representatives after having been passed by the Senate. We said (at paragraph 90) that we would make a further response after the enactment of the legislation. The legislation was passed on 29 March 2017.
1053. The *Social Services Legislation Amendment Act 2017* includes provisions that will freeze for two years, from 1 July 2017, the fortnightly payments of Family Tax Benefit Part A and Family Benefit Part B. The *Explanatory Memorandum* accompanying the Bill stated that the expected savings over the period 2017-18 to 2020-21 will be around \$1,950 million. There will be ongoing savings to the Budget, and losses for families, because the cuts over the two years will not be restored. In the absence of a freeze, these family payments would increase by 1.5% on 1 July 2017 as a result of the 1.5% annual increase in the Consumer Price Index (CPI) at December 2016. The current level of these family payments is set out in Table 18 of the Attachment to ACCER's initial submission. In a family with two children, one under 13 years and the other one 13 years or older, the Family Tax Benefit Part A payment is \$210.35 per week and the Family Tax Benefit, Part B, payment is \$54.32 per week (where the youngest child is age 5 or more).
1054. Table 8.6 of the *Statistical Report*, published by the Fair Work Commission (FWC), includes these kinds of payments in its calculations of the disposable incomes of various households, but they are limited to school age children under the age of 13. The various kinds of transfer payments are not disaggregated in the *Statistical Report*, but it is apparent that family payments are a very large part of the disposable income of low income families.
1055. On the assumption that family tax benefits are \$250.00 per week, the loss from 1 July 2017 will be \$3.75 per week. This is substantial when compared to, for example, the after-tax increase in the National Minimum Wage (NMW) of \$12.48 per week as a result of the FWC's May 2016 decision. Compensation for the loss caused by the freeze on 1 July 2017 would require a gross wage increase of \$4.63 per week for low paid workers earning between \$18,201 and \$37,000 per year (where the marginal tax rate is 19.0%) and would require a gross wage increase of \$5.56 per week for those

earning above \$37,000 per year (where the marginal tax rate for low income earners is 32.5%). These calculations do not take into account the Medicare Levy, which will not be payable by lower income families.

1056. The losses that families will suffer on 1 July 2017 come on top of the losses that they have recently suffered as a result of the withdrawal of the Schoolkids Bonus. We have addressed the loss of the Schoolkids Bonus in our submission of 29 March 2017 and have asked the FWC to include within the increases awarded in the current review an amount of \$8.00 per week as interim compensation for the loss of the Schoolkids Bonus; see paragraphs 5 and 87-9.
1057. ACCER has accepted that compensation for the loss of the Schoolkids Bonus cannot be achieved in only one annual wage review. It has not revised its wage claim in the light of the freezing of family benefits because it believes that there is a limit on the capacity of the FWC to address in one wage review the very large cuts to family living standards brought about by this change and by the abolition of the Schoolkids Bonus. These are matters that should be addressed over time in successive annual wage reviews.

The Statistical Report and the Schoolkids Bonus

1058. The estimates of disposable household incomes in Tables 8.5 and 8.6 of the *Statistical Report* include the weekly value of the Schoolkids Bonus on the basis that the children are attending primary school. In 2016 the annual value of the payment for each child in primary school was \$430.00, or \$8.24 per week (at 52.18 weeks per year). In a family with two children this amounts to \$16.48 per week, significantly more than the after-tax increase in the NMW in July 2016.
1059. The current *Statistical Report* calculates poverty lines and disposable incomes at September 2016. On past practice, these figures will be re-calculated for December 2016 following the release of estimates of Household Disposable Income in the next issue of *Poverty Lines, Australia*, which will cover December 2016. It is appropriate to include the annualised value of the Schoolkids Bonus in figures for 2016. However, it is important that the withdrawal of the payment at the end of 2016 be recognised. ACCER submits that any reference in the updating of *Statistical Report* to the position at December 2016 identify the amounts attributable to the Schoolkids Bonus, with a further notation that they not payable after 2016. We expect, however, that the FWC's consideration of contemporary disposable incomes and living standards in its forthcoming decision will not include the Schoolkids Bonus.

Response to medium-term target decision

1060. The FWC has rejected the application by United Voice for the setting of a medium-term target for the NMW; see *Decision* [2017] FWCFCB 1931, 7 April 2017. ACCER will respond to this decision prior to the consultations on 17 and 18 May 2017, but there are several aspects which can now be addressed. ACCER supported the proposal for the setting of a target relative to median wages because, if adopted, the target would have a direct impact on the relative living standards of the low paid and their ability to purchase the essentials for a decent standard of living.
1061. In the absence of such a target, ACCER will ask the FWC to adopt a policy to increase the relative living standards of low paid workers over a period of time with a view to restoring the eroded relative living standards of the low paid to at least the level that applied when the NMW was first established (as the Federal Minimum Wage) in 1997. It will argue that such a policy can be adopted consistent with the FWC's statutory obligations. The Government's changes to the social safety net, discussed above, add support for such a policy, as does the increasing impact of bracket creep on the after-tax wages of low paid workers; see ACCER March 2017 submission, at paragraph 92. Having regard to the FWC's decision on the medium-term target, ACCER will not seek the establishment of any particular relationship between the NMW and the median or average wage levels.
1062. The cause of the decline in living standards, including rising poverty levels, is highlighted by passages in the Australian Government's March 2017 submission which point to the loss in the relative value of the NMW since 1997:
- “252. Since the national minimum wage was introduced in 1997, it has increased on average by 3.4 per cent a year in nominal terms and 0.7 per cent a year in real terms. This is less than growth in median full-time earnings, which averaged 4.3 per cent a year in nominal terms and 1.5 per cent a year in real terms to 2015 (ABS *Characteristics of Employment*).
253. Therefore, the minimum wage bite (the ratio between the minimum wage and median full-time earnings) has declined from 62 per cent in 1997 to 53 per cent in 2015. This is still above the average for comparable OECD countries (see Chart 7.1). Most of the decline occurred in the late 1990s and the mid-2000s, with the early 2000s and the period since 2008 exhibiting relative stability.”
1063. ACCER submits that the FWC cannot turn a blind eye to the impact that these changes have had on the living standards of the low paid. We are also concerned that the FWC may omit from its recitation of recent history the worst of these deleterious changes. For example, in rejecting the United Voice application the FWC said:

“We do recognize, however, that a series of independent annual Review decisions might have a cumulative impact that was not explicitly intended. It is for this reason that the Panel routinely considers (and publishes in its statistical report) the evolution of economic and social data over the past 10 years, as well as over the more immediate time frame.” (Paragraph 65)

1064. It is now 20 years since the NMW was established and the worst damage done to living standards occurred in the first 13 years of its operation, particularly during the *Work Choices* years. It is clear that there was no *explicit* intention over the years prior to *Work Choices*, to cut living standards, but that was the cumulative effect. It still calls for a remedy. The FWC’s concentration on the past decade is evident in the current *Statistical Report*. Tables 8.2, 8.4, 8.5, 9.1 and 9.2 and Charts 8.1, 8.2 and 9.1 cover the period 2006 to 2016. Because of the lack of data for 2016 Table 8.1 and Chart 8.3 cover the period 2005-15. There is nothing in chapters 8 and 9 of the *Statistical Report* which records, or even alludes to, the fundamental post-1997 change identified by the Government in its submission.

1065. The limiting of data and inquiry to the past decade excludes a true picture of the changes that have taken place in the relative living standards of low paid workers and the explanation for the increasing poverty levels among low paid workers and their families.

1066. The clear purpose of the minimum wage provisions of the *Fair Work Act 2009* was to restore fairness to the minimum wage decision making process and to overcome the unfairness of the *Work Choices* years. They have also presented the means by which the FWC can address the decline in the relative living standards of low paid in the years leading to the *Work Choices* legislation when safety net wages failed to reflect the substantial increases in national incomes. Yet the effect of the increasingly limited time horizon in the FWC’s data and its consideration of that data present a very real risk that the large cuts in relative living standards will be deemed irrelevant to contemporary wage setting. We understand that some may wish that the FWC’s record be judged by its actions since January 2010, but it has a legacy to address: a legacy which has caused loss and distress to many low paid workers and their families.

1067. Several of the filed submissions have referred to the implications for the current wage review of the FWC’s penalty rates decision of 23 February 2017: *4 yearly review of modern awards – Penalty Rates, Decision* [2017] FWCFB 1001 (Penalty Rates Decision). The Shop Distributive and Allied Employees’ Association has referred to the FWC’s view in that case, at paragraph 823, that “The needs of the low paid are best addressed by the setting and adjustment of modern award minimum rates of pay

(independent of penalty rates)”. Clearly, any improvement in award wage rates has to be achieved over time and by a commitment to provide a contemporary assessment of the needs of the low paid, with wage adjustments to follow. However, the FWC’s rejection of the application for the setting of a medium-term target suggests that this may be a false hope, unless the FWC identifies a policy basis upon which the relative level of wage rates for the low paid can be reviewed and adjusted over time.

1068. ACCER’s submissions on the medium-term target decision will contend that the FWC’s construction of the terms of each of section 284(1) and 134(1) of the *Fair Work Act* are erroneous and will address the FWC’s views at paragraphs 50, 57 and 58 of the decision. ACCER will contend that the FWC has failed to identify its fundamental obligation to set a safety net which, of its nature, is intended to protect the living standards of workers. In setting such a safety net the FWC is obliged to take into account the specified factors in sections 284(1) and 134(1), which have an operation that is ancillary to the fundamental obligation of setting a safety net for the benefit of workers. The FWC’s construction of these sections disconnects the particular matters to be taken into account from the FWC’s fundamental obligation. ACCER notes that the FWC’s views draw on the analysis of the same sections in the Penalty Rates Decision. ACCER contends that the construction adopted in the Penalty Rates Decision was erroneous and should not be followed.

C. POST-BUDGET SUBMISSION

1069. ACCER’s Post-Budget submission noted aspects of the Australian Government’s Budget for 2017- 18, addressed various Questions on Notice published by the FWC, responded to recent updates to the FWC’s *Statistical Report* and responded to the FWC’s decision on 7 April 2017 in respect of an application for it to set a medium term target for the NMW. The following paragraphs are extracted from that submission. They do not include the responses to the Questions on Notice.

The May 2017 Budget

1070. Unlike the Budgets of the previous three years, the May 2017 Budget did not announce substantial proposals for cuts to the social safety net, in particular family payments, that would impact on the living standards of wage-dependent workers and their families. The reason for this absence was the enactment of the *Social Services Legislation Amendment Act 2017* on 29 March 2017 and the confirmation in the May 2017 Budget that the remaining proposals from the May 2014 Budget that threatened a further reduction in family living standards would not be pursued. The relevance of the recent

changes to the current wage review are covered in ACCER's Reply of April 2017. We should also record that in the absence of any tax cuts for taxpayers, apart from high income earners previously paying the Budget Repair Levy, bracket creep will continue to reduce the after tax incomes of wage-dependent workers. This matter was discussed at paragraph 745 of the March 2017 submission where we noted that "if any tax cuts are introduced in the May 2017 Budget, the first \$7.95 per week for NMW-dependent workers would be compensation for bracket creep".

1071. The broad macroeconomic assessment presented by the May 2017 Budget is positive:

"Australia's journey to broader-based growth after the mining investment boom is now well advanced.

In its 26th year of consecutive growth, the nation is well placed to build on the hard-won growth secured in recent years and rising optimism about the global outlook.

Real GDP growth is expected to rebound to 2¾ per cent in 2017-18 after slowing in 2016 -17 as a result of weather-related factors in early 2016-17 and Tropical Cyclone Debbie more recently. Growth is forecast to increase to 3 per cent in 2018-19.

This Budget seeks to build on that impressive growth story, ensuring that all Australians have the opportunity to enjoy the benefits of a prosperous economy. It seeks to make the right choices to secure better days ahead for Australians, and those right choices are clear. " (*Budget Paper No.1, Statement 1: Budget Overview*, page 1-1)

1072. This assessment of the strength of the Australian economy is supported by several of the major economic forecasts included in *Budget Paper No.1, Statement 1: Budget Overview*, at Table 2:

- Real GDP is forecast to grow by 2.75% in 2017-18 and by 3.0% in 2018-19, up from a forecast for 2016-17 of 1.75%.
- The Consumer Price Index is forecast to rise by 2.0% in 2017-18 and 2.25% in 2018-19.
- The Wage Price Index is forecast to rise by 2.5% in 2017-18 and 3.0% in 2018-19, up from a forecast for 2016-17 of 2.0%.

1073. This material supports ACCER's submission that its claims are both fair and affordable.

Recent data

1074. The *Statistical Report* of 5 May 2017 includes updates to Tables 8.6 and 8.7 following the publication of *Poverty Lines: Australia, December quarter 2016*. Table 41 (which is numbered to follow earlier tables) reproduces Table 8.7 of that report, with the addition of similar data for December 2010 and January 2017. The figures for December 2010 are taken from the Table in the FWC's Statement of 26 July 2016 ([2016] FWCFB

5047), which corrected Table 5.7 of the Annual Wage Review 2015- 16 decision of 31 May 2016. The calculations for January 2017 are based on the most recent poverty lines and the disposable incomes in Table 8.6 of the *Statistical Report*. The disposable incomes in Table 8.6 are at December 2016 and include the Schoolkids Bonus in households with children on the basis that the children are at primary school. The notes to Table 8.5 advise that the Schoolkids Bonus is calculated at \$8.27 per week, per child. The January 2017 calculations for families with children are based on the disposable incomes at December 2016 less the appropriate amount in respect of the Schoolkids Bonus.

1075. Table 41 shows a substantial cut in the living standards of low income families, specifically those dependent upon the NMW (the C14 award rate) and the C10 award rate, and, implicitly, those dependent on a wage between those two wage levels. In families where the child or children are attending secondary school the losses have been greater: the Schoolkids Bonus entitled parents to \$430.00 per year for each primary school student and \$856.00 per year for each secondary school student. Of course, families with pre-school age children have not suffered this loss. In the absence of data on the average loss per family as a result of the ending of the Schoolkids Bonus, the calculations in the *Statistical Report* of the value of the Schoolkids Bonus are appropriate.

Table 41

**Comparison of 60 per cent median income poverty lines with disposable income of
selected households December 2010 to January 2017**

	December 2010			December 2011			December 2015			December 2016			January 2017		
	60% median income PL	Disposable income as a ratio of 60% median income PL		60% median income PL	Disposable income as a ratio of 60% median income PL		60% median income PL	Disposable income as a ratio of 60% median income PL		60% median income PL	Disposable income as a ratio of 60% median income PL		60% median income PL	Disposable income as a ratio of 60% median income PL	
	(\$ pw)	C14	C10	(\$ pw)	C14	C10	(\$ pw)	C14	C10	(\$ pw)	C14	C10	(\$ pw)	C14	C10
Single adult	455.57	1.15	1.31	474.00	1.13	1.30	517.94	1.15	1.30	523.01	1.16	1.31	523.01	1.16	1.31
Single parent, one child	592.24	1.27	1.40	616.20	1.26	1.39	673.32	1.27	1.39	679.91	1.29	1.40	679.91	1.27	1.39
Single parent, two children	728.91	1.17	1.28	758.40	1.16	1.26	828.70	1.17	1.27	836.81	1.18	1.28	836.81	1.16	1.26
Single-earner couple, no children	683.36	1.04	1.08	711.00	1.00	1.02	776.91	1.02	1.03	784.51	1.02	1.03	784.51	1.02	1.03
Single-earner couple, no children (no NSA)	683.36	0.83	0.94	711.00	0.77	0.87	776.91	0.79	0.88	784.51	0.80	0.89	784.51	0.80	0.89
Single-earner couple, one child	820.03	1.05	1.07	853.20	1.04	1.06	932.29	1.05	1.07	941.42	1.06	1.07	941.42	1.05	1.06
Single-earner couple, one child (no NSA)	820.03	0.92	1.01	853.20	0.91	1.00	932.29	0.92	1.00	941.42	0.93	1.01	941.42	0.92	1.00
Single-earner couple, two children	956.70	1.01	1.03	995.40	0.99	1.02	1087.67	1.01	1.02	1098.32	1.01	1.02	1098.32	1.00	1.01
Single-earner couple, two children (no NSA)	956.70	0.89	0.97	995.40	0.88	0.96	1087.67	0.89	0.97	1098.32	0.90	0.97	1098.32	0.89	0.96
Dual-earner couple, * no children	683.36	1.21	1.35	711.00	1.17	1.34	776.91	1.19	1.36	784.51	1.20	1.37	784.51	1.20	1.37
Dual-earner couple, * one child	820.03	1.21	1.31	853.20	1.20	1.30	932.29	1.21	1.30	941.42	1.22	1.31	941.42	1.21	1.30
Dual-earner couple, * two children	956.70	1.14	1.23	995.40	1.13	1.21	1087.67	1.14	1.22	1098.32	1.15	1.23	1098.32	1.14	1.22

Note: * One partner earns 100% of the specified wage rate, the other earns 50% of this rate.

ACCER's calculations of poverty lines and poverty gaps

1076. ACCER's March 2017 submission included calculations of poverty lines and poverty gaps for January 2017 based on *Poverty Lines: Australia, September quarter 2016*. Those figures produced a median equivalised disposable household income of \$875.57 per week and a 60% relative poverty line of \$525.34 per week for a single person. The *Statistical Report* calculates the single person poverty line at December 2017 as \$523.01, \$2.33 per week less than ACCER's estimate. For the sole parent with two children the excess of ACCER's figure over the report's figure is \$3.74 per week and for the couple with two children the excess is \$4.90 per week. ACCER accepts the poverty line calculations in the *Statistical Report* and will re-calculate the various figures used in the March 2017 submission if the FWC wishes this to be done.
1077. We should also note that there is a small discrepancy in the respective calculations of the disposable incomes of families; for example, after the deduction of the Schoolkids Bonus the *Statistical Report* produces a figure of \$972.88 per week for the NMW-dependent family of a couple and two children (without the Newstart allowance), whereas Table 28 of ACCER's submission calculates the disposable income at \$973.71 per week, 83 cents per week more than the report. Apart from the removal of the Schoolkids Bonus there were no income changes from the end of December 2016 to the start of January 2017.

No improvement in living standards

1078. On the basis of the FWC's figures in the latest *Statistical Report*, we can say that, in January 2017, the NMW-dependent family of a couple and two children had a poverty gap of \$125.44 per week and a similar family dependent on the C10 award rate had a poverty gap of \$46.62 per week.
1079. Table 41 shows that the relative living standards of low paid workers with family responsibilities have not improved since December 2010: in the 16 households with children, 10 declined and 6 were unchanged. It should also be noted that over the period December 2010 to December 2016 the position of the NMW-dependent single adult had improved by only one percentage point, while the C10-dependent single adult remained on the same ratio to the poverty line. The single earner couples had suffered a decline in their relative living standards following the withdrawal of the dependent spouse taxation rebate from 1 July 2011; see note to Table 8.5 of the *Statistical Report*.

1080. Table 41 supports ACCER's contention that decisions under the *Fair Work Act 2009* have not addressed the falling living standards of low paid workers prior to its commencement in 2010, which was one of the reasons for the enactment of the legislation. The decisions over the past seven years have arrested the substantial decline, but have not addressed the longer term decline in living standards.

Responses to the medium term target decision

1081. ACCER's Reply submission of April 2017 referred to the FWC's decision on United Voice's application for the setting of a medium term target for the NMW; see Decision [2017] FWCFCB 1931, 7 April 2017 (Preliminary Decision) . Two matters were raised in response: one concerning the construction of the provisions under which the FWC sets the NMW and award wage rates; and an alternative response to the underlying issue of longer term wage cuts which had been demonstrated in the union's application.

The construction of section 284(1) and section 134(1)

1082. ACCER's Reply summarised its concern about the FWC's views about the terms and operation of the safety net provisions concerning the NMW and award terms and conditions in sections 284(1) and section 134(1), respectively:

"ACCER's submissions on the medium-term target decision will contend that the FWC's construction of the terms of each of section 284(1) and 134(1) of the *Fair Work Act* are erroneous and will address the FWC's views at paragraphs 50, 57 and 58 of the decision. ACCER will contend that the FWC has failed to identify its fundamental obligation to set a safety net which, of its nature, is intended to protect the living standards of workers. In setting such a safety net the FWC is obliged to take into account the specified factors in sections 284(1) and 134(1), which have an operation that is ancillary to the fundamental obligation of setting a safety net for the benefit of workers. The FWC's construction of these sections disconnects the particular matters to be taken into account from the FWC's fundamental obligation. ACCER notes that the FWC's views draw on the analysis of the same sections in the Penalty Rates Decision. ACCER contends that the construction adopted in the Penalty Rates Decision was erroneous and should not be followed." (Paragraph 18)

The Preliminary Decision

1083. The statutory construction issues are raised by a number of passages in the Preliminary Decision which deal with the terms of the legislation and the particular issue of whether the setting of a medium term target for the level of the NMW is permissible or desirable:

"[44] The Act requires the Panel [when conducting an annual wage review] to take into account a number of considerations in performing these functions. The relevant statutory considerations are set out in the object of the Act (in s.3), the

modern awards objective (in s.134(1)) and the minimum wage objective (in s.284(1)). The Panel must conduct the Review within the legislative framework of the Act.

[45] It is clear, and uncontroversial, that in the context of a particular Review the Panel cannot 'bind' future panels in subsequent reviews. It follows that any attempt to adopt a 'hard' or binding medium term target for the NMW would be ineffective (even if it were accepted that the Panel had power to adopt such a target). The issue then becomes whether any useful and appropriate purpose would be served by adopting a more 'flexible' medium term target of the type described by the ACTU and United Voice. For the reasons that follow, we think not.

1084. The reasons for the rejection of the setting of soft target are then set out in the context of a consideration of the statutory terms. The constructions given to those terms, which we contend were erroneous, were not necessary for the conclusion to reject the claim for a soft medium term target. The rejection of the soft medium term target could have been made on the basis of the construction of the legislation for which ACCER contends.
1085. ACCER does not, therefore, seek to demonstrate that the conclusion in the Preliminary Decision to reject the setting of a medium term target was wrong; rather, its concern is with aspects of the reasoning that lead to that conclusion.
1086. The aspects of the reasoning in the Preliminary decision that we challenge were drawn from the *4 yearly review of modern awards – Penalty Rates, Decision* [2017] FWCFB 1001 (Penalty Rates Decision) of 23 February 2017. The Annual Wage Review Panel referred to the consideration of the statutory provisions in that decision and adopted that reasoning, and the "principles" identified, with the conclusion: "We intend to conduct the 2016-17 Review in accordance with the principles set out above." (paragraph 78).
1087. The paragraphs leading to the conclusion in paragraph 78 set out the relevant statutory terms: section 3 (the object of the Act), section 284(1) (the minimum wages objective), section 134(1) (the modern awards objective) and section 578(a) (which requires the FWC takes into account the object of the Act when performing its functions or exercising its powers). It concluded:

"[50] Sections 134, 284 and 578 of the Act each direct the Panel to 'take into account' certain specified considerations in conducting and completing an AWR. A matter which the Panel is directed to 'take into account' is a relevant consideration in the *Peko-Wallsend* sense;[footnote to citation] which is those matters which the decision maker is bound to take into account and treat as matters of significance in the decision making process. [footnote to cases] No particular primacy is attached to any of the considerations identified in the

modern awards objective (s.134(1)(a)(h)) or in the minimum wages objective (s.284(1)(a)(e)). For our part we would observe that the weight to be attributed to a particular statutory consideration may vary from year to year depending on the social and economic context in a particular Review."

1088. In the following paragraph of the Preliminary Decision a distinction is drawn between three broad categories of the considerations to be taken into account in regard to each wage setting function: economic, social and collective bargaining. The social considerations are discussed at paragraphs 52 to 55.

1089. We should note that these social considerations are employee-specific and do not relate to the interests of employers. In regard to the obligation to take into account the needs of the low paid the FWC repeats a passage used in past annual wage review decisions:

"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." (paragraph 55).

1090. By way of summary the Panel stated:

"[56] As the Panel has observed in previous Review decisions, there is often a degree of tension between the economic, social and other considerations which the Panel must take into account and, as we have mentioned, *no particular primacy is attached to any of these considerations*." (footnote omitted, emphasis added)

1091. The particular matters to be taken into account in sections 134(1) and 284(1), like other frequently found statutory provisions which guide and constrain the exercise of statutory discretions by tribunals and decision makers, do not contain a stated weighting or primacy. However, the weight to be given to each of the matters may be determined by the purpose for which the statutory power is given. The statutory context may mean that some matters may be more relevant and should command greater attention by the decision maker. Where a statutory power is conferred to protect a particular interest, having regard to, or taking into account, a range of considerations which may promote or constrain the purpose of the power, each of the identified considerations would not carry the same weight. A decision maker could not be indifferent to the relative importance of those matters in achieving the statutory purpose. This does not prevent or inhibit the decision maker from considering all of the facts and circumstances relevant to each statutory consideration and drawing conclusions about each of them. In the context of the obligation on the tribunal to set a safety net wage, the relative living standards and the needs of the low paid (see

section 184(1)(c)) will have particular importance.

1092. The purpose for which the specified matters are to be considered is discussed by the FWC in paragraph 57:

"[57] While the statutory considerations referred to must be taken into account it is important to bear in mind that these considerations inform the modern awards objective and the minimum wages objective, but they do not themselves constitute the relevant statutory objectives. The modern awards objective is to 'ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions.' The minimum wages objective is to 'establish and maintain a safety net of fair minimum wages.' These objectives are very broadly expressed and the notion of fairness is at the heart of both statutory objectives. *Fairness in this context is to be assessed from the perspective of the employees and employers covered by the NMW or the modern award in question.* [footnote: [2017] FWCFB 1001 at paras 117- 119.]" (Emphasis added)

1093. The specified considerations are to be taken into account for the purpose of setting a safety net, either a wage safety under section 284(1) or an award safety net under section 134(1). Fairness is, to use the words of the FWC, at the heart of both statutory objectives. However, the last sentence of paragraph 57 is, we contend, inconsistent with the purpose of each of the safety nets required to be established under the two sections.
1094. ACCER contends that the last sentence of paragraph 57 is erroneous and not consistent with the proper construction of the terms of sections 284(1) and 134(1) and the object of the Act in section 3. The adjective *fair* in each of the sections relates to the *safety net* which is to be established for the benefit and protection of workers.
1095. The term safety net is not defined in the legislation, but its common meaning and purpose in relation to wages recognise the need to protect vulnerable workers. This is not a question of fairness between parties, such as would arise in the case of a claim of unfair dismissal or in the resolution of many industrial disputes between a particular employer and its employees. It is more in the nature of health and safety requirements that protect workers even though these requirements are against the economic interests of employers. There are various obligations imposed on business, including the obligation to pay tax, which do not depend upon the application of fairness test as between a particular employer and a particular employee, or some other party.
1096. This means that the safety net has to be fair for the workers, with due account taken of the various matters specified in those sections, which include economic interests of employers generally and the social considerations of that apply to workers. Those

factors are taken into account for the essential purpose of protecting the living standards and working conditions of workers, not to protect employers. The economic matters identified in those sections are to protect the economic interests of employers against the unreasonable setting of minimum wages and award conditions.

1097. Sections 284(1) and 134(1) are beneficial provisions. For these reasons the wages and other terms and conditions under those sections are not simply set by the balancing of the interests of employers by the test of fairness as described in paragraph 57 of the Preliminary Decision.

1098. The footnote to the last sentence of paragraph 57 of the Preliminary Decision is to paragraphs 117-119 of the Penalty Rates Decision, which read:

"[117] First, fairness in this context is to be assessed from the perspective of the employees and employers covered by the modern award in question. So much is clear from the s.134 considerations, a number of which focus on the perspective of the employees (e.g. s.134(1)(a) and (da)) and others on the interests of the employers (e.g. s.134(1)(d) and (f)). Such a construction is also consistent with authority. In *Shop Distributive and Allied Employees Association v \$2 and Under (No. 2)* [footnote] Giudice J considered the meaning of the expression 'a safety net of fair minimum wages and conditions of employment' in s.88B(2) of the Workplace Relations Act 1996 (Cth) (the WR Act). That section read as follows:

‘88B Performance of Commission’s functions under this Part ...

- (2) In performing its functions under this Part, the Commission 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.’

[118] As to the assessment of fairness in this context his Honour said:

‘In relation to the question of fairness it is of course implicit that the Commission should consider fairness both from the perspective of the employees who carry out the work and the perspective of employers who provide the employment and pay the wages and to balance the interests of those two groups. This must be done in the context of any broader economic or other considerations which might affect the public interest.’[footnote]

[119] While made in a different (albeit similar) statutory context the above observation is apposite to our consideration of what constitutes a ‘fair ... safety net’ in giving effect to the modern awards objective. We would also endorse the

following observation by the Full Bench in the Equal Remuneration Decision 2015:

‘We consider, in the context of modern awards establishing minimum rates for various classifications differentiated by occupation, trade, calling, skill and/or experience, that a necessary element of the statutory requirement for ‘fair minimum wages’ is that the level of those wages bears a proper relationship to the value of the work performed by the workers in question.’[footnote]"

1099. The first part of paragraph 117 of the Penalty Rates Decision focuses on some of the statutory considerations in section 134 (1) without consideration of the way in which they relate to the primary obligation to set a fair safety net of award terms and conditions. The statutory task under section 134(1) is not simply to balance the competing interests of employers and employees according to the criterion of fairness. The economic considerations in paragraphs 134(1)(d) and (f) are relevant to the setting of a fair safety net for workers and their proper consideration may provide a constraint or limitation on the content of the safety net.
1100. The view in paragraph 117 of the Penalty Rates Decision and paragraph 57 of the Preliminary decision that the legislation applies fairness as between employers and employees by reference to the specified considerations is said (in paragraph 117) to be "consistent with authority". Two decisions are referred to *Shop Distributive and Allied Employees Association v \$2 and Under (No. 2)* (the \$2 case) and the *Equal Remuneration Decision, 2015*.
1101. The principal authority relied upon for the view that the fairness in this context involves a determination of fairness as between employers and employees is the decision of the President of the Australian Industrial Relations Commission (AIRC), Giudice J, in *Shop Distributive and Allied Employees Association v \$2 and Under (No. 2)* PR941526 (\$2 Case). This was a dissenting decision, as the FWC noted (see below), with the majority comprising Senior Deputy President Watson and Commissioner Raffaelli.
1102. The \$2 Case decision, which was delivered on 3 December 2003, arose out of a letter of demand and a log of claims served by the Shop, Distributive and Allied Employees Association (SDA) on some 35,877 employers in the retail industry in Victoria and concerned the appropriate rate for the remuneration of Sunday work. The SDA argued for double time, which was contested by employer organisations, who argued the rate should be time and a half. The majority decision sets out the arguments on behalf

of the parties to the dispute. It appears from the majority decision that the construction of the legislation as adopted by Giudice J was not relied upon by the parties opposing the SDA's claim: the President (at paragraph 6) agreed and adopted the account of the evidence and submissions given by the majority, which did not include a reference to such an argument. The substantive basis for the President's dissent are in the paragraphs that follow the paragraphs quoted in the Penalty Rates Decision; see paragraphs 12 to 28 of the dissent, which follow immediately after the paragraph quoted in the Penalty Rates Decision. At paragraph 12 he stated "In fixing penalty rates in a safety net award it is appropriate to have regard to the penalty rate structure in the award under consideration and in other relevant awards including awards applying to the same industry in other states". These matters appear to be the basis upon which the President came to his decision.

1103. The Penalty Rates Decision notes that Giudice J dissented. The footnote referring to this aspect includes "We note that Giudice J was in the minority in the result, but the observation cited is consistent with the views of the majority at [124]." That paragraph in the majority decision reads:

"In our view, those departures from the interim award, directed to reflecting the reality that retailing in Victoria is a seven-day a week industry, provide sufficient beneficial conditions for employers and there is no justification for further departure from the interim award in respect of penalty rates for Sunday work in ordinary hours. In the context of the departures from the interim award provisions arising out of the January 2003 decision, we are confident that our decision in respect of Sunday penalties strikes an appropriate balance between fair safety net conditions and proper compensation of employees in respect of the disabilities associated with Sunday work and flexibility for employers to staff their establishments on Sundays, without deterrence of Sunday trade."

1104. ACCER submits that this does not amount to support Giudice J's view and that the view of the majority can be described as consistent with that view. The majority's extensive consideration of the issues involved (commencing at paragraph 90) includes the following passage under the heading Fair Minimum:

"As indicated above, we think the primary focus in assessing a fair minimum standard for the penalty for work in ordinary hours on a Sunday, in the context of living standards generally prevailing in the Australian community, is found in the interim award provisions and beyond that, to a lesser degree, in award provisions operating more generally in the Victorian retail sector." (Paragraph 119)

1105. This approach is consistent with the objective of providing fair compensation for employees on account of the disabilities associated with working on Sundays, with

the decision being based on the need to compensate employees, rather than on striking some kind of balance between the interests of employers and employees. There is no reason to conclude that the decision of the majority supports, even implicitly, the construction of the legislation in the dissent.

1106. It appears clear that Giudice J did not seek to base his dissent on a construction of the legislation that decisions should be fair as between employers and employees, but on a consideration of the penalty rate structure in the award before him and in other relevant awards. It was not and, we submit, was not intended to be the reason for the dissent. A closer consideration of the majority and minority decisions shows that this footnote claims too much. The \$2 Case should not be treated as "authority" as has been done by the FWC in both recent decisions.

1107. Furthermore, the view expressed by Giudice J now relied upon by the FWC was made in respect of a different statutory scheme. It would serve no purpose now to debate the correctness of the observation; but we should note that, in regard to the setting of minimum wage rates, ACCER's submissions to the safety net review cases conducted by the AIRC under the same legislation until it lost its jurisdiction to set minimum wage rates in 2005 were inconsistent with the observation.

1108. The second authority relied upon by the FWC in the Penalty Rates Decision is the *Equal Remuneration Decision 2015* [2015] FWCFB 8200. It endorsed the following passage in that Full Bench decision:

‘We consider, in the context of modern awards establishing minimum rates for various classifications differentiated by occupation, trade, calling, skill and/or experience, that a necessary element of the statutory requirement for ‘fair minimum wages’ is that the level of those wages bears a proper relationship to the value of the work performed by the workers in question.’[footnote]"

1109. This passage does not support the contention that the setting of award terms and conditions under the current legislation is a matter of determining a level of fairness between competing interests, i.e. those of employers and employees. In fact, it supports the view that the essential function in the setting of award wage rates is to recognise and give monetary reward the value of the work performed by the workers and not merely to provide a balance between the competing economic interests of employers and their workers. The essential purpose of the setting of these wage rates as part of the award safety net is to protect and ensure that workers who have and exercise skills and responsibilities are properly rewarded. Whether or not the outcome of this process may be regarded as fair to employers is not relevant.

1110. The Preliminary Decision, like the Penalty Rates Decision, fails to consider the nature and requirement of a safety net. The purpose of the NMW safety net under section 284(1), like the award safety net under section 134(1), is to ensure a level of protection for workers who do not have the capacity to bargain for a fair outcome for themselves.
1111. We noted earlier that the Preliminary Decision repeated a passage used in past annual wage review decisions in regard to the obligation to take into account the needs of the low paid: "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."
1112. We note, however, that the principles identified by the FWC as those which it will apply in the current wage review do not include any reference to a passage that is also found in successive annual wage review decisions. 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, paragraph 33, emphasis added)*
1113. The last sentence has been repeated in all three subsequent decisions. It is a fundamentally important matter because it recognises the essential nature of the safety net: it should protect workers against poverty, at the least, yet it is not included in the principles to be applied in the current wage review. The FWC's use of the term "reasonable expectation" is significant because it recognises the need for workers to be given a basic level of protection without having to demonstrate fairness to employers. This objective is, we submit, an obligation under the legislation and not merely an aspiration.
1114. The provenance of the first sentence of the previous quote is discussed in ACCER's March 2017 submission at paragraphs 169 and 395, which emphasise the requirement to protect workers against poverty.

Harvester

1115. The essential purpose of minimum wage legislation is to protect workers. This beneficial nature has been accepted from the earliest days of minimum wage setting,

as illustrated by the first national decision on such a matter in the Commonwealth Court of Conciliation and Arbitration. In *Ex parte H. V McKay* (1907) 2 CAR 1 (the *Harvester case*) a manufacturer of agricultural implements, H.V. McKay, sought an exemption from the imposition of excise duties imposed by the *Excise Tariff Act 1906*. The Act provided that the duties would not be payable in respect of goods manufactured in Australia under conditions of remuneration which were declared by the President of the Court to be fair and reasonable. The President of the Court, Justice Higgins, was required to ascertain whether the terms of remuneration were fair and reasonable.

"The provision for fair and reasonable remuneration is obviously designed for the benefit of the employees in the industry; and it must be meant to secure to them something which they cannot get by the ordinary system of individual bargaining with employers. If Parliament meant that those conditions shall be such as they can get by individual bargaining - if it meant that those conditions are to be fair and reasonable, which employees will accept and employers will give, in contracts of service - there would have been no need for this provision. The remuneration could safely have been left to the usual, but unequal, contest, the "higgling of the market" for labour, with the pressure for bread on one side, and the pressure for profits on the other. The standard of "fair and reasonable" must, therefore, be something else; and I cannot think of any other standard appropriate than the normal needs of the average employee regarded as a human being living in a civilised community. I have invited counsel and all concerned to suggest any other standard; and they have been unable to do so. If, instead of individual bargaining, one can conceive of a collective agreement - an agreement between all the employers in a given trade on one side, and all the employees on the other side - it seems to me that the framers of the agreement would have to take, as the first and dominant factor, the cost of living as a civilised being. If A lets B have the use of horses, on the terms that he give them fair and reasonable treatment, I have no doubt that it is B's duty to give them proper food and water, and such shelter and rest as they need; and as wages are the means of obtaining commodities, surely the State, in stipulating for fair and reasonable remuneration for the employees, means that the wages shall be sufficient to provide these things, and clothing, and a condition of frugal comfort estimated by current human standards. This, then, is the primary test, the test which I shall apply in ascertaining the minimum wage that can be treated as "fair and reasonable" in the case of unskilled labourers." (*Ex parte H. V McKay* (1907) 2 CAR 1, 3-4)

1116. *Harvester* was based on the provision of a level of remuneration that we would now describe as a safety net wage, which was to protect the living standards of workers who, if exposed to the labour market and, in some cases, to unscrupulous employers, would be denied a decent standard of living for themselves and their families, i.e. "a condition of frugal comfort estimated by current human standards". This passage

recognises that there is a minimum standard of living that should be guaranteed regardless of an employer's economic interests. The minimum standard identified was not compromised by the level of profits in a particular establishment.

1117. The *Harvester* standard of living is echoed in the formulation used by the FWC which we quoted earlier: one in which the lowest paid 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." However, the living standard identified, and the income necessary for that standard, is the essential purpose of the safety net and not simply, as the FWC's analysis suggests, only one consideration in a range of considerations in the setting of the wage safety net.
1118. ACCER submits that the purpose of a safety net wage set under the terms of section 284(1) is to provide the employee with 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. The error made by the FWC in the Preliminary Decision was to regard this matter as merely one of a number of factors to be balanced against, or constrained by, the estimated economic interests of employers generally.
1119. These issues concerning the construction of sections 284(1) and 134(1) are matters of great importance to the application of the legislation and the minimum wage and award protection provided for Australian workers. It is clear that they cannot be sufficiently considered by all interested parties and the FWC in the time available before the handing down of the decision in the current annual wage review. ACCER proposes, therefore, that these matters be listed as a preliminary matter in the Annual Wage Review 2017-18, with appropriate directions for the filing of submissions. ACCER also proposes that the matter be listed in sufficient time for a decision to be handed down by December 2017.

A policy on restoring past living standards

1120. ACCER's initial response to the FWC's rejection in the Preliminary Decision of the application for a medium term target was included in its April 2017 Reply submission,:

"In the absence of such a target, ACCER will ask the FWC to adopt a policy to increase the relative living standards of low paid workers over a period of time with a view to restoring the eroded relative living standards of the low paid to at least the level that applied when the NMW was first established (as the Federal Minimum Wage) in 1997. It will argue that such a policy can be adopted consistent with the FWC's statutory obligations." (ACCER Reply, April 2017, paragraph 11)

1121. This proposal has been raised in the context of the FWC's conclusion that low paid and award reliant have fallen behind community increases, a matter acknowledged once again in the Preliminary Decision:

"[54] The assessment of relative living standards focuses on the comparison between award reliant workers and other employed workers, especially non-managerial workers. [footnote] The relative position of award reliant workers has fallen over time. As noted in the *2015- 16 Annual Wage Review* decision:

'There is no doubt that the low paid and award reliant have fallen behind wage earners and employee households generally over the past two decades, whether on the basis of wage income or household income.'[see [2016] FWCFB 3500, paragraph 372]"

1122. The FWC has accepted that there are other ways in which the longer term changes (which have occurred over the past two decades) may be addressed:

"[73] We acknowledge the need to periodically assess the medium and long term consequences of successive Review decisions and have recognised that these decisions have both an immediate and cumulative impact. *But the adoption of a 'target' is not the only way of addressing the issue raised.* A chart on the minimum wage bite over the last 10 years is now included in the Statistical report. Parties can make submissions on the level and trends in the minimum wage bite in each annual wage review and the Panel can consider these submissions at that time. As outlined earlier, the Panel also tracks changes in other relevant indicators over time, including factors such as productivity, living costs and inflation, employment and financial stress. It is also appropriate that medium and longer term trends in these factors are considered as part of each Review." (Emphasis added)

1123. If the longer term cuts in the living standards are to be addressed more is needed than the ability of parties to present longer term data in each successive wage case. The use of the word "addressing" suggests that, over time, but not necessarily each year, action can and will be taken by the FWC to remedy the detriment. Unless there is some direction and purpose for these kinds of submissions the parties can have no confidence in the prospect of them being addressed.

1124. The policy that ACCER proposes has two parts. First, consistent with what the FWC has already said, the FWC accepts that since the NMW was first introduced in 1997 (and then called the Federal Minimum Wage), the relative living standards provided by the NMW and other minimum wage rates have fallen as a result of the falling relativity of those rates to Australian median wages. Second, the FWC accepts that, as a general objective to be pursued over time and consistent with its statutory obligations, it will progressively restore the relative value of those wage rates for the purpose of restoring the relative living standards of those workers and families who

depend, directly or indirectly, on minimum wage rates.

1125. ACCER submits that a policy of the kind proposed is consistent with the proper exercise of the statutory powers conferred on the FWC by sections 134(1) and 284(1) of the *Fair Work Act 2009*. The capacity to adopt a policy of this kind was summarised by Tracey J in *Gbojueh v Minister for Immigration and Border Protection* [2014] FCA 883, at 39:

“At both common law and under statutory judicial review a decision-maker will not commit jurisdictional error merely by having regard to a principle or policy when exercising a statutory discretion. Error, may, however, occur if the decision-maker considers him or herself bound to apply the policy without regard to countervailing considerations and acts accordingly. In *Elias v Commissioner of Taxation* [2002] FCA 845; (2002) 123 FCR 499 at 506-7 Hely J summarised the position as follows:

“The Commissioner is entitled to adopt a policy to provide guidance as to the exercise of the discretion, provided the policy is consistent with the statute by which the discretion is conferred. Thus if the statute gives a discretion in general terms, the discretion cannot be truncated or confined by an inflexible policy that it shall only be exercised in a limited range of circumstances. A general policy as to how a discretion will ‘normally’ be exercised does not infringe these principles, so long as the applicant is able to put forward reasons why the policy should be changed, or should not be applied in the circumstances of the particular case.”

See also: *R v Moore; Ex parte Australian Telephone and Phonogram Officers’ Association* [1982] HCA 5, (1982) 148 CLR 600 at 612; *Tang v Minister for Immigration and Ethnic Affairs* (1986) 67 ALR 177 at 189-190 (Pincus J); *Madafferi v Minister for Immigration and Multicultural Affairs* [2002] FCAFC 220, (2002) 118 FCR 326 at 358.”

1126. The High Court judgment in *R v Moore; Ex parte Australian Telephone and Phonogram Officers’ Association* referred to in this extract was a case where the general principle was applied to wage setting by the AIRC.
1127. The history of wage fixation in Australia demonstrates that the exercise of a discretion to set wages can be based on the formulation and application of principles and policies. The awarding more than a century ago of the *Harvester Basic Wage* across a range of industrial disputes demonstrates that the exercise of a discretionary power may be based on the application of principles and policies. Various forms of wage fixing in the past century have reflected the application of changing principles and policies. This has been consistent with general legal principles.

D. ACCER'S ORAL SUBMISSIONS, 18 MAY 2017

1128. The FWC held consultations with the parties on 17 and 18 May 2017 in Melbourne and Sydney, respectively. ACCER was represented in Sydney by Brian Lawrence, past-chairman of ACCER, and Fr. Frank Brennan SJ AO, Chief Executive Officer of Catholic Social Services Australia. The following paragraphs are copied from the first part of those submissions, with some minor corrections to the passages that appear in the transcript. Further on we refer to the submissions made about child poverty.
1129. We would like to introduce our submissions with a reference to the historical context of the setting of minimum wage rates in Australia, in particular the fact that this year is the 110th anniversary of the *Harvester* case. It is an anniversary that should be marked in this annual wage review because the Fair Work Commission is the successor to the court which decided that case. For 110 years this tribunal and its direct predecessors have had to consider the fairness of minimum wage rates. This is a history worth commemorating. There is probably no tribunal in the world that can trace its involvement in this kind of work to an earlier date.
1130. Three days ago in Melbourne the Fair Work Commission marked this anniversary with a shortened re-enactment of the *Harvester* hearings. The publicity for that event, described as *Harvester revisited* stated:
- “2017 marks the 110th anniversary of the historic Harvester case, a key decision leading to the introduction of Australia’s first minimum wage in the 1920s. In honour of this anniversary, the Fair Work Commission is presenting a mock hearing in which the Harvester case will be revisited.
The event seeks to acknowledge the importance of the Harvester case, and demonstrate how principles from that historic decision continue to influence the Commission today.” (Emphasis added)
1131. The mock hearing was held in the Supreme Court of Victoria building in William Street Melbourne, the very building in which the Commonwealth Court of Conciliation and Arbitration sat in October and November of 1907 to hear and determine *Harvester*. The Court was then constituted by the President, Mr Justice Henry Bournes Higgins, who was also a judge of the High Court of Australia. The re-enactment of *Harvester* was the Fair Work Commission’s contribution to Melbourne’s annual Law Week programme. It might be noted that there was no shortage of resource material for the mock hearing: the *Harvester* transcript runs to 647 pages. The evidentiary basis of the case was very substantial.

1132. It is true that *Harvester* continues to inform our current wages system. The legislation under which this annual wage review is conducted, the *Fair Work Act 2009*, was publicly launched by a speech entitled *Introducing Australia's New Workplace Relations System* at the National Press Club on 17 September 2008. The then Deputy Prime Minister, 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.)

1133. The campaigns around Australia for the setting of a living wage to protect workers had been under way for more than a decade before *Harvester* and a range of minimum wage rates had been set in some industries; but it was the intellectual rigour and the evidentiary basis of the judgment of Justice Higgins in a case about what constituted “fair and reasonable” wages that gave meaning to the term and provided the basis upon which minimum wage rates were set in later minimum wage disputes. The object of the living wage principle is to give workers a decent standard of living: a decent standard of living for themselves and their families.

1134. Before saying more about *Harvester*, we would like to return to this very week in May 1907, when the third Thursday of the month was the 16th May, not 18th May as it is today.

1135. A short walking distance to the north-west from where this Commission is now sitting in William Street, East Sydney, the State Court of Arbitration was then sitting at Chancery Square, an area now known as the Hyde Park Barracks. The Court of Arbitration, presided over by a judge of the Supreme Court of New South Wales, Mr Justice Heydon, was hearing a wage claim by the Shop Assistants’ Union in a case entitled *Shop Assistants’ Union v Mark Foy and the Masters Retailers Association*. Over several weeks the court heard evidence about the wages paid to shop workers and the adequacy of those wages. The proceedings were reported in the law reports section of *The Sydney Morning Herald*. The reports contained a recitation of the submissions and evidence, including exchanges between counsel and witnesses. On Tuesday 18 May 1907 the paper reported that William Lowe, who was the founder of one of Sydney’s iconic retailers, W. Lowe and Co., had given evidence in support of

the claim. He was a major employer at that time. The paper reported that Mr Lowe had deposed that he employed about 130 hands in manufacturing goods and between 40 and 50 people in his shops in George and Oxford streets.

1136. The paper also reported an exchange in Mr Lowe's cross examination.

"Mr. Kelynack: In what capacity do you come here, as an employer or an employee? -I come here as an employer, and also as a man who wants to give a living wage.

In reply to Mr. Kelynack, witness said that if the claims of the union were upheld it would mean an increase of about £6 a week in his wages sheet.

Mr. Kelynack: Are you not in competition with Mark Foy and other houses?

Witness: Yes; but I would like the Court to know that I am not giving evidence to harm employers. I am here to assist the employees in getting a decent living wage."

1137. In the same week as this significant case was being heard by the State Court of Arbitration, the Commonwealth Court of Conciliation and Arbitration was also sitting in Sydney, just another short walk away from here, this time to the south at the Darlinghurst Courthouse. At this time the President of the Court was Mr Justice O'Connor, another member of the High Court. The Law List in *The Sydney Morning Herald* of Thursday 16 May 1907 advised that there were five applications made under the *Excise Tariff Act* to be heard that day. This is the same legislation and the same kind of applications heard and determined by Justice Higgins six months later, after his appointment as the new President of the Court.

1138. The decisions in the five applications were reported in *The Sydney Morning Herald* of 17 May 1907. For various reasons none of them involved a contest and a decision as to what would be fair and reasonable wages. In regard to the application by Meadowbank Manufacturing Co., the paper reported:

"Mr. Peden Steel, on behalf of the Meadowbank Manufacturing Co., applied, under the Excise Tariff Act, for a declaration that the rates of wages paid were fair and reasonable. The object was to secure exemption from the clause requiring inspection by a Customs officer.

An affidavit by Ernest Samuel Trigg, on behalf of the company, was read. He also gave evidence stating that the company employed 250 to 270 men *under union conditions*. The matter would have been brought before the State Arbitration Court but for the fact that there was no dispute. He put in an agreement by the Clyde Engineering Company and Ritchie Brothers and their employees, which he said would have been the basis of the common rule.

His Honor (sic) said he was perfectly satisfied that the rates were fair and reasonable, and would remain in force so long as the schedule of wages embodied in the order was paid, or until further order." (Emphasis added)

1139. Mr Justice O'Connor sat in Adelaide in the following month to deal with similar applications, but none was a contest that required him to determine a fair and reasonable wages.
1140. The Darlinghurst Courthouse was the courthouse in which the High Court of Australia sat when in Sydney, as it was in this week in 1907. At that time, with Melbourne as the national capital, it might be said that the High Court was in Sydney on circuit. On Wednesday 15 May 1907 a public notice appeared in *The Sydney Morning Herald* announcing that a free public lecture, entitled *The Struggle for Existence*, was to be delivered by Mr Justice Higgins that night at the Chatswood Town Hall. The paper carried a report of the lecture on the following day.
1141. Justice Higgins was used to public lectures. Prior to his appointment to the High Court he had been a leading silk at the Victorian Bar, a member of the Victorian and Commonwealth Parliaments and a former Attorney-General of the Commonwealth. He was born in Ireland and came to Melbourne as an eighteen year old. Following his appointment to the High Court in October 1906 *The Catholic Press*, published in Sydney, recorded that he “has long been recognised as the first Equity lawyer in Australia. It has been the practice of leading lawyers in Sydney to refer important cases to him for his opinion”. It also reported that a prominent, but unnamed, Sydney lawyer had said that “A better man could not be found in the whole of Australia - certainly not in Sydney, where our Bar is very weak”. The writer noted that the last part had been “added sadly”. No doubt, there are many, possibly some in this hearing room, who would claim that times have changed in this regard over the past 110 years. It could be that an education and practice in Equity conditions the legal mind better to understand fairness in the resolution of the relations between unequal parties.
1142. It might be thought by those who do not know more about Henry Bournes Higgins that *The Catholic Press* was trumpeting the standing of one of its own. Not so. Justice Higgins was the Protestant son of a Protestant clergyman. The paper described him as the “most popular Irishman in Australia” and “the idol of the Irish people of Australia”. It claimed that “Ireland has no more patriotic son”.
1143. The Commonwealth Court of Conciliation and Arbitration was established by the *Conciliation and Arbitration Act 1904*. Justice Michael Kirby, one of Justice Higgins’ successors on the High Court, (and a member of a predecessor of this tribunal) commemorated the centenary of that legislation in a paper entitled *Industrial*

Conciliation and Arbitration in Australia – A Centenary Reflection. In referring to these early years he wrote:

“In a recent talk, claiming that a hundred years of conciliation and arbitration was "more than enough" ... a critic linked me and what he called my "present-day absurd perspectives" with Justice Henry Bournes Higgins. Little did he know that I could not have been more flattered.

In fact Higgins, like myself, traced his origins to Protestant Ireland. He was brought up in the Church of Ireland and educated by the Wesleyans. But he was greatly influenced (doubtless through his religious upbringing) by notions that we would now describe as based on fundamental human rights. In the 1890s Higgins embraced ideas that had been propounded in 1891 by Pope Leo XIII in his encyclical *Rerum Novarum*. As you will understand, it is no small thing for a person with such an Ulster background to adopt papal ideas. ...

Higgins saw conciliation and arbitration of industrial disputes as an idea inextricably linked to concepts of civil rights and basic human dignity. Civil rights was the language of the English common law. Basic human dignity was the language of *Rerum Novarum*.

Higgins' considerable intellect and sense of history helped him and his supporters to create what was described as "... an antipodean amalgam of Catholic social thought, the ideas of the Fabians, Sidney and Beatrice Webb and North American progressivism". It was this potent mixture that was to provide the intellectual under-pinning of the movement towards federal conciliation and arbitration in Australia. We forget the truth when we pretend that the national arbitral tribunal of this country was a mere agency of economics. From conception down to the present, it has been an agency of something more important - industrial equity, a "fair go all round" or, as many would now describe it, human rights.”

(<http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj>, 22October 2004, footnotes omitted)

1144. This connection was taken up by another son of a clergyman, former Prime Minister Bob Hawke, in the inaugural Bishop Manning Lecture in October 2010. Not only had Mr Hawke been the Australian Council of Trade Unions' industrial advocate in major wage cases and its President, his thesis at Oxford University was on the history of the Basic Wage from its colonial antecedents until 1953. Mr Hawke set the scene by referring to the debates at the Constitutional Conventions.

“In April 1891 delegates from the colonies meeting in Sydney for the first of three Conventions to draft a constitution for the proposed new nation – the Commonwealth of Australia – defeated a proposal to include a federal power in regard to conciliation and arbitration. Just a few weeks later, on 15th May 1891, Pope Leo XIII promulgated the papal encyclical *Rerum Novarum* (on Capital and Labour) which was to become a bedrock of the Church's teaching on social justice.

Most significantly *Rerum Novarum* profoundly influenced the thinking of Henry Bournes Higgins, a major advocate for the inclusion of a federal conciliation and

arbitration power and later the President of the Commonwealth Conciliation and Arbitration Court who formulated the concept of the basic wage in the 1907 Harvester Case. The incongruity of this influence was wryly remarked upon by Justice Michael Kirby in a 2004 lecture commemorating the centenary of the establishment of the Conciliation and Arbitration Court

But the logic, the humanity and the compassion of *Rerum Novarum* sat squarely with the embryonic arguments that Higgins had used at the Sydney Convention and these were arguments, now bolstered by the intellectual and institutional weight of *Rerum Novarum* that he was able to use with ultimate success at the 1898 Melbourne Convention.

As I have said my friends, this ground-breaking philosophy of *Rerum Novarum* deeply influenced the thinking and arguments of Higgins who (with Kingston from South Australia) finally won the day at the 1898 third, and last, Constitutional Convention by narrowly (22-19) securing the inclusion of the power for the Commonwealth to legislate for “conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limit of any one State.”

But even more remarkable was the way in which over the next eight years this conjunction of Ulsterman and Pope did so much to shape the social fabric of the evolving Australian nation. No bill in the history of the federal parliament has had a more tumultuous passage than that introduced on the 7th July 1903 to create the Commonwealth Court of Conciliation and Arbitration. Seventeen months and eight days elapsed before the bill received the Royal Assent on the 15th December 1904 – during that period one minister resigned, two governments fell and it was steered through the parliament under four different prime ministers.

It was three years later however – in the 1907 Harvester Case – that witnessed the ultimate fusion of the philosophy of the Pope and the philosophy and practice of the Ulsterman.

Higgins’ 42 shillings became known as the basic wage and was inserted in all federal awards as the foundational element of the whole award structure. The basic wage retained this important role for almost fifty years until the introduction in 1965 of the total wage.”

1145. The Commonwealth Court of Conciliation and Arbitration had been established to deal with interstate industrial disputes in accordance with the powers conferred by the *Constitution*. The *Excise Tariff Act of 1906* invested it with another function, with the central question being whether an applicant under that Act was paying fair and reasonable wages. *Harvester* differed from earlier cases of this kind because, having found that the wages being paid were not fair and reasonable, Justice Higgins then decided what would be fair and reasonable wages for the unskilled and skilled workers employed by the applicant employer.
1146. Because of that statutory test the *Harvester* judgment had no need to use the term “living wage”. However, Justice Higgins’ reasoning on what was a fair and

reasonable wage for unskilled workers came to be regarded as a living wage and the basis upon which the Court would arbitrate in settlement of industrial disputes. This continued even though the High Court ruled in 1908 that the *Excise Tariff Act* was beyond the constitutional power of the Commonwealth and invalid. The living wage which emerged from *Harvester* survived that ruling and became the Basic Wage.

1147. None of the people participating in the cases in the State Court of Arbitration case or the Commonwealth Court of Conciliation and Arbitration in the third week of May 1907 could have appreciated that in 110 years in a hearing room between the two courts a national wage tribunal would be considering the minimum wage rates for skilled and unskilled workers, with its decision having a direct impact on the wages and living standards of more than 20% of the Australian workforce and having an indirect effect on a similar proportion through the negotiation of collective and individual employment agreements.
1148. We must recognise the immense workload and responsibility placed on this Commission. We should also recognise the fact that this kind of task is left to an independent statutory body. The Commissions functions are sometimes called “quasi-judicial”, but in relation to wage setting they can be fairly described as judicial in nature. This kind of system is much more preferable than a wage setting system that depends on the decisions of the Legislative and/or the Executive branches of government.
1149. We should emphasise, however, the changes that have taken place in our understanding of the rights of workers. There is a connecting line from the living wage as it emerged from *Harvester* to currently recognised human rights. In our submissions of 29 March 2017 we have outlined the connection between the pursuit through the living wage principle and the development of an the articulation of the human right to decent wages, recognised in the *Universal Declaration of Human Rights* in 1948 and the *International Covenant on Economic, Social and Cultural Rights* in 1966. Having ratified that agreement, Australia is bound to enact legislation that gives reasonable and proportionate effect to the right under Article 7(a) of the Covenant “...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)).

1150. The *Fair Work Act 2009* now recognises the same kind of logical distinction identified by Justice Higgins. First, a wage set by reference to the inherent human dignity of workers and their families and the right to a wage that provides a decent standard of living for workers and their families. In addition to that, if the worker is possessed of further skills and responsibilities, he or she has a claim in justice to a wage that guarantees fair remuneration for those skills and responsibilities.
1151. The Basic Wage was absorbed into total award wage rates in 1965, but re-emerged in 1997 as the Federal Minimum Wage, albeit at a level that called out for the *Harvester* living test to be applied afresh. The *Fair Work Act* of 2009 established the national Minimum Wage as the general minimum wage entitlement across Australia. We refer again to the publicity for the mock hearing held earlier this week. The current legislation is very much informed by *Harvester*, but, as we have argued in our submissions, the enduring principles of *Harvester*, and our modern understanding of human rights, have not been applied.
1152. The foregoing paragraphs have been incorporated into a document published by ACCER *The Harvester minimum wage case and its importance to Australian society after 110 years* and is available at www.accer.asn.au. The document includes some further information on the people involved in the case.

ACCER's question to the FWC

1153. Following the presentation of the commentary on *Harvester*, ACCER turned to a critical question for the FWC and for the assessment of its decisions. The transcript of the submission reads:

"Can I just say by way of general introduction to the remaining comments that I want to make, the principal reason why the Australian Catholic Council for Employment Relations comes to these hearings and has been coming to these hearings for a number of years is our concern about the living standards of low paid workers and their families. In particular, the fact that children are living in poverty in working families.

If children were not living in poverty in working families we may not be here or we may not have the same role, or seek to have the same role that we have had over recent years. There's no doubt that many thousands of children in Australia are living in poverty in wage-dependent families. Even when there is a full-time worker in the family. Also we know that low wages are a primary or major reason at least for this situation. Wage increases targeted at the lowest paid workers will improve the lives of these children. No such targeted action has been taken by this Commission in the past six decisions to address this state of affairs. We ask this question and we ask it without any disrespect being intended to this Commission, but we ask it because we think a lot of low paid workers and their

families who are living in poverty would like us to ask this question, and the question is; how many children have to live in poverty before the Fair Work Commission take[s] appropriate action to relieve this poverty?

Now that may seem a little blunt and out of place but it's the sort of question that we believe ordinary workers would want to ask, and it would have been the question that Higgins J and all of those others who shaped the system that we now benefit from would have addressed when they were considering these issues 110 years ago." (PN1981-83)

1154. A response from the bench it pointed out that the FWC had to take into account employment effects of proposed increases and that it would not "do any good for poverty if very large wage increases lead to increased unemployment" (transcript PN1291. to which the response was:

"[W]e're not putting forward very large wage increases. We're saying that the wages should be set to provide a decent standard of living for people. That doesn't necessarily involve in any particular year very large wage increases. We've proposed wage increases this year certainly behind the amount claimed by the ACTU, they're still substantial, about \$30 generally and a bit extra for the national minimum wage, but we say they would not be excessive. We've proposed a phased approach to ensuring decent living standards and we'd say that the step that we propose this year is modest, it won't have unacceptable economic impact. If the Commission was to agree with us this year, we would be making another claim next year which would then have to be run in the context of the economic circumstances et cetera, of 2018." (PN1292)

1155. It was also put from the bench that large wage increases would be needed over time to achieve the target.

"What we have said is that over a period of - we've identified the base rate for cleaners as the target point for the national minimum wage. That's \$40, or we would like \$40 a week more than the national minimum wage and we've said that that - we should progress to that in a phased way. This year we have proposed that the step is a very modest step because we are seeking the national minimum wage to move to \$710 per week, but it's still only - less than \$7 more than the increase that we're seeking in award increases. So it's a modest increase and as you know from the evidence which was discussed yesterday, there's a very limited number of workers in receipt of the national minimum wage or the award equivalent, 160,000 I think the figure was. But it's a very small amount.

If you are to address the question of poverty among wage dependent families, many of whom are on a wage in excess of the national minimum wage, then you have to work out some way of doing it. Our answer is, our proposal is, well you start from the bottom up. You start moving up the national minimum wage, you review it each year, you don't lock yourself in, we haven't proposed that the Commission should lock itself into any particular increase in successive years. But you look at it step by step and we'll make out a case if you were to agree to an adjustment to the national minimum wage, we'd make out a case next year for that extra increase in the national minimum wage."

We say that looking at all the material that we've got, making the decision that - a decision about what's required for a decent standard of living, we need to get to the base rate for cleaners at least. There's (sic) be some opposition to that, we'll deal with it on the way through if the Commission are prepared to walk this path tentatively without committing itself to the end point, but we expect that by next year, at least next year, that we'll have more data particularly from the Social Policy Research Centre on the question of the needs of the low paid, and we will then have a better idea of whether our aim of the base rate for cleaners is an appropriate one or not." (PN1296-8)

1156. In response to a subsequent question from the bench it was said that the base rate for a cleaner would still leave people in poverty and be insufficient.

"How much further we go will depend on some other matters including that Social Policy Research Centre material but certainly we wouldn't argue that that's sufficient, that would be sufficient. But we're prepared to have a debate about that at some stage." (PN1301)

1157. The FWC was advised that the research by the Social Policy Research Centre is expected to be released in July or August of 2017.
1158. ACCER's submissions on the progressive adjustment to the NMW reflect the position that it has taken in past years and are well-known to the FWC. The relief of poverty and the addressing of the needs of the neediest workers should have priority in minimum wage setting. Poverty and low living standards should be targeted over successive wage cases. However, in its call for the FWC to take action to alleviate poverty, ACCER did not ask the FWC to commit itself, even conditionally, to setting the NMW at the base wage rate for a cleaner. ACCER has accepted that each year it would have to make out a case for successive increases and the economic and other circumstances will need to be taken into account and balanced against the importance of alleviating poverty, in particular, child poverty. The unacceptable level of poverty among wage-dependent families has to be addressed over time. ACCER proposed that it be done in conjunction with dollar, and not percentage, increases in the NMW and the award rates covering the lowest paid workers.
1159. As we will see in the next section, the 2017 decision, like earlier decisions, failed to target poverty. The "one size fits all" approach cannot target poverty and provide sufficient assistance to the neediest sections of the Australian workforce. There was no good reason to fail to address the needs of the neediest working families.

11

THE FAIR WORK COMMISSION'S DECISION OF 6 JUNE 2017

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**Working Australia, 2017:
wages, families and poverty**

CHAPTER 11

THE FAIR WORK COMMISSION'S DECISION OF 6 JUNE 2017

A. INTRODUCTION

1160. On 6 June 2017 the Fair Work Commission (FWC) published its *Annual Wage Review 2016-17, Decision*, [2017] FWCFB 3500 (June 2017 decision). A comprehensive review of the FWC's 206 page decision, which includes 723 footnotes, would be a monumental task if it were to be written for the benefit of those who are not familiar with the issues of minimum wage setting and the tribunal's earlier assessments and priorities. Even the explanation of the particular concerns of this review requires detailed consideration of the evidence before the FWC, the claims made by some of the parties participating in the wage review and the FWC's responses to those claims.
1161. The purpose of this review of the decision is to consider the impact of the decision on the low paid workers, in particular low paid workers with family responsibilities. These low paid workers might only be paid the National Minimum Wage (NMW) or the award rate fixed for a low paid award work classification or they may be paid an amount in addition to the applicable minimum wage rate, but which still leaves them low paid. Workers earning up to \$800.00 per week must be regarded as low paid.

The structure of this review

1162. This review of the June 2017 decision falls into three parts. The first, at sections B to I, deals with the living standards of low paid workers and their families, the wage claims made on their behalf and the continued rejection by the FWC of wage increases that would provide relatively more to those most in need. This part also contains commentary on the framework and operation of the minimum wage system. The second part, at sections J to L, takes a closer look at the FWC's consideration and findings regarding the relative living standards and needs of the low paid, which are critical considerations in its obligation to establish a safety net of fair minimum wages. The third part, at sections M to R, examines in more detail the FWC's minimum wage setting obligations and its own view of those obligations. The substance of this part is that the FWC has fallen into error, the effect of which is a self-imposed constraint on its ability and obligation to improve the standard of living of wage-dependent workers and their families, many of whom are living in poverty and many more of whom do not have a decent standard of living in excess of poverty.

The poverty question

1163. By way of further introduction, we refer to key points and a question which were put to the FWC by the Australian Catholic Council for Employment Relations (ACCER) at the FWC's consultations on 18 May 2017:

- The evidence is that many thousands of children are living in poverty in wage-dependent households even when there is a full time worker in the household. For example, *Poverty in Australia 2016*, a report prepared by the Social Policy Research Centre at the University of New South Wales and published by the Australian Council of Social Services in November 2016, which was based on research carried out in 2013-14, found that a large number of those living in poverty were in households where there was full time employment: 622,700 at the 50% of median poverty measure and 1,051,100 at the 60% of median poverty measure. *Poverty in Australia 2016* also found that 731,300 children under the age of 15 were living in poverty at the 50% of median level, with 1,048,900 in poverty at the 60% level. The evidence in regard to poverty in wage-dependent households is summarised at paragraphs 986-98, above.
- Low wages are the primary or a major reason for this level of poverty and wage increases targeted at the lowest paid workers will improve the lives of these children. The impact of low wage rates is compounded by the inability of many workers to obtain full time work. This is of particular concern to sole parents who are also burdened with the high cost and limited availability of adequate child care services.
- No such targeted action has been taken by the FWC in its decisions since 2011. In each year since then the FWC has awarded a uniform percentage increase in minimum wage rates which has failed to take into account the greater unmet needs of low paid workers.

1164. Low paid workers with family living in poverty are entitled to ask:

"How many children have to live in poverty in these wage-dependent families before the Fair Work Commission takes action to relieve this poverty?"

B. THE WAGE CLAIMS IN SUPPORT OF THE LOW PAID

1165. The March 2017 claim by the Australian Council of Trade Unions (ACTU) sought an increase of \$45.00 per week in the NMW and award wage rates up to the C10 award classification rate, then set at \$783.30 per week, which equated to an increase of 5.7% at that award rate, and an increase of 5.7% in all award wage rates above the C10 rate. The C10 rate is the base rate for a trade-qualified worker set by the *Manufacturing and Associated Industries and Occupations Award*. The ACTU's proposal for a tiered increase was based on the objective of providing the largest wage rises, in percentage terms, to the lowest-paid workers while preventing any further erosion of the skill-based wage relativities above the C10 rate. The claim for \$45.00 per week equated to an increase of 6.9% in the NMW.
1166. ACCER claimed an increase of \$37.30 per week in the NMW and an increase of \$30.70 per week in award wage rates. ACCER's claim was intended to provide relatively more to those most in need and maintain the real wages of those employed in higher award classifications. The claimed increase in the NMW equated to 5.5%. At the C10 rate ACCER's claim equated to an increase of 3.9%.

C. EXTRA ASSISTANCE FOR THE LOW PAID REJECTED

1167. The FWC awarded a uniform increase of 3.3% in the NMW and in all award wage rates.
1168. The FWC's decision moved the NMW to \$694.90, an increase of \$22.20 per week, which was \$22.80 less than that claimed by the ACTU and \$15.10 less than ACCER claimed. At the C10 award wage rate, which moved to \$809.10 per week, the increase was \$25.80 per week, which was \$19.20 less than that claimed by the ACTU and \$4.90 less than that claimed by ACCER.
1169. The June 2017 decision was the seventh year in a row that the FWC has awarded a uniform percentage increase in these minimum wage rates. In each year since 2011 the ACTU has made a similar tiered claim as that made in 2017, with the intention of providing relatively more to low paid workers. Like the ACTU, in each of its claims since 2011 ACCER has sought relatively more, in percentage terms, for low paid workers.
1170. For the seventh year in a row the ACTU and ACCER have failed in their claims for relatively greater wage increases for low paid workers. Not one dollar extra has been achieved for low paid workers.

1171. This "one size fits all" practice is at odds with the general intent of Australian public policy to give priority and preference to those most in need. This kind of preference is not just found in public policy: it is found in the widespread sense of fairness within the country and in the tradition of giving the battler a "fair go". The value of fairness, as we have used it in Australia, requires the recognition of the need to support the battlers, including low paid workers.
1172. The lack of this kind of fairness is more concerning when we consider that the FWC's decisions impact on the lives of hundreds of thousands of children who are living in poverty. This is why these battlers who struggle on low wages to support their children are entitled to ask "How many children have to live in poverty before the Fair Work Commission does something to alleviate our poverty?"
1173. Had the FWC been minded to convert the 3.3% figure into a flat dollar increase for low paid workers, as sought by the ACTU, the NMW would have been increased by a further \$3.00 per week, with proportionately less for those on higher wage rates up to the C10 rate. Over a period of time, and since 2011, the application of the tiered approach would have yielded a modest improvement in the lives of the low paid and their families. We can calculate the effect of this kind of adjustment over time by comparing the increases in the NMW and the C10 wage rate. Since 2011 the NMW has increased by \$125.00 per week (including the 2017 increase) while the C10 rate has increased by \$145.50 per week. This increase, which reduces across the higher wage rates towards the C10 rate, would provide significant support for low paid workers. ACCER has supported the awarding of a flat money amount for low paid award classifications, but has also argued that the NMW, as the base wage rate upon which the award system operates should also be adjusted.
1174. The FWC noted that some parties had proposed increases that would provide a "more substantial increase to the lowest paid and particularly those living in poverty" (paragraph 97) and responded.

"[98] In previous Reviews, the Panel has accepted 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. While we have not departed from that position, we acknowledge that the increase we propose to award will not lift all award-reliant employees out of poverty (measured by household disposable income below a 60 per cent median income poverty line), particularly those households with dependent children and a single-wage earner. However, to grant an increase to the NMW and award minimum rates of the size

necessary to immediately lift all full-time workers out of poverty, or an increase of the size proposed by some parties, is likely to have adverse employment effects on those groups who are already marginalised in the labour market with a corresponding impact on the vulnerability of households to poverty due to loss of employment or hours.” (Footnote omitted)

1175. Contrary to the suggestion in this paragraph, no party advocated an increase “of the size necessary to immediately lift all full-time workers out of poverty”. It would have been nonsensical to suggest it. The reference to an increase in the size proposed by some parties must include the ACTU and, presumably, ACCER which had sought substantially less than the ACTU, although ACCER’s claim in respect of the NMW was only slightly lower. The statement about possible employment effects does not specifically address the ACTU’s proposal for a tiered increase, with relatively more, in percentage terms, being paid to the low paid. The relationship between wage increases and employment levels is discussed in Chapter 6 of the June 2017 decision, but the discussion is in broad terms, with the general conclusion:

“[92] Our consideration of the international research on the impact of increases in minimum wages on employment, particularly the UK research, has fortified our view that modest and regular wage increases do not result in disemployment effects and that research suggests that the Panel’s past assessment of what constitutes a ‘modest’ increase may have been overly cautious, in terms of its assessed disemployment effects.”

1176. It is important to record that the reasons given by the FWC to reject the ACTU’s claim for relatively more were not supported by any apparent reasoning regarding its employment effects. There was no apparent consideration in the decision of the employment effect of the conversion of the 3.3% increase into a dollar amount for all those employed in a classification with a wage rate below the C10 level. There was no apparent consideration in the decision given to a lower percentage increase, for example, an increase of 3.0%, to balance the extra support given to those most in need.
1177. The FWC said that the increases would improve real wages and relative living standards:

“[93] The level of increase we have decided upon will not lead to inflationary pressure and is highly unlikely to have any measurable negative impact on employment. It will, however, mean an improvement in the real wages for

those employees who are reliant on the NMW and modern award minimum wages and an improvement in their relative living standards.

1178. It is true that the increase granted exceeded the increases in the Consumer Price Index over the previous 12 months; and it has continued the trend of recent years; but this takes no account of substantial increases in labour productivity. In regard to relative living standards, low paid workers with school age children will have substantial cuts in income through the withdrawal of the Schoolkids Bonus; but all workers who depend directly or indirectly on the NMW and award rates have had their relative living standards cut by the failure of the FWC and its predecessors to maintain earlier relative living standards.
1179. As we will see later, the reason for not giving consideration to these aspects of the ACTU's claim was the FWC's wages relativities policy. The FWC essentially approached its decision without regard to the ACTU's claim for greater support for the low paid because it took the view that a flat dollar increase at lower wage levels would reduce the award wage relativities within this group and reduce the wage relativities between the lowest paid and those on higher wage rates, including those on wages well in excess of the C10 wage rate. This has been the constant basis for the rejection of the ACTU's tiered proposals since 2011. Given this policy, not one dollar extra could be gained by the ACTU on behalf of the lowest paid.

D. POVERTY RECOGNISED, BUT REJECTED AGAIN

1180. The FWC recognised the widespread poverty in wage-dependent families, but has not accepted the responsibility for the alleviation of that poverty.

"[66] The high and continuing levels of child poverty indicate that the combination of wages and social welfare assistance, are not sufficient to ensure that the needs of all low-wage families are met. We view this as a serious matter for society. This conclusion is supported by the evidence that about one-third of people in poverty lived in households for which wages were the main source of income and that about half of these families had children." (Repeated at paragraph 487)

"The rise in inequality has been tempered in recent years. But it has left Australia with a legacy of relatively high inequality in earnings and in household disposable income, and disturbing levels of poverty especially among families with children." (Paragraph 68 and repeated at paragraph 489.)

1181. In a discussion of the various kinds of arrangements (including family payments) for the support of families, the FWC said:

“It is most important to evaluate whether these arrangements, together with the wages that can be earned, are sufficient to provide families with adequate incomes. The high and continuing levels of child poverty indicate that they are not and this is a serious matter for society. This conclusion is supported by the evidence provided by ACOSS, drawing on the 2016 *Poverty In Australia* report. This finds that about one-third of people in poverty lived in households for which wages were the main source of income; and that about half of families in poverty had children.” (Paragraph 468, footnote omitted)

1182. Despite this conclusion about the seriousness of the high and continuing levels of child poverty FWC was not prepared to give an extra dollar to the lowest paid so that those with family responsibilities might be better able to provide for their children.
1183. It is as if the FWC has decided that family poverty is the Commonwealth Government’s responsibility and one to be addressed through the welfare system. But the severity of the problem has been caused by the failure of the national minimum wage system over the past two decades or so to adjust minimum wage rates in line with rising community-wide incomes. Furthermore, the FWC knows that the Government’s budgetary strategy is to reduce the financial support for families, not increase it. We have a standoff between the institutions setting the wages safety net and the social safety net, with a devastating effect on the lives of the working poor and their families.

Cuts in the relative value of minimum wages have caused increasing poverty

1184. We need to recognise that the current high and continuing level of child poverty in wage-dependent families is to a great extent the product of past decisions by national minimum wage tribunals. The capacity of a low paid worker to support his or her family at a decent standard of living has been weakened by the decisions of wage tribunals that have left minimum wage rates lagging behind community wage levels.
1185. Over the past 20 years, at least, all minimum wage-dependent workers have seen a cut in the relative value of their wages. In August 2004 the NMW (then known as the Federal Minimum Wage) was 58.4% of median wages, whereas in August 2016 it was 53.8%. This is a figure given and accepted in the FWC’s decision of 6 June 2017; see paragraphs 396-7. Had the NMW maintained its earlier relativity to median wages, in early 2017 it would have been around \$730.20 per week, some \$57.50 per week more than it was.
1186. A longer term perspective of the failure to adjust minimum wage rates to reflect increasing community-wide incomes was given in the application made in the recent wage review by United Voice for the FWC to adopt, as a medium term target, the setting of the NMW at 60% of median wages.

1187. The ACTU's submission of 10 October 2016 in support of United Voice's application included a comparison between the NMW and its predecessors and median earnings from 1983. Until 1992 the minimum was never less than 7.0% above the 60% of the median. In August 1997, four months after the NMW was first set (and then called the Federal Minimum Wage), the NMW was 3.0% above 60% of the median. By 1999 the NMW had fallen to less than 60% of the median. Since 2008, it has been at least 9.0% below 60% of the median. In the four years from 2004, a period partly coinciding with the *Work Choices* years, the NMW dropped by about four percentage points. In each of the three years to 2016 the NMW has been at or very close to 11.0% below 60% of the median; see ACTU submission, 10 October 2016.
1188. If in early 2017 the NMW had been 60% of median wages (which was less than it was in 1997), it would have been around \$750.00, not \$672.70 per week. The difference of some \$77.30 per week is indicative of the degree to which NMW-dependent workers and other low paid workers who rely on safety net wage rates have suffered as a result of the disconnection between safety net wages and median wages.
1189. These figures demonstrate that the increasing level of poverty among wage-dependent families was primarily caused by the failure of wage setting tribunals to provide wage increases in line with, or broadly consistent with, community wage movements.
1190. The application by United Voice was rejected on the grounds that the setting of a target of the kind sought would be inconsistent with the terms of the *Fair Work Act* (which require an annual assessment of a range of specified considerations) if it were to be adopted as a firm target and of no practical utility if it were to be regarded as a flexible target; see *Decision* [2017] FWCFB 1931, 7 April 2017.
1191. The cuts in the relative value of minimum wages emerged prior to the establishment of the FWC in 2010 (when it was known as Fair Work Australia), but the FWC has not addressed its legacy. The FWC has been keen to press the point that in the recent years the disconnection between minimum wage increases and median wage increases has been halted, but the consequences of those earlier cuts have not been addressed and alleviated. The trend has not been reversed, as it should be. There is a very real danger that the earlier cuts in relative wages are being locked in by a tribunal that gives prominence to the statistics for the last few years. The FWC might wish to be judged by the events over the last few years, but it has a legacy and a reality of unacceptable levels of poverty that it must address and alleviate.

E. MEASURING RELATIVE LIVING STANDARDS AND POVERTY

1192. The declining relative value of minimum wage rates has been reflected in measures of the living standards of workers and their families. Relative living standards, and their changes over time, can be assessed by the use of comparisons between the incomes of minimum wage-dependent workers and their families and national median income. Living standards can also be measured by a comparison between the incomes of workers and their families and poverty lines. These poverty lines are relative poverty lines because they are set relative to the national median. The relevant data and calculations are well-known to the FWC and the parties that appear before it.
1193. Every two years the Australian Bureau of Statistics (ABS) publishes an estimate the national median equivalised disposable household income (MEDHI) which, through the application of equivalence scales, enables comparisons to be made between the living standards of particular kinds of households and the national median. The next publication is due for release in August 2017.
1194. This ABS data provides the basis for the calculation of relative poverty lines. Some regard a standard of living at 50% of the median as the poverty line; others regard 60% of the median as the poverty line, or the "risk of poverty" line. Since 2008 the Australian Fair Pay Commission and, from 2010, the FWC have calculated the poverty lines for various kinds of households using the 60% relative poverty line. To estimate changes in MEDHI and poverty lines between the ABS surveys the tribunals have relied on estimates of per capita national household disposable income published by the Melbourne Institute of Applied Economic and Social Research in its quarterly publication *Poverty Lines: Australia*.
1195. As indicated, there is no broad agreement on the level at which a poverty line should be set, with the parameters for debate being 50% and 60%. However, precision in the measurement of poverty is not needed because that is not the prime reference point for wage setting. The FWC has repeatedly said "those in full-time employment can reasonably expect a standard of living that exceeds poverty levels"; see, for example paragraphs 98 and 461 of the June 2017 decision. That higher standard was identified in the June 2017 decision:

"It is customary in this field of research to set a poverty line as either 50 or 60 per cent of the median value of the distribution of equivalent household disposable income. This income takes account of private income, taxes and transfers and household size. This form of poverty line is a measure of relative income, not of absolute needs. *We present the data for 60 per cent of median income on the basis*

that those in full-time work are entitled to expect some margin above a harsher measure of poverty." (Paragraph 463, emphasis added.)

1196. This is a significant point made by the FWC. It was implicit in earlier decisions, but it has now been made explicit that the 60% of median measure, which need not be called a poverty line, is the appropriate national living standard reference measure for wage setting purposes. The formulation is a sensible and appropriate way of describing an objective of minimum wage setting without being distracted by the measurement of poverty. It may be useful to drop any reference to poverty when using this measure and simply refer to it as the 60% of median living standard. We return to this standard when discussing the FWC's views on who, among the diversity of workers and family circumstances of contemporary Australia, is entitled to the standard identified.
1197. These measures of relative living standards and poverty are particularly relevant to the FWC's obligation under section 284(1) of the *Fair Work Act 2009* when setting a "safety net of fair minimum wages, taking into account [among other matters] relative living standards and the needs of the low paid".
1198. The cut in the relative value of wages, which we referred to earlier, has been reflected in changes in these measures of living standards. Changes in relative living standards and poverty lines are not necessarily the result of changes in wage levels because changes in income taxation and transfer payments also need to be considered; but, when taken into account, the financial impact of these changes have been very minor. The changes in the level of minimum wage rates relative to median earnings have been, almost exclusively, the cause of declining living standards.

F. CUTS IN RELATIVE LIVING STANDARDS AND INCREASING POVERTY

1199. The changes in relative living standards are illustrated in ACCER's calculations of the position of single workers and single breadwinner families over the years January 2004 to January 2017. ACCER calculated that the NMW-dependent family of a couple and two children fell further into poverty over these 13 years: from 3.2% below the 60% of median poverty line, with a poverty gap of \$20.37 per week, to 11.7% below it, with a poverty gap in January 2017 of \$129.51 per week; see paragraph 785, above. It also calculated that in January 2004 the NMW-dependent worker was 26.0% above the 60% of median poverty line, but by January 2017 had fallen to 15.4% of the poverty line; see paragraphs 785-6, above. However, see paragraphs 1076-7, above, for a very minor correction to the January 2017 figures.

1200. Because of the connection between poverty lines and median disposable incomes, these poverty line calculations can be converted into measures of relative living standards by reference to national median disposable incomes. The NMW-dependent family of a couple and two children fell from 58.1% of the median in January 2004 to 53.0% in January 2017. The single NMW-dependent worker without family responsibilities fell from 75.6% of the median to 69.2% over the same 13 year period. (These figures are calculated using Tables 27 and 28, above.) While the single person had a greater cut in terms of percentage points, the cut in income relative to the median was similar: the family fell by 8.8% while the single person fell by 8.5%. The slightly greater cut for the family was caused by the withdrawal of the Schoolkids Bonus at the end of 2016, a loss that outweighed earlier increases in family support payments for low paid workers.
1201. Similar calculations to these can be made in respect of other minimum wage rates. ACCER's poverty line calculations include calculations for the C10 and C12 wage rates on the *Manufacturing and Associated Industries and Occupations Award*. The C12 wage rate has been a significant reference point in ACCER's submissions over the years because it is virtually the same rate as the lowest rate fixed for cleaners, i.e. the wage rate which ACCER has identified as the target for successive NMW adjustments, pending the gathering of further data on the living costs of low paid workers and their families. The C12 wage rate is only 20 cents per week more than the lowest rate fixed for cleaners.
1202. ACCER's calculations show that the C12-dependent family of two adults and two children fell into poverty over the 13 years to January 2017: from 1.7% above the poverty line, with a margin over poverty of \$11.21 per week, to 8.5% below it, with a poverty gap in January 2017 of \$93.75 per week; see paragraph 785, above. Converting these figures to relative living standards by reference to the median, over the 13 years the C12-dependent family fell from 61.1% of the median to 54.9% of the median.

G. THE INTERACTION OF THE NMW AND AWARD WAGE RATES

1203. The discussion to this point has concentrated on the NMW and the C10 award wage rate prescribed by the *Manufacturing and Associated Industries and Occupations Award*. Under the award system introduced by the *Fair Work Act 2009* 122 "modern awards" were introduced to replace hundreds of awards operating throughout Australia. Given the diversity of the provisions that needed to be translated into the new awards a

number of inconsistencies emerged between these awards. This was evident in the wage rates that came into operation under the new legislation.

1204. Past awards covering the metals industry component of the *Manufacturing and Associated Industries and Occupations Award* had been the key awards in the Australian minimum wages system. The wage rate which is now the C14 wage rate of the *Manufacturing and Associated Industries and Occupations Award* was the rate adopted in 1997 as the appropriate rate for the setting of the Federal Minimum Wage, which became the NMW in 2010. In both 1997 and now the C14 wage rate is an introductory wage rate operating for three months, after which the C13 rate applies. The wage increase is \$20.00 per week.
1205. The rates set by the Manufacturing and Associated Industries and Occupations Award for the introductory period of employment and subsequently are not widely reflected in other award rates. The selection of awards in Table 6, above, show a range of wage rates that apply to unskilled workers upon engagement or after a short introductory period. Only 45 of the 122 awards have a wage rate equal to the NMW (see the June 2017 decision at paragraph 163), but in others the lowest wage rate is substantially more: for example, from 1 July 2017, with the NMW at \$694.90 per week, the lowest rate in the *Cleaning Services Award* is \$742.10 per week, the lowest rate in the *Waste Management Industry Award* is \$735.90 per week and the lowest rate in the *General Retail Industry Award* is \$763.20 per week. In most cases where the NMW is used it only applies for an introductory period, typically three months. In the *Restaurant Industry Award* and the *Hospitality Industry (General) Award* the NMW applies to the first three months, followed by the equivalent of the C13 rate in *Manufacturing and Associated Industries and Occupations Award*.

The Miscellaneous Award

1206. As its name suggests the *Miscellaneous Award* covers a variety of occupations not covered by other awards. There are various exclusions from its coverage, but, generally speaking, those exclusions concern higher paid occupations which had been excluded from award coverage before the introduction in 2010 of the new award system under the *Fair Work Act*. Under the *Miscellaneous Award* the NMW rate applies for three months, after which the rate is \$742.30 per week, which is the same as the C12 rate in the *Manufacturing and Associated Industries and Occupations Award*.

1207. In discussing the limited number of employees likely to benefit from ACCER's proposal in the 2016-17 wage review to increase the NMW by \$6.60 per week more than that set for low paid award rates, the FWC said:

"[161] We consider that there is a real possibility that even these proportionately low numbers are an overestimate. The *Miscellaneous Award 2010* covers employers and their employees who fall within 4 generically-defined classifications who are in an industry not covered by any other modern award. The wage rate for the lowest paid classification (Level 1) is aligned with the NMW. The exceptions to the broad coverage of the *Miscellaneous Award* are unlikely to have application to any significant number of low-paid employees. It is therefore difficult to identify any employees who are not covered by a modern award and to whom the NMW applies. It appears highly likely that many employers are not aware that their employees are covered by the *Miscellaneous Award*, and this may be reflected in the award reliance statistics." (June 2017 decision, footnote omitted)

1208. The matter referred to in the last sentence is of some importance to the operation and administration of the award system. It is undesirable that the scope of the operation of the *Miscellaneous Award* is likely to be unknown to many employers. Similarly, it is likely and undesirable that many employees do not know that they are covered by the award; and do not know that after three months employment they are entitled to an extra payment of \$47.40 per week.

1209. The FWC's conclusion in relation to the extent of award coverage over low paid workers also highlights the need to distinguish between the setting of the NMW and award rates. What is the role of the NMW when the vast majority, or even all, of the low paid are also covered by an award? The answer is that it does not matter because the NMW is intended to be set independently of awards and, as a consequence, it does not matter whether 50% or 100% of those covered by the NMW are also covered an award. The high, or even exclusive, coverage of low paid workers by awards, whether by an equivalent wage rate or by a higher wage rate, does not minimise the importance or nature of the obligation to set the NMW as a fair safety net wage.

H. THE RELEVANCE AND CONSEQUENCES OF INCONSISTENT AWARD RATES

1210. The FWC, in its discussion of its obligation to take into account the principle of equal remuneration for work of equal or comparable value and gender pay issues, stated that no party "contended that the NMW did not bear a proper work value relationship to award rates of pay" (June 2017 decision, paragraph 642). It is true that the relativities question has not been raised in connection with the equal remuneration, but, more

generally, ACCER has raised the relativity between the NMW and award wage rates through its repeated references over the years to the fact that awards provide different wage rates for unskilled work, i.e. the work upon which the NMW would be set and upon which award rates should be based. For example, in its submissions of March 2011 ACCER made the following submission in respect of the setting of the NMW:

"465. We submit that the provisions of current awards should not constrain the proposed increase. The minimum wage objective in the F W Act operates with the intent that the awards will give effect to decisions about what is a fair wage rate, not hinder it. Current award rates are not based on the evaluation of the needs of low paid workers. The establishment of a new system of national modern awards, as part of the Commonwealth's *Fair Work* reforms, was a process of award-making on uneven ground. As a result, the modern awards contain a variety of minimum rates for unskilled and basic entry level work."

1211. In its March 2013 submission ACCER once again pointed out the limited number of awards that would be affected by its proposed increase to the NMW and again commented on wage relativities:

"520. This is not a case where we are seeking a change to carefully established wage levels and relativities. The establishment of a new system of national modern awards, as part of the Commonwealth's *Fair Work* reforms, was a process of award-making on uneven ground. As a result, the modern awards contain a variety of minimum rates for unskilled and basic entry level work."

1212. ACCER has repeatedly sought greater increases in the NMW than it has sought for award rates in order to strengthen the NMW as a safety net wage. It has repeatedly referred to the different rates fixed for unskilled entry level work and has proposed that the NMW should rise to, at least, the base wage rate for cleaners. Because of the variety of rates for unskilled workers across the awards, this process would affect some awards, but not others. The wage rates in some awards would be overtaken by the NMW, with the consequence that they could be allowed to become redundant or be further adjusted so that they maintained a margin over the NMW.

1213. The Federal Minimum Wage was introduced by the Australian Industrial Relations Commission in 1997; *Safety Net Review-Wages-April 1997*, (1997) 70 IR 1. Vice President Ross, now the President of the FWC, dissented from the majority on the basis that the proposed minimum was inadequate and needed to be adjusted over time towards the "consensual poverty line". He referred to the consequences for higher paid classifications:

"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)

1214. In 1997 there was greater consistency between awards as a result of tribunal decisions over the previous decade than there is in 2017 as a result of the introduction of the current award system. Because unskilled work classifications have differing wage rates across the awards it is now not a simple matter of adjusting all award relativities as could have been done in 1997. In the current context some award relativities would need to be reviewed. If the NMW were to be moved over time to the base rate for cleaners, as proposed by ACCER, there would be no need to change existing relativities for those which do not have a minimum rate below that rate. For example, there would be no need to change the rates in the *General Retail Award* where the lowest rate is \$21.10 per week more than the lowest rate in the *Cleaning Services Award*.
1215. It should be noted that the FWC’s discussion of the setting of the NMW, from paragraph 146, concludes:
- “[164] If the NMW was set at a level above these modern award minimum wage levels it would raise for consideration whether the maintenance of a modern award minimum wage at a level *below* the NMW meets the minimum wages objective. There is also the added complication of any potential limitation on the Panel’s power to vary the classification structures in modern awards (as opposed to the variation of modern award minimum wages).
- [165] These issues warrant some consideration and they can be addressed in the submissions of all parties in next year’s Review.” (Emphasis and parenthesis in original)
1216. This may be a sign that the FWC is prepared to consider awarding a greater increase in the NMW than that applied to award wages.

I. HOPES RAISED, BUT DASHED

1217. In this section we refer to the FWC’s decision on 23 February 2017 in regard to Sunday penalty rates and return to United Voice’s unsuccessful application for the setting of a medium for the NMW. These two decisions are relevant to an assessment of the June 2017 decision because they set out the FWC’s views on the operation of sections 284(1) and 134(1) of the *Fair Work Act* in regard to the setting of the NMW and award wages. We return to this matter in section B.2.
1218. The two decisions are also relevant to an assessment of the June 2017 decision because in each of them there was an expectation that the annual wage review decision might take those decisions into account in a way that would be favourable to low paid workers. Any such hopes were dashed.

The Penalty Rates decision

1219. The implementation of the FWC’s decision in *4 yearly review of modern awards – Penalty Rates, Decision* [2017] FWCFB 1001 (Penalty Rates decision) will have a devastating effect on the living standards of the low paid and reduce the standard of living of many workers and their families. For many low paid workers, Sunday work, for which the compensation will be cut, has been necessary to make ends meet. Some will fall into poverty.
1220. The relevance and implications of the Penalty Rates decision is canvassed at paragraphs 18 to 30 of Chapter 1 of the June 2017 decision. Those paragraphs include a reference to submissions about whether and how minimum wage rates should be adjusted in response to that decision.
1221. Expectations had been raised in some areas by the FWC’s comment in the Penalty Rates decision in response to the argument that penalty rates were relied upon by workers to meet their needs. The FWC responded: “The needs of the low paid are best addressed by the setting and adjustment of modern award minimum rates of pay (independent of penalty rates)” (Penalty Rates decision, paragraph 823). Quite apart from the question of need, it was clear that the proposed substantial costs savings by employers could be a factor that would work in the favour of low income workers, many of whom work in the industries affected by the Penalty Rates decision. The FWC said:
- “It is not appropriate to take account of the decision in some quantifiable or mechanistic way to support a particular level of increase in the NMW or in modern award minimum wages.” (Paragraph 29)
- “The *Penalty Rates decision* does form part of the broad factual matrix against which the Review is conducted and, to that limited extent, we have taken it into account.” (Paragraph 30)
1222. In reality, the penalty rates factor meant nothing: low income workers, many of whom have suffered from the cuts in penalty rates, have received not one dollar more than higher paid workers who have not been subjected to any cuts in their penalty rates. Employers of low paid workers in hospitality and retail will have a windfall gain by the Penalty Rates decision, yet the financial capacity of those employers to pay the wages that will deliver a fairer, but still inadequate, safety net wage to workers was not part of the decision. It was lost in the “broad factual matrix” (to use the FWC’s words) for, we can only conclude, the reason that to give any extra to the low paid would disturb the relativities that have been central to the FWC’s decisions for the past seven decisions.

United Voice's application

1223. United Voice's application for the setting of a medium term target was rejected in the preliminary decision of 7 April 2017. In commenting on that decision in Chapter 1 of the June 2017 decision, the FWC said:

“[35] We also acknowledged the need to periodically assess the medium and long-term consequences of successive Review decisions and recognised that these decisions have both an immediate and cumulative impact. A chart on the minimum wage bite over the last 10 years is now included in the Statistical report. Parties can make submissions on the level and trends in the minimum wage bite in each Review and the Panel can consider these submissions at that time. As outlined earlier, the Panel also tracks changes in other relevant indicators over time, including factors such as productivity, living costs and inflation, employment and financial stress. It is also appropriate that medium and longer-term trends in these factors are considered as part of each Review.”

1224. These words were taken from paragraph 73 of the medium term target decision; see paragraph 1122, above. A person reading these words would have expected that the longer term trends exposed in the material in support of the application would have some discernible effect on the FWC's reasons and decision in the annual wage review. ACCER responded to the passage in its submissions on that decision; see paragraph 1123, above. The response included: “Unless there is some direction and purpose for these kinds of submissions the parties can have no confidence in the prospect of them being addressed.” ACCER proposed a policy of restoring past relativities, consistent with the FWC's statutory obligations; see paragraph 1124.

1225. Statistical reports showing the changes over the past 10 years do not capture all the damage done to the living standards of low paid workers and their families and with the passage of time the relevant data will be removed from the FWC's records. Referring to the past loss of minimum wage relativities has had no demonstrable effect in past annual wage reviews. In ACCER's March 2011 submissions, for example, comparisons were made between decade-long increases in the NMW (42.3%) and Average Weekly Ordinary Time Earnings (59.3%). But this kind of information, and much more from the ACTU, over the years has made no impact on the FWC's decisions; hence the application by United Voice to have the loss of relativity addressed.

1226. Despite the claimed openness to dealing with these past cuts to minimum wage rates, as shown in the medium term target decision, the June 2017 decision provides no evidence of a wish to address these matters. With no progress being made in 2017, it is hard to

imagine any future decision addressing the past unfairness in minimum wage setting. The FWC's decision does not acknowledge, as it should, that the current levels of poverty among low income working families have resulted from the cuts in safety net wages. Rather than this history informing and directing minimum wage decisions, it is being written out of FWC decisions.

J. THE STRUCTURE OF THE FWC'S DECISION

1227. The June 2017 decision of 206 pages contains a wide range of detailed material which follows a similar format to past decisions. The chapters in the June 2017 are structured in a similar manner to past decisions, with Chapter 1 being the Overview and the Decision. Many of the paragraphs are essentially updates of matters contained in previous decisions.
1228. The decision is set out in paragraphs 87 to 100 in Chapter 1. Paragraph 95 contains the decision to increase the NMW by 3.3% and paragraph 99 (which is reproduced at paragraph 1353, below) contains the decision to increase all award rates by 3.3%. These paragraphs refer to the "factors identified above" (regarding the NMW) and the "considerations to which we have referred" (regarding award wages) as the grounds for the decisions. Those factors and considerations cover social and economic matters in the similar way to past annual wage review decisions.
1229. Economic considerations are summarised at paragraphs 37 to 50, with a range of macroeconomic matters being covered. No distinction is made between "factors" relevant to the NMW and "considerations" relevant to award wage rates. This summary of economic considerations is drawn from Chapter 4, which comprises 50 pages of the 206 page decision, where, again, there is no distinguishable identification or consideration of the different matters that might arise in relation to the NMW and award wage rates.
1230. Social considerations are summarised at paragraphs 51 to 79 of Chapter 1. These paragraphs are mainly concerned with relative living standards and the needs of the low paid, which draw on the contents of Chapter 5. We return to the conclusions in respect of relative living standards and the needs of the low paid in the next two sections.
1231. The FWC's obligation requirement under sections 134(1) and 284(1) of the *Fair Work Act* to take account of "promoting social inclusion through increased workforce participation", which is discussed in Chapter 6 of the decision, is summarised paragraphs 69 to 76. The obligation to take into account "the principle of equal

remuneration for work of equal or comparable value” is discussed in Chapter 8 and is summarised at paragraphs 77 to 79. The obligation to take into account “the need to promote collective bargaining” is covered at paragraphs 80 to 86, which draw on Chapter 7.

1232. A notable feature of the paragraphs summarising social and economic matters is the conflation of the consideration of matters relevant to the setting of the NMW and the setting of award wage rates. We have commented on the same feature in our review of the May 2016 decision:

“... in deciding that a 2.4% increase should be applied to the NMW and the award wage rates, the FWC conflated what should have been two separate wage setting processes. We referred earlier to the FWC's references to "factors" in regard to the NMW and "considerations" in regard to award increases. A review of the May 2016 decision demonstrates that there is, however, no discernible list of factors relevant to the decision to award a 2.4% increase in the NMW and no discernible list of considerations relevant to the decision to increase award rates by 2.4%. There are no identifiable factors that relate to the NMW and no identifiable considerations that relate to award wages in the summary paragraphs in Chapter 1 and the substantive discussions of the economic and social issues in Chapter 4 and Chapter 5, respectively. It is clear that the FWC was considering the setting of a uniform figure for the NMW and award rates. Although the FWC refers to "factors" in regard to the NMW and "considerations" in regard to award rates, nothing turns on this distinction. This is, in our view, contrary to the requirement of the *Fair Work Act* that the NMW be set independently of award rates of pay.” (ACCER submission, March 2017; see paragraph 385, above)

1233. Whether in response to this submission or not, the FWC has sought to explain the awarding of the same increases in the NMW and award wage rates in each decision since 2011:

“... there is little practical difference between the range of considerations the Panel is obliged to take into account in making a NMW order and in reviewing and varying modern award minimum wages. In such circumstances it is hardly surprising that the 2, separate, functions have yielded the same result.” (Paragraph 149)

1234. This response does not distinguish between the fundamentally different purposes of the NMW and award wage rates. The NMW is intended as a generally applicable wage for workers covered by the *Fair Work Act* without regard to any compensation for the acquisition of skills and responsibilities, whereas award wages are intended to add compensation for those features of the work performed. The primary purpose of a safety net is to protect basic living standards for which an inquiry into and assessment of the needs of the low paid are required. This is a matter of great importance to the

setting of the NMW as a safety net wage and not one particularly relevant to the setting of award wages for higher paid classifications. Contrary to the FWC's claim that it is hardly surprising that the separate functions would have yielded the same increases, it is very surprising that for seven years, and in the face of continuing levels of poverty among low paid workers and their families, the FWC could award the same percentage increases to the lowest paid and the highest paid.

K. THE FWC ON RELATIVE LIVING STANDARDS

1235. Section 284(1)(c) of the *Fair Work Act* requires that the FWC take into account, among other matters, “relative living standards” when setting a safety net of fair minimum wages. Clearly, safety net wages have to be set in a social context. Taking into account relative living standards requires a comparison between the living standards of those who are to be protected by the safety net and the general living standards of the society, including relevant groups within society.
1236. Section 284(1)(c) also requires that the FWC takes into account “the needs of the low paid”. As the FWC has said, they are “different, but related, concepts” (at paragraph 51). The FWC's consideration of relevant living standards is at paragraphs 51 to 68 of Chapter 1 and paragraphs 360 to 459 of Chapter 5. Given the connection between relative living standards and the needs of the low paid, parts of these paragraphs are also relevant to an understanding of the needs of the low paid and how the wages safety net has provided for the needs of the low paid over a period of time.
1237. The FWC's consideration of relative living standards of safety net-dependent and low paid workers has focussed on comparisons in contemporary measures of wage earnings and household incomes, which take into account changes in taxes and transfers and changes those measures over time. The comparisons also take into account changes in average and median measures of community-wide earnings and disposable incomes and the earnings and disposable incomes of groups within society, in particular the earnings and disposable incomes of the low paid who depend on safety net wages. Most of this has been described by reference to the current levels of inequality and changes in inequality over time. Particular reference has been made to earnings inequality among wage earners and to the modifying effects on earnings inequality by the operation of the social safety net.

1238. The FWC reaffirmed its past views on the importance of an assessment of household disposable income. At paragraphs 405 and 406 it reproduced the following passages from its May 2016 decision:

“The relative living standards of employees on the NMW and award-reliant employees are affected by the level of wages that they earn, the hours they work, tax-transfer payments and the circumstances of the households in which they live. The net effect of these factors is summarised in the notion of equivalised household disposable income. It is therefore necessary to have regard to a range of measures of the relative living standards of the low paid and the household circumstances in which they live.”

“The effect of taxes and transfers on disposable incomes of the low paid is relevant to the needs of the low paid and their relative living standards, both in terms of specific changes in the tax-transfer system at the time of a particular AWR and in assessing broader information in relation to measures of the relative income of the low paid...”

1239. By way of summary, the FWC observed:

“[489] The rise in inequality has been tempered in recent years. But it has left Australia with a legacy of relatively high inequality in earnings and in household disposable income, and disturbing levels of poverty especially among families with children. The NMW and modern award rates of pay affect the level of earnings of the low paid and of many employee households with relatively low disposable income. Higher levels of safety net pay rates will assist low-paid individuals and families to better meet their needs, and improve their relative standard of living. As a consequence, increasing the NMW and modern award minimum wage will also have some effect in reducing poverty and inequality.”

1240. Unlike the targeted social safety net, income taxes affect all wage earners. Tax cuts and effective tax increases through bracket creep pushing up the average rate of income tax, have an impact whether or not the worker has family responsibilities. The FWC’s summary took into account recent changes in the social safety net, while noting that these changes do not affect all groups in the same way:

“[65] ... the changes to the tax-transfer system in the past 2 budgets have reduced the financial assistance that is provided for low-income families with children. A majority of low-wage workers are single without children and the many who work full time are not assisted by the social welfare system; indeed, they have their disposable incomes reduced by income tax.”

1241. The differential impact of the wages safety net and the modifying effects of the current Australian social safety net do not produce the same living standards across single person and family households where the single worker or the family breadwinner is on the same wage rate. This reality, which has ever been so since minimum wage rates

were introduced, raises the question of the nature and purpose of a safety net wage. We return to this question in section B.2.

Measuring relative living standards

1242. We referred earlier to the use of median equivalised disposable household income as a means of providing a community-wide measure against which the living standards of particular households can be measured and the use of that data to compare the living standards of those households by reference to relative poverty lines, which are set at a selected percentage of the median measure. The practice of the FWC, like the Australian Fair Pay Commission before it, is to refer to the 60% poverty line as a reference point, with living standards being measured by the percentage divergence above or below that line. A margin of 5% above the 60% poverty line is 63.0% of the median and 5.0% below the poverty line is 57.0% of the median.

Table 5.9

1243. Table 5.9 is an updating of a table that has been prepared for annual wage reviews since the Australian Fair Pay Commission introduced it in 2008. It compares the disposable incomes of 12 different kinds of wage-dependent households and their respective poverty lines, with a calculation of the margin above or below the poverty line for each of those households. Two years are chosen: December 2011 and December 2016. The format and data for those years are the same as those appearing in Table 41 in ACCER's Post-Budget submission of May 2017, which is reproduced at paragraph 1075, above. However, Table 41 also includes the same kind of information for December 2010, December 2015 and January 2017. We will return to Table 5.9 in the following section when dealing with the needs of the low paid, but at this point we note what it says about relative living standards and their changes over time.
1244. One of the FWC's conclusions drawn from Table 5.9 is that "all categories of family type and minimum wage type have had some small increase in their income relative to the selected measure of poverty over the period from 2011 to 2016" (paragraph 464).
1245. Table 5.9 does not, however, present an adequate picture of relevant recent changes. Cutting off the data at December 2016 and not factoring in the abolition of the Schoolkids Bonus from January 2017 is an unrealistic basis for a comparison of changes in relative living standards. Table 41, with its commencement in December 2010, is a better guide to recent changes in the relative living standards of safety net-dependent workers and their families than Table 5.9. When we take into account the

loss of the Schoolkids Bonus from January 2017 no kind of family with children has had an increase in its standard of living relative to the poverty line; and two of the eight had a one percentage point fall over this period. By comparison the margin over poverty increased by one percentage point for the single person.

1246. The earlier the datum point for measuring the changes in relative living standards, the greater will be the decline. This is because the substantial decline in the wages of safety net-dependent workers relative to the workforce as a whole occurred before December 2010. The FWC's practice of limiting its comparisons to the most recent five years or the previous decade progressively eliminates an important part of the history of the wage setting system and does not record its failure to maintain the relative living standards of safety net-dependent workers and their families.

Pensions

1247. In its submissions on relative living standards in March 2017 ACCER asked the FWC reconsider its assessment in the May 2016 decision that "a comparison with pensioners for the purpose of assessing the relative standards of the low paid is of very limited relevance". It argued that the FWC should treat "the level of pensions as having significant relevance and weight in the setting of safety net wages for low-paid workers". The request for reconsideration was based on material presented to the FWC in 2016 (the Pension Review Report), but not referred to, and on comments made in the May 2016 decision that suggested that the FWC had not considered that material. These submissions are set out at paragraphs 1002-04, above. The FWC claimed that the Pension Review Report was taken into account, despite, we can add, it not being mentioned, directly or indirectly:

"Whilst no direct reference was made to the Pension Review Report in the 2015–16 Review decision it was before the Panel by virtue of ACCER's submission and was taken into account along with the other extensive material before the Panel. We do not propose to depart from our conclusion in the 2015–16 Review decision." (Paragraphs 367-8, footnote omitted)

1248. The level of age and disability pensions and the living standards of those who receive them have been raised by ACCER in each of the wage cases since these pensions were reviewed and reformed in 2009. We cannot expect that the FWC will respond to every matter raised by the parties, but the failure of the FWC to even mention the data on these aspects (and this was the case again in 2017) suggests that it regards the level of pensions and the living standards of pensioners on the pensions safety net as having no significance.

1249. We have a situation in Australia where the pensions safety net for several million Australians provides a relatively higher standard of living for pensioners than that provided by the wages safety net, supplemented by family payments, for even a skilled worker (on the C10 trade-qualified award wage rate) with a spouse and two children; see paragraphs 812-6, above. The FWC might regard this of marginal interest and not worth mentioning, but for many low paid workers and those with a serious interest in public policy, it would be a matter of some importance. The FWC's failure to give significant weight to the pensions safety net when setting the wages safety net is inconsistent with a fair reading of the terms of section 284(1)(c).

ACCER's submissions on inequality

1250. Finally, in this section we refer to criticism by the FWC of ACCER's position on inequality and declining living standards. At paragraph 451 the FWC refers to paragraphs 52-3 of ACCER's submissions of March 2017, which are now at paragraphs 999 and 1000, above. ACCER's submission was that measures of increasing earnings inequality across the workforce do not truly reflect the greater increase in the earnings inequality of safety net-dependent workers. ACCER pointed out that across the workforce as a whole, the percentile with the lowest real wage increase, the 10th percentile (the bottom decile), had a greater wage increase than those depending on safety net rates. This meant that safety net-dependent workers had suffered greater increases inequality than other groups. Of course, low paid safety-dependent workers will be included in the lower deciles along with those with those in receipt of wages above the legal minimum. Their inclusion is part of the reason for the increases in those deciles being less than those of higher paid deciles.

1251. After noting that the NMW has not fully matched the growth in the bottom quarter of the earnings distribution over the previous years (at paragraph 451), the FWC continued:

“[452] ... But we reject the proposition implied by ACCER that it is inappropriate for us to focus on growth in the earnings of the lower deciles when considering the relative living standards and needs of the low paid, and instead that we should focus just on the relative values of the NMW and award rates. In the end, more important to the ability of workers to sustain a decent standard of living is what in fact they earn, not what the safety net provides. The fact that there has been some growth, albeit small, in the real value of the NMW and award rates means that those who remain dependent on the safety net have had their real earnings increased, even while their relative position has declined. In fact, we consider both minimum rates and low earnings, being aware as we do so that the influence

of changes to the NMW and award rates will be apparent in changes in the absolute and relative earnings of those at the bottom of the earnings distribution.

1252. This misses the point made by ACCER. However, we do say that it is inappropriate for the FWC to assess the relative living standards of the low paid safety net-dependent workers by focusing on the lowest paid workers across Australia who have suffered the most as a result of the growing income inequality within the Australian workforce. The focus should be on median and average wages. The second sentence in the quote is curious in the context of a decision of tribunal that should be concerned about the wages safety net providing a decent standard of living. Many workers need the wage safety net because they cannot get achieve a decent standard of living without it. The third sentence suggests that the FWC is prepared to accept a decline in relative living standards so long as the safety net maintains the real value of wages. In the context of the past cuts to the relative wage levels of safety net workers (i.e. relative to mean and average earnings), this is a very troubling matter. This restricted view of the importance of changes in relative living standards would condemn safety net-dependent workers to lower standards of living than those set by reference to community standards, whether measured by median or average measures.

1253. These responses from the FWC only heighten the concern that was expressed in ACCER's submissions about the impact of the FWC's conflation of income inequality across all sectors of the workforce and income inequality between safety net-dependent workers and the rest of the workforce community. This was evident in the following passage 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." (Emphasis added. This paragraph was repeated at paragraph 412 of the June 2015 decision.)

1254. ACCER's point was that changes in aggregate measures of inequality could not lessen the work to be done by the NMW and by award rates. Rather, the work required of the NMW should not be lessened until it can be fairly said that the NMW safety net provides a standard of living in excess of poverty and one which will enable workers and their families to purchase the essentials for a decent standard of living and engage in community life; see paragraph 1001, above.

ACCER misrepresented on discounting

1255. A component of ACCER’s wage claim was a claim for compensation for the loss of the Schoolkids Bonus, with further compensation for this loss in future wage cases. The FWC responded:

“[423] ACCER advocated an approach by which identified reductions in welfare payments under the tax-transfer system, in particular the abolition of the SchoolKids Bonus, were quantified in dollar terms and that the Panel would then include a component in any increase to the NMW and modern award wages to specifically compensate for such reductions. ACCER further proposed the development of a process for phasing in such increases over time, *and also to compensate for the past discounting of wage increases that ACCER asserts had been implemented by wage-setting tribunals* because of benefits to low-paid households in the tax-transfer system.

[424] We reject the proposition that past decisions of the Panel and its predecessors have erred in the manner in which they have taken into account changes in the tax-transfer system, and that this needs to be compensated for in this and in future Reviews.” (Footnotes omitted, emphasis added.)

1256. No such proposition about past decisions was put. The footnote to the first sentence in paragraph 423 is to paragraph 84 of ACCER’s March 2017 submission, now at 1031, above. The footnote to the second sentence is to paragraphs 89 and 93 of the same submission, which are now at 1036 and 1040, above. There is nothing in these paragraphs to support the claim. The claim by the FWC in paragraph 424, which is plainly directed at ACCER, is without any foundation. The explanation for the FWC’s error appears to be that it has misread the second sentence of what is now paragraph 1031, above, and has failed to see that it and the following paragraphs were concerned with cuts to benefits that had just come into effect (the Schoolkids Bonus) and about to come into effect (the freezing of family payments). Had the FWC raised this matter at the consultations on 18 May 2017, it could have been easily clarified.

L. THE FWC ON THE NEEDS OF THE LOW PAID

1257. Section 284(1)(c) of the *Fair Work Act* requires that the FWC take into account, among other matters, “needs of the low paid” when setting a safety net of fair minimum wages. Ordinarily understood, the needs of the low paid include the costs of necessities such as food, clothing, housing and transport and the costs of participation in a basic level of social activities.

1258. One can only set a safety net based on some assessment of these needs. Since its decision in June 2013 the FWC has said that 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 'decent standard of living' and to engage in community life, assessed in the context of contemporary norms"; see paragraph 71, above. This appears in the June 2017 decision at paragraphs 53 and 362. This passage incorporates the objective of the safety net wage, i.e. to provide a decent standard of living, and the requirement to take into account the needs of the low paid, i.e. the costs of goods and services, when setting the safety net wage. As we explain later (in sections B.2 and B.3) the objective of a decent standard of living which is implicit in the nature of a safety net wage, is not merely a factor to be taken into account when setting a minimum wage, but an intrinsic feature of a safety net wage. To treat a decent standard of living as a mere factor to be taken into account when setting the safety net wage is to misunderstand the nature and purpose of a safety net wage.

1259. An extraordinary feature of the eight decisions made under the *Fair Work Act* is that they have been made without any investigation into the costs of food, clothing, housing, transport, social participation, etc. which comprise the needs of the low paid and which, the statute intends, will inform the setting of the safety net wage. The NMW and award wages have been adjusted without regard any assessment of this kind. The FWC has repeatedly rejected applications for an investigation into the needs of the low paid. It has also rejected the Budget Standards research by the Social Policy Research Centre, which is the only Australian research into the needs of the low paid and the costs of them, on the basis that it lacks contemporary relevance. We refer to this research and the rejection of it at paragraphs 713 to 736 and 758, above. The Budget Standards research has been revised and updated with a release expected in August 2017.
1260. Instead of decisions being informed by an investigation into the various needs and costs of those needs, the FWC, like the Australian Fair Pay Commission before it, has relied on poverty lines as indicators of need; poverty lines have been treated as proxy measures of the basic material needs of the low paid. It has not, however, sought to equate the needs of the low paid with poverty lines. It has said in each decision since June 2013 that "those in full-time employment can reasonably expect a standard of living that exceeds poverty levels"; see, for example, the June 2017 decision at paragraphs 98 and 461. Both tribunals have used the 60% of median poverty line without accepting that it is the appropriate measure of poverty, but implicitly using it as a measure of a decent or acceptable standard of living that is above poverty. This

implicit use of the relative poverty line became explicit in the June 2017 decision when the FWC referred to the data in Table 5.9:

“We present the data for 60 per cent of median income on the basis that those in full-time work are entitled to expect some margin above a harsher measure of poverty.” (Paragraph 463)

1261. The contents of Table 5.9, which covers the positions of the selected households at December 2011 and December 2016, are included in Table 41 of ACCER’s Post-Budget submission of May 2017, which is now at paragraph 1075, above.

1262. By contrast to this view and use of the 60% of median measure, the FWC claimed that ACCER had used the measure in an unacceptable way:

“We do not accept the position, implied by ACCER, that the 60 per cent poverty line is a clear representation or measure of poverty, such that those who receive this income or less are unquestionably unable to meet their needs.” (June 2017 decision, paragraph 468)

1263. The FWC has misrepresented ACCER’s position on the use of this measure. In fact, the FWC’s use of the 60% of median measure, as described in paragraph 463 of its decision, is consistent with that proposed by ACCER. The substance of the highlighted passage in paragraph 463 of the FWC’s decision is found in ACCER’s submissions over past years; for example:

“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. 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.” (March 2017 submission, now at paragraphs 865-6, above)

1264. This position has been argued in the same or very similar terms since 2014. In the March 2017 submission there was also the following passage which picked up two matters identified by the FWC:

“There may be some debate about which poverty line should be used as a measure of poverty: whether the appropriate poverty line is at 50% or 60% of the median, or at some percentage between the two. However, that debate is peripheral to the substance of the evidence. The 60% of median poverty line is, at least, a risk of poverty line and, ACCER has argued, it represents the minimum income needed to achieve the objective identified by the FWC: a standard of living for workers that is in excess of poverty and one which enables them to purchase the essentials for a decent standard of living and engage in community life, assessed in the context of contemporary norms.” (March 2017 submission, now at paragraph 987, above)

“Insights” from Table 5.9

1265. The FWC drew three “insights” from Table 5.9, two of which related to the living standards of the selected households at December 2016:

“[464] We draw out 3 insights from the table. ... The second is that most family types have incomes above the relative poverty line even if they are on the NMW, with the greatest margin being for a single parent with one child. The third is that the family types that have an income that is below the 60 per cent poverty line are those that have an adult who is not in the labour force (i.e., does not receive a wage or the Newstart Allowance). This applies whether or not there are children in the household. Indeed, the family with the biggest gap between their income and the poverty line is the single-earner couple with no children and one partner not in the labour force or actively seeking employment. No party contended that the NMW should be at a level which would enable a couple without dependent children to have sufficient income such that one able-bodied partner neither has to work nor seek work.”

1266. It is apparent from Table 5.9 (and Table 41, above), as it has been in all previous tables since the Australian Fair Pay Commission commenced this kind of analysis of living standards, that the living standards provided by a minimum wage rate vary from household to household, even after taking into account family payments. It has been so ever since minimum wages were first set. At December 2016 the NMW-dependent single breadwinner family of a couple and two children was 10% below the 60% measure, which equated to the family being on a standard of living of 54.0% of median Australian living standard. By contrast the NMW-dependent single worker was 16% above the 60%, which equated to 69.6% of the median Australian living standard. Table 5.9 refers to 12 kinds of households, but there is nothing to indicate how common they are. ACCER has sought to do this through the data from the 2011 Census, which is presented at Chapter 8G, above.

Sole parents

1267. Table 5.9 includes one child and two children sole parent households. It estimates that at December 2016 the NMW-dependent sole parent with one child was 29% above the poverty line and the sole parent with two children was 18% above the poverty line. The basic reason for the differences between sole parent and couple parent families is that both families receive the same amount of family payments, which means that the sole parent family will have a higher standard of living than the single breadwinner couple parent family when the same wage rate is being earned in both households. However, the equivalence scales used to calculate relative living standards do not take into account the costs of childcare, which can be substantial and capable of leaving a sole

parent family in poverty. Furthermore, many sole parents are unable to obtain full time employment. ACCER addressed these matters in its March 2017 submission, which are now at paragraphs 1041-5, above, supported by extensive data on sole parent families from the 2011 Census (in Chapter 8G, above). Although most children who are living in poverty, or at the risk of poverty, are in couple parent families, children in sole parent families are more likely to be living in poverty. Part of the reason for the higher rate in sole parent families is that sole parents are more likely to rely on part time work.

1268. The figures for sole parents in Table 5.9 give the false impression that sole parents and their children have a higher standard of living than single workers without family responsibilities. ACCER has asked the FWC to reconsider its use of full time employment when estimating the living standards of sole parents and to undertake some research into the impact of childcare costs on the living standards of working sole parents. Despite some tentative response to this in the May 2016 decision, the June 2017 decision does not deal with these important matters.

Couple parent families

1269. The single breadwinner couple parent family with two children falls well under the 60% of median measure which the FWC has presented as the level that “those in full-time work are entitled to expect [because it contains] some margin above a harsher measure of poverty”. The FWC noted:

“[465] Both the ACTU and ACOSS drew attention to the fact that it is only through receipt of Newstart Allowance that some single-earner households reach an income above the 60 per cent poverty line. ACCER did argue that a single minimum wage, together with social welfare support, should be sufficient to maintain a couple family with children above the poverty line, while only one partner is in the workforce. At present this is not the case. Such families do have a substantial margin above the poverty line if the second adult earns a part-time NMW: they have a slender margin if receiving a Newstart payment.” (Footnotes omitted)

1270. In order for this family of four to achieve the 60% of median standard of living the breadwinner has to work overtime or get a second job or the second parent has to obtain part time work or receive the unemployment benefit while waiting for it. Children will live in poverty, or be at the risk of poverty, in these low income families unless one or more of these courses are pursued.
1271. The fact that many working families are living in poverty, with especially unacceptable consequences for children, has left the FWC unmoved. It has been silent about the sole

parent families where the parent does not work full time. It has been unmoved by the plight of the single breadwinner couple parent family with children; as if their poverty is self-inflicted and that they have chosen to live in poverty. Consider these passages:

“[67] The level of the NMW and modern award rates of pay have a significant role to play in seeking to reduce the financial stresses on families. But this role does not extend to a requirement to set the NMW at a level that ensures that a single-earner couple family with children on the NMW has an equivalent disposable income that exceeds the 60 per cent poverty line.” (This is repeated at paragraph 488)

“[98] In previous Reviews, the Panel has accepted 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. While we have not departed from that position, we acknowledge that the increase we propose to award will not lift all award-reliant employees out of poverty (measured by household disposable income below a 60 per cent median income poverty line), particularly those households with dependent children and a single-wage earner. However, to grant an increase to the NMW and award minimum rates of the size necessary to immediately lift all full-time workers out of poverty, or an increase of the size proposed by some parties, is likely to have adverse employment effects on those groups who are already marginalised in the labour market with a corresponding impact on the vulnerability of households to poverty due to loss of employment or hours.” (Footnote omitted)

“[469] The level of minimum wages has some role to play in seeking to reduce the financial stresses on families. But this role does not extend to a requirement to set the NMW at a level that ensures that a single-earner couple family with children on the NMW has an equivalent disposable income that exceeds the 60 per cent poverty line. The 60 per cent poverty line is arbitrary, and a fair and relevant safety net must take account of the full range of statutory considerations, be fair to employers as well as to employees, and be alert to the likelihood that at some level of increase, it will probably reduce employment opportunities for lower-skilled people.”

1272. It is readily apparent from the passages concerning the living standards of single breadwinner couple parent families is that the FWC does not see any need to improve their living standards by taking steps to move towards the target that it has identified: a standard of living that is in excess of poverty and one that provides a decent standard of living. It has presented the calculations of the 60% of median living standard (which need not be referred to as a poverty line) on the basis that “those in full-time work are entitled to expect some margin above a harsher measure of poverty” (see paragraph 463), yet are indifferent to its own assessment that, at December 2016 (and before the impact of the loss of the Schoolkids Bonus), the family was very much below that level.

1273. By what reasoning has the FWC concluded that the single breadwinner family of a couple and two children is not entitled to a standard of living in excess of poverty and to an income that will enable it to achieve a decent standard of living by contemporary Australian standards?
1274. This is a fundamental question. As ACCER explained in its March 2017 submission, this is the substance of the recognised international right to fair wages and a decent standard of living for themselves and their families under the *International Covenant on Economic, Social and Cultural Rights*. The covenant is an international convention that binds Australia and one which the *Fair Work Act* seeks to implement; see paragraphs 49-64 and 229-30, above. This FWC’s position discriminates against single breadwinner families, i.e. those families in which one of the parents stays out of the paid workforce and stays at home to care for the children.
1275. Paragraph 469 might give the erroneous impression that ACCER was arguing that the FWC was *required* to increase the NMW to a point where it met the 60% benchmark. ACCER had made it clear that it thought that the 60% of median figure was appropriate, but it accepted that the achievement of that level had to take into account economic factors. The pursuit of this objective may be constrained by a proper consideration of the other factors that the FWC is required to take into account when setting a safety net wage. ACCER’s approach was made clear at the outset of its submission. It sought an extra increase in the NMW of \$6.30 per week, with more to be pursued in the future; see paragraph 2(c), March 2017 submission, now at paragraph 948, above.
1276. It is important that we note at this stage the difference between economic factors being a constraining factor on the achievement of an adequate and fair safety net, as argued by ACCER, and the FWC’s view of its statutory obligation. The FWC has treated the setting of a decent standard of living as part of the obligation to take into account the “needs of the low paid” and not as an intrinsic purpose of the safety net. A decent standard of living is treated as merely one of a number of factors, among which none has “primacy” (to use the FWC’s term), to be taken into account when setting minimum wages. The error in the FWC’s position is to include within the scope of “the needs of the low paid”, a need to achieve a decent standard of living, rather than seeing the achievement of a decent standard of living as being the purpose of the safety net. We discuss this in more detail at sections B.2 and B.3, below.

1277. Setting a safety net wage so as to achieve a decent standard of living and treating economic considerations as a constraint on the achievement of that objective is very different to treating the objective of a decent standard of living as having no primacy among a range of considerations, including economic considerations. The proper question to be asked is whether there are any economic considerations, in particular disemployment effects, in providing, or moving towards, a safety net wage that will achieve the statutory objective of a decent standard of living.
1278. In the situation where the safety net wage is found to be inadequate, the FWC should demonstrate the matters which it has found constrain the achievement of the statutory objective. It has not done so. Even on the FWC's different view of the legislation, it has not stated the basis upon which it has concluded that the increases sought by the ACTU and ACCER would have any disemployment effects. To state conclusions, such as those in paragraphs 98 and 469 (quoted above), is insufficient. There is nothing else.
1279. The FWC's discussion in Chapter 6 regarding the connection between wage increases and employment levels does not address any possible disemployment effects from the granting of the claims before it. The assessment is in general terms:
- “[507] Despite some assertions to the contrary, we judge there to be a widespread view that regular, modest increases will have little or no impact on employment but that excessive increases would likely result in losses of jobs and/or hours. This leaves the definition of ‘modest’ and ‘excessive’ as a major issue of contention when considering the appropriate quantum of each year’s decision. It has been accepted that these will vary depending on economic conditions, although the empirical evidence for this belief is not strong. When unemployment is high and rising, smaller increases are seen to be appropriate. In stronger economic conditions, somewhat larger increases have been determined.”
- “[585] Some employer groups submitted that increases to minimum and award wages have been excessive having regard to the prevailing economic conditions, and that this level of increase should not be repeated in the current Review. However, the material before us does not cause us to change the view previously expressed that modest increases to the NMW and award wages do not have a discernible impact on employment levels in the prevailing circumstances.” (This paragraph is also at paragraph 85 in the Chapter 1 summary.)
1280. These conclusions are general and do not consider whether the flat dollar increases proposed by the ACTU and ACCER would have any discernible effect on employment levels, particularly in lower paid employment. There is no consideration of any possible disemployment effects of the ACTU's claim to have a flat dollar increase up to the C10 wage rate and a percentage increase for higher wage rates. There is no consideration of any possible disemployment effects of ACCER's claim for an extra

\$6.60 per week increase in the NMW. Nor is there any consideration given to the fact that in the hospitality and retail industries, which employ a substantial proportion of safety net-dependent workers, non-wage employment costs are expected to be lowered to a substantial degree by the FWC's decision to cut Sunday penalty rates.

The FWC comments on social change

1281. The FWC's lack of action to alleviate poverty and improve the lives of low income working families, in particular single breadwinner families, appears to be reinforced by its assessment of social, cultural and economic changes. This emerges in several paragraphs leading to the conclusion in paragraph 469 (which is quoted above):

“[466] There has been a long debate in Australia about whether minimum wages should be expected to meet the expenses of a dependent family, starting with the Harvester case in 1907. Families, and the expected role of women, have changed a great deal since this issue was first considered. It is well accepted that a minimum wage that was sufficient to support a dependent family would be well in excess of the needs of a single adult. The data in Table 5.9 show that currently a single adult on the NMW has a margin of 16 per cent above the 60 per cent poverty line. As we have mentioned, around 58 per cent of low-paid workers are single without children.

[467] The tax-transfer system plays a major role in raising the living standards of minimum wage families that have children. It does not, however, support them to the point where they can have an adult not in the workforce and still have an income above the 60 per cent poverty line.

[468] ... Here we observe that the families of today take many forms and have diverse ways in which they bring up their children. The sole breadwinner couple with several children is no longer the norm, although it remains one of a range of family types. Society has responded to this growing diversity by the development of a range of adaptations including paid parental and personal leave, formal child care, informal child care, out of school hours care, and a range of family payments. It is most important to evaluate whether these arrangements, together with the wages that can be earned, are sufficient to provide families with adequate incomes. The high and continuing levels of child poverty indicate that they are not and this is a serious matter for society. This conclusion is supported by the evidence provided by ACOSS, drawing on the 2016 *Poverty In Australia* report. This finds that about one-third of people in poverty lived in households for which wages were the main source of income; and that about half of families in poverty had children.” (Footnote omitted)

1282. The first sentence of paragraph 446 claims that there has been a long debate on the question of whether minimum wages should meet the expenses of a dependent family. Any debate that has occurred has been resolved in favour of the view that wages should be set so as to take into account the needs of workers with family responsibilities. The only significant departure from this was the FWC's decision in its June 2014 decision

to adopt the single person criterion for wage setting, a decision that was reversed a year later.

1283. The second sentence of paragraph 446 refers to the *expected* role of women. Obviously the *actual* role of women within the workforce and outside the workforce has changed. This is because it is now generally accepted that women should be able to exercise a choice as to how they balance their work and family responsibilities. This attitude and the public policy responses were addressed by Prime Minister Keating in his speech in December 1993 to mark the launch of the International Year of the Family; see paragraph 152, above. Compared to a century ago, there are now more women in the workforce supporting dependent children; and most of these are working part time, often unable to secure or undertake full time work. The June 2017 decision overlooks them in its consideration references to poverty.
1284. The first two sentences of the extract from paragraph 468 draw a comparison between different historical periods, presumably between the time of the *Harvester* decision in 1907 and now. It is true that families in Australia have fewer children than at the time of *Harvester*, two rather than several, but otherwise the comparison is superficial. Today, children are dependent on their parents for a substantially longer period. Historical and family research will show that at about the time of *Harvester* there were many sole parent, blended and step families, mostly caused by premature death, such as the death of a mother as a result of childbirth, the death of a father at work or the death of a parent from an infection or an incurable illness. The causes of sole parent, blended and step families are now somewhat different.
1285. A debate about whether there was a family norm at the time of *Harvester* and whether there is a family norm today is a diversion from the substance of that decision, which was the recognition of the need for workers to secure a wage that would support them and their families at a decent standard of living. Wage setting decisions today should focus on extending the safety net to cover as much of the diversity as possible, not limiting the wages safety net to a narrow section of working people. Of course, the protection cannot extend to all, but it needs to be reasonable and proportionate in giving effect to the objective of providing workers with a wage that will provide them and their families with a decent standard of living, consistent with recognised human rights and the intent of the *Fair Work Act*.

1286. Single breadwinner couple families are still a large proportion of Australian working families, as we demonstrate in Chapter 8G, above, and are entitled to be protected by the wage setting system. Given this, it does not matter if the proportion has fallen over the past century. Furthermore, in view of the collapse in the relative value of minimum wage rates, it is likely that some of the change in working patterns is attributable to the failure of the minimum wage setting system, rather than the result of changes in the attitudes and aspirations of parents. We should also add that sole parent families who are dependent on part time work comprise a significant proportion of wage-dependent households and also require recognition in the setting of minimum wage rates.
1287. The concluding sentences of paragraph 468 make the point that, despite contemporary forms of family support, including family payments, there are “high and continuing levels of child poverty”, which “is a serious matter for society”.
1288. Despite this conclusion, not one dollar in extra assistance, in the form sought by the ACTU, was given to those most in need. Similarly, ACCER’s claims failed despite the FWC’s concerns about poverty. This supports the view that the FWC was seeking to pass the responsibility to the Commonwealth Government. If it had demonstrated that it had done as much as it could do without causing disemployment effects, this might be understandable. However, it had not done that.

More on the tax-transfer system

1289. From paragraph 437 the FWC discusses the claim that increases in social welfare payments and the reduction in taxes are more “efficient” than increases in the NMW and award wage rates in meeting the needs of the low paid. However, the matter is hypothetical given that the Commonwealth Government’s budgetary policies are constraining rather than expanding these kinds of measures. The FWC’s conclusion to this section contains a useful observation on the question of the appropriate policy balance between wages and welfare policies:

“[442] We make one final point. A number of parties emphasise the benefits of being employed. These benefits extend beyond just the income earned, to include greater dignity and self-respect and capacity for social inclusion. It is consistent with this view to believe that dignity and self-respect, and sense of fairness, is enhanced when individuals and families are paid a fair wage and are able to rely more on what they earn and less on social welfare benefits to sustain themselves. A dollar received as a wage carries a different meaning from a dollar received as a welfare transfer.”

1290. We agree. It is important that employment which pays a fair wage and provides a decent standard of living is available to all who seek it. There are many kinds of

personally and socially desirable kinds of work outside paid employment, some of which, such as raising children, need to be recognised in the welfare system.

1291. The point made by the FWC might be intended as limited to a comparison between unemployment benefits and wages, but it could extend into the question of the appropriate balance between the public purse and the wage packet in the support of low income families. It sits uneasily with the FWC's decision not to give an extra dollar to the lowest paid, many of whom have children living in poverty, apparently on the basis that it is the Commonwealth Government's responsibility and one to be addressed through the welfare system.

The operative reason for the FWC's failure to act on poverty: wage relativities

1292. The FWC's discussion of the needs of the low paid suggests that its reasons for failing to give some priority to the alleviation of poverty among wage-dependent families, particularly single breadwinner families, was based on some concerns about the disemployment effects of increasing minimum wage rates and on the view that the targeting of poverty is a job best done through government transfers. However, a closer consideration of the decision demonstrates that the operative reason for the failure to do more to assist low paid workers was the FWC's wages relativities policy. The targeting of poverty would mean giving relatively more, in percentage terms, to low paid workers, which would compress the existing relativities between award wage rates and the relativities between the NMW and award wage rates. The wages relativities policy places a higher priority on wage structures for the less needy than the alleviation of poverty suffered by the most needy. It is wrong as a matter of fairness. As we explain in section B.6, it is also wrong as a matter of law.

M. THE STATUTORY FRAMEWORK

1293. For the seventh year in succession the FWC's decision on 6 June 2017 increased the NMW and all award wage rates by a uniform percentage. Each of these decisions has rejected the claims by the ACTU and ACCER for relatively greater wage increases for low paid workers. The decisions were made despite the evidence that many low paid workers were living in poverty and unable to achieve a decent standard of living. The decisions to award a uniform increase prevented the adjustment of the NMW to a level where it can be described as a living wage.
1294. The scheme for the setting of the NMW and award wages requires the FWC to first decide the amount that it will fix for the NMW. The NMW provides the base upon

which the award system prescribes wage rates for various kinds of work. This means that the NMW should be set independently of the operation of the award wage rates. The relevant provisions in respect of each function are set out in Chapter 2C, above. Given that the lowest paid are the most likely to be living in poverty and have the greatest need for financial support we would not expect that for seven years in succession the low paid would only receive the same percentage increases as the highest paid workers. No extra assistance, through greater percentage increases, has been given to those workers who are most in need.

The statutory objectives

1295. 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 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:

- (g) 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
- (h) 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;"

1296. The National Employment Standards are contained in the Act, whereas the making of awards and NMW orders are functions of the FWC.

1297. 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 the NMW 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:

- (f) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and
- (g) promoting social inclusion through increased workforce participation; and
- (h) relative living standards and the needs of the low paid; and
- (i) the principle of equal remuneration for work of equal or comparable value; and
- (j) 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)

1298. The second specific objective in the legislation is found in the criteria to be applied in decisions concerning the range of terms and conditions that may be set by awards, which cover a range of provisions in addition to minimum wage rates. Section 134 (1) provides a wider range of matters to be taken into account than those specified in the minimum wages objective:

"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:

- (i) relative living standards and the needs of the low paid; and
- (j) the need to encourage collective bargaining; and
- (k) the need to promote social inclusion through increased workforce participation; and
- (l) 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:
 - (v) employees working overtime; or
 - (vi) employees working unsocial, irregular or unpredictable hours; or
 - (vii) employees working on weekends or public holidays; or
 - (viii) employees working shifts; and
- (m) the principle of equal remuneration for work of equal or comparable value; and
- (n) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (o) 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
- (p) 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)

1299. The two statutory functions of setting the NMW and setting award wage rates are based on the minimum wages objective, but are quite distinct. The first, which sets the NMW, provides a general minimum wage entitlement. The second, which operates within the award system, provides wage rates for those workers who have and exercise skills and responsibilities in their work and whose employment falls into defined work classifications in the awards. By contrast to the nature of the award wages system, of its nature the NMW is based on unskilled work. Some awards contain an unskilled or entry level work classification for which a rate equal to the NMW is prescribed, but

most awards do not have an unskilled rate or provide a higher wage rate for unskilled work.

1300. In regard to both section 284(1) and section 134(1), it is important to distinguish between the objective of the obligation on the FWC and the considerations to be taken into account in its discharge of that obligation. This distinction is referred to in the FWC's June 2017 decision:

"While the statutory considerations referred to must be taken into account it is important to bear in mind that these considerations inform the modern awards objective and the minimum wages objective, but they do not themselves constitute the relevant statutory objectives." (Paragraph 128)

1301. The objective in each provision is the establishment of a safety net. It is not merely to establish minimum wage rates, but to establish fair safety nets. The setting of the safety net may be informed or constrained by one or more of the considerations in sections 284(1) and 134(1). The relative standards and the needs of the low paid are considerations for the setting of a fair safety net wage and other award provisions. The FWC could not set a safety net wage conformable with its obligation unless its decision is informed by an inquiry into relative living standards and the needs of the low paid. In each section the FWC is required to take national productivity into account, but the promotion of national productivity, while relevant to the setting of the safety net, is not the objective. The FWC is also required in each of its functions to take into account "the principle of equal remuneration for work of equal or comparative value". This is a consideration in the setting of the safety net, but it is not the objective.

N. THE NATURE AND PURPOSE OF THE SAFETY NET

1302. The term "safety net" is not defined in the legislation, but, by its ordinary meaning, it has two fundamental purposes: first, the safety net is intended to provide a wage rate for those workers who are unable to gain it in the employment marketplace; and, second, the safety net is intended to provide a standard of living that is not otherwise achievable. That standard of living would be commonly understood as a decent standard of living, or a basic acceptable standard of living, by reference to contemporary Australian society. It would be understood as a standard of living in excess of poverty.
1303. The setting of a single safety net wage rate, such as the NMW or a wage rate applicable to a particular award work classification, will inevitably apply to a range of employees living in a variety of circumstances. As well as not defining the safety net, the

legislation does not identify who is intended to receive the benefit intended by the safety net. Identifying those who are intended to receive the benefit and protection of the statute is a crucial part of the FWC's exercise of its obligation to set wages and other terms and conditions of employment as safety nets for the protection of workers.

1304. The FWC's decisions about the level and terms of the safety net should be *reasonable and proportionate* in giving effect to the purposes of the legislation and powers conferred upon it. It is under an obligation to give reasonable and proportionate effect to its statutory powers. The protection and benefit conferred by the safety net should cover the ordinary and expected situation in which workers live. It should apply to workers with family responsibilities and to those workers without those responsibilities. The proper exercise of these powers does not require wages to be set so as to cover the unusual or exceptional circumstances in which some workers live, such having a family of nine children. In regard to those with family responsibilities, the protection and benefit should cover sole parents and partnered parents. Given the number of children in contemporary Australia, workers with one or two children would be within the scope of the protection and benefit intended by the legislation. The safety net should be sufficient for each of these groups and the protection should not be averaged over the groups.
1305. The question of which workers are within the intended scope of the wages safety nets provided by the *Fair Work Act* was raised by the FWC's decision of June 2014 to adopt the single person criterion for the setting of safety net wage rates: it 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, paragraph 373. 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; see paragraphs 18 to 24, above. There was no reasoning given in support of this position. The FWC did not set out a legislative obligation to adopt the single person criterion. The decision to apply the single person criterion was a policy decision. It was inconsistent with its obligation to give reasonable and proportionate effect to its statutory powers.
1306. In the following year, 2015, ACCER made submissions that the test adopted was contrary to law. Those submissions, which are at paragraphs 315-31, above, argued

that the safety net was intended to cover workers with family responsibilities and, in particular, that the FWC is obliged to take into account the relative living standards and the needs of the low paid with family responsibilities. After referring to ACCER's submissions, the FWC's June 2015 simply stated that it "is bound to take into account relative living standards and the needs of the low paid without limitation"; see *Annual Wage Review 2014-15, Decision* [2015] FWCFB 3500, paragraphs 140 to 143. It was implicit in this statement that the FWC accepted that the wages safety net was intended to cover workers with family responsibilities. However, there was no analysis of the legislation that would shed light on the extent of the coverage, save that (at paragraph 338) the FWC observed: "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."

O. THE OPERATIONAL OBJECTIVE IN WAGE SETTING

1307. In its March 2017 submission ACCER proposed (at paragraph 976, above) "an appropriate formulation of the NMW safety net":

"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."

1308. This formulation, which ACCER called the operational objective, drew on passages used in each of the FWC's previous four decisions, passages that were repeated again in the June 2017 decision. Those passages include the following:

- "[T]hose in full-time employment can reasonably expect a standard of living that exceeds poverty levels." (See, for example, the June 2017 decision at paragraphs 98 and 461.)
- "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 'decent standard of living' and to engage in community life, assessed in the context of contemporary norms." (See, for example, the June 2017 decision at paragraphs 53 and 362.)

1309. ACCER argued that its formulation of the operational objective is an appropriate formulation of the NMW safety net, which is required by the terms of the *Fair Work Act* and is consistent with Australia's relevant human rights obligations in the *International Covenant on Economic, Social and Cultural Rights*

"The objectives identified by the FWC are consistent with, and required by, the *Fair Work Act 2009*, which has as one of its principal objectives the promotion of

social inclusion and a wage-setting system based on the establishment and maintenance of a "safety net of fair minimum wages". They are also consistent with, and required by, the objective in the *Fair Work Act* to establish a framework for workplace relations that "take[s] into account Australia's international obligations". 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." (Paragraph 977, above)

1310. The FWC responded to these submissions. After quoting two examples of the passages that ACCER had drawn on, the FWC rejected ACCER's formulation on the basis that it was inconsistent with the terms of the legislation:

"[154] While we do not resile from either of the passages referred to above it is important to bear in mind that these observations were made in the context of the Panel's consideration of *one* of the various statutory considerations we are required to take into account. ACCER's submission suffers from the elevation of one consideration—'relative living standards and the needs of the low paid'—above all others.

[155] As noted in previous Review decisions, the Act requires the Panel to take into account *all* of the relevant statutory considerations, and the relative living standards and needs of the low paid are but 'one of a number of considerations that [the Panel] must take into account.' The legislature has not attached any particular primacy to any of the considerations we are required to take into account." (June 2017 decision, footnotes omitted)

1311. This response misunderstands the submission put by ACCER and is inconsistent with a proper construction of section 284(1). ACCER's submission was concerned with the formulation of the safety net, i.e. the objective of the legislation, and not, as the FWC claimed, with the description of the scope of one of the considerations that is to be taken into account when setting that safety net.
1312. The FWC's position is reflected in other parts of the June 2017 where, it is said that the needs of the low paid, which it defines too widely, is only one of a number of considerations, none of which has primacy:

"[129] As the Panel has observed in previous Review decisions, there is often a degree of tension between the economic, social and other considerations which the Panel must take into account. No particular primacy is attached to any of these considerations. For example, a substantial wage increase may better address the needs of the low paid and improve the relative living standards of award-reliant employees, but it may (depending upon the prevailing economic circumstances) also reduce the capacity to employ the marginalised and hence not promote social inclusion through increased workforce participation. It is this

complexity that has led the Panel to reject a mechanistic or decision rule approach to wage fixation, such as the adoption of real wage maintenance, and, more recently, to reject the adoption of a medium-term target for the NMW.” (Footnotes omitted)

"[155] As noted in previous Review decisions, the Act requires the Panel to take into account *all* of the relevant statutory considerations, and the relative living standards and needs of the low paid are but ‘one of a number of considerations that [the Panel] must take into account.’ The legislature has not attached any particular primacy to any of the considerations we are required to take into account." (Footnotes omitted, parenthesis in original)

1313. ACCER was not seeking to put "one consideration ... above all others". ACCER was focused on the nature and purpose of the safety net, which could be appropriately described as a wage that would enable the worker “to purchase the essentials for 'decent standard of living' and to engage in community life, assessed in the context of contemporary norms”.
1314. The FWC's analysis of the operation of section 284(1), and section 134(1) does not focus on the nature and purpose of the safety net, i.e. the reason for the considerations being taken into account, but treats the objective as a consideration. The description of the needs of the low paid is too broad because it extends into the statutory objective. A construction of the section that treats this matter as only one of a number of considerations, and one without any primacy, is inconsistent with the proper reading of the legislation. Achieving a decent standard of living is the object of the safety net wage, not a mere consideration in the setting of minimum wages. The reference in section 284(1) to the needs of the low paid is not a reference to the need for a safety net, but to the financial needs that need to be taken into account for the purpose of setting the safety net.
1315. The “needs of the low paid” are the needs and costs of food, clothing, housing, transport and the like which must be known if an informed safety net wage is to be set as intended by the statutory objective. The error in the FWC’s view of this matter is to define it in a way that includes the object of a decent standard of living, rather than the information that informs the setting of the safety net.
1316. ACCER’s formulation of the operational objective requires the decision maker to give proper consideration to all of the relevant considerations. It made it clear that the consideration was not determinative and that the setting of the safety net has to take into account the relevant considerations in section 284(1):

"Because the setting of safety net wage rates through the NMW and awards requires the assessment of economic as well as social factors, the basic operational objective may not be met in any one year. If, as is the case now, there is a substantial gap between the NMW the wage which is necessary to meet the objective, the gap will have to be closed over time." (Paragraph 976, above)

1317. An assessment of what is an appropriate safety net wage does not determine the wage to be set. We return to this in section Q.

P. THE SAFETY NET AND FAIRNESS

1318. The foregoing paragraphs have concerned the nature and purpose of the safety nets that the FWC is required to establish. In the following paragraphs we refer to the obligation to ensure that the safety nets are fair.

1319. In section 284(1) the FWC is obliged to "establish and maintain a safety net of fair minimum wages". This applies in relation to the NMW and to award wages. The obligation in section 134(1) is to "ensure that modern awards, together with the National Employment Standards, provide a fair and relevant safety net of terms and conditions". The safety nets have to be fair and, further, in the case of non-wage award terms and conditions, at least, "relevant". Whether the obligation to ensure relevance in awards applies to award wages and adds a dimension to the objective under section 284(1) is a question that can be left aside from the current review of the June 2017 decision.

Fairness and the Penalty Rates decision

1320. The FWC's June 2017 decision referred to a decision of the FWC in regard to award provisions concerning Sunday penalty rates: *4 yearly review of modern awards – Penalty Rates – decision* [2017] FWCFB 1001, 23 February 2017 (Penalty Rates decision) and adopted several views about the operation of the award safety net. The Penalty Rates decision was decided by a different bench of the FWC, but three members, including the President, were members of the annual wage review bench. The parts of the June 2017 decision concerning fairness were:

"[122] We now turn to deal with aspects of the proper construction of the modern awards objective and the minimum wages objective.

[123] The proper construction of the expression 'a fair and relevant minimum safety net of terms and conditions' in the modern awards objective was the subject of some consideration in the *4 yearly review of modern awards – Penalty Rates – hospitality and retail industries decision* (the *Penalty Rates decision*). Three points emerge from the consideration of that expression in the *Penalty Rates decision*.

[124] First, ‘fairness’ in the context of the modern awards objective is to be assessed from the perspective of the employees *and* employers covered by the modern award

....

[127] We agree with the above observations and adopt them in our consideration of the modern awards objective. We are also of the view that the observations as to the meaning of ‘fair’ and ‘safety net’ in the modern awards objective apply with equal force to the meaning of those words in the minimum wages objective.

[128] ... The modern awards objective is to ‘ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions.’ The minimum wages objective is to ‘establish and maintain a safety net of fair minimum wages.’ These objectives are very broadly expressed and *the notion of fairness is at the heart of both statutory objectives. As we have mentioned, fairness in this context is to be assessed from the perspective of the employees and employers covered by the NMW or the modern award in question.*” (Footnotes and second and third observations omitted, emphasis in paragraph 128 added)

1321. A further reference to this issue is found in the context of a response to submissions concerning the need to give a beneficial construction of the terms of section 284(1): “Fairness in this context is to be assessed from the perspective of the employees and employers covered by the NMW order” (paragraph 141).

Fairness, as explained in the medium term target decision

1322. These views concerning fairness were first followed in the decision of 7 April 2017, which rejected the application by United Voice for the FWC to set a medium target for the NMW at 60% of median earnings; *Decision* [2017] FWCFB 1931. This decision applied the views in the Penalty Rates decision about the award safety net to the wages safety net. The construction given to section 134(1) in the Penalty Rates decision was adopted in respect of section 284(1).
1323. Because that decision regarding penalty rates was handed down after the date on which the initial submissions were due to be filed (29 March 2017) the FWC gave leave to the parties to file a response to the decision prior to or in the May consultations. ACCER's response was included in its Post-Budget submission of 12 May 2017, but a short response was included in the Reply of 13 April 2017. The relevant passages in those documents are set out in paragraphs 1068 and 1081-1119, above.
1324. The reference to fairness in the June 2017 decision is brief. To better understand the FWC's reasoning it is necessary to go to the decision of 7 April 2017 in regard to the medium term target application, which applies the views in the Penalty Rates decision regarding section 134(1) to section 284(1). The reasoning on this aspect is substantial, from paragraphs 42 to 78 of the medium term target decision.

1325. The substance of ACCER's response in its Post-Budget submission to the FWC's view concerning fairness in the medium term target decision falls into two parts. First, ACCER contended, contrary to the FWC's views, that there is no relevant legal authority which supports the conclusion that "fairness in this context [of setting the wage and awards safety nets] is to be assessed from the perspective of the employees and employers covered by the NMW or the modern award in question". The basis for this decision is at paragraphs 1100-9, above.

1326. Second, ACCER contended that, as a matter of statutory construction, the terms of section 284(1) are not concerned with the application of the criterion of fairness between employers and employees, as stated in the medium term target decision. This claim was repeated in the last sentence of paragraph 128 of the June 2017 decision. In regard to that view when it appeared in the medium term target decision, ACCER responded:

"... the last sentence of paragraph 57 is erroneous and not consistent with the proper construction of the terms of sections 284(1) and 134(1) and the object of the Act in section 3. The adjective *fair* in each of the sections relates to the *safety net* which is to be established for the benefit and protection of workers."

1327. In making the argument that the fairness of the safety net was concerned with the fairness to workers, ACCER referred to the nature of the safety net:

"The term safety net is not defined in the legislation, but its common meaning and purpose in relation to wages recognise the need to protect vulnerable workers. This is not a question of fairness between parties, such as would arise in the case of a claim of unfair dismissal or in the resolution of many industrial disputes between a particular employer and its employees. It is more in the nature of health and safety requirements that protect workers even though these requirements are against the economic interests of employers. There are various obligations imposed on business, including the obligation to pay tax, which do not depend upon the application of fairness test as between a particular employer and a particular employee, or some other party.

This means that the safety net has to be fair for the workers, with due account taken of the various ... matters specified in those sections, which include economic interests of employers generally and the social considerations of that apply to workers. Those factors are taken into account for the essential purpose of protecting the living standards and working conditions of workers, not to protect employers. The economic matters identified in those sections are to protect the economic interests of employers against the unreasonable setting of minimum wages and award conditions.

Sections 284(1) and 134(1) are beneficial provisions. For these reasons the wages and other terms and conditions under those sections are not simply set by the balancing of the interests of employers by the test of fairness as described in

paragraph 57 of the Preliminary Decision." (ACCER's Post-Budget submission, paragraphs 36-8, now at 1095-1097, above)

1328. ACCER's Post-Budget then turned to a consideration of the claim that the setting of minimum wages is a process of being fair, as between employers and employees, by reference to the statutory considerations. It argued that there was no statutory basis for that view. In regard to the views expressed in the Penalty Rates decision, on which the medium term target decision was based:

"The first part of paragraph 117 of the Penalty Rates Decision focuses on some of the statutory considerations in section 134 (1) without consideration of the way in which they relate to the primary obligation to set a fair safety net of award terms and conditions. The statutory task under section 134(1) is not simply to balance the competing interests of employers and employees according to the criterion of fairness. The economic considerations in paragraphs 134(1)(d) and (f) are relevant to the setting of a fair safety net for workers and their proper consideration may provide a constraint or limitation on the content of the safety net." (Paragraph 40, now at 1099, above)

"The Preliminary Decision, like the Penalty Rates Decision, fails to consider the nature and requirement of a safety net. The purpose of the NMW safety net under section 284(1), like the award safety net under section 134(1), is to ensure a level of protection for workers who do not have the capacity to bargain for a fair outcome for themselves." (Paragraph 51, now at paragraph 1110, above)

1329. Paragraph 128 of the June 2017 decision claims that "the notion of fairness is at the heart of both statutory objectives, i.e. sections 134(1) and 284(1). It is true that fairness is at the heart of both statutory objectives, but what is contentious, and we submit erroneous, is that "fairness in this context is to be assessed from the perspective of the employees and employers covered by the NMW or the modern award in question".
1330. In support of this consideration of fairness to employers, at paragraph 141 the FWC refers to specific aspects of the legislation:

[141] It seems to us that the statutory provisions relevant to the fixation of the NMW plainly seek to strike a balance between competing interests. So much is clear from the range of considerations the Panel is required to take into account in giving effect to the minimum wages objective (for example compare s.284(1)(a) and (c)). It is also clear from the minimum wages objective itself—to "establish and maintain a safety net of *fair* minimum wages". Fairness in this context is to be assessed from the perspective of the employees and employers covered by the NMW order. The object of the Act also speaks to multiple legislative purposes. Section 3 provides that the object of the Act 'is to provide a *balanced framework* for cooperative and productive workplace relations that promotes national prosperity and social inclusion for all Australians' (emphasis added), by the means specified in sections 3(a) to (g)." (Parenthesis in original)

1331. This view of the *Fair Work Act* 2009 fails to recognise that the legislation covers a wide variety of matters concerning employment relations. It confers, prohibits and regulates a wide range of matters and not all of them can be said to be based on an assessment of fairness as between employers and employees. This is particularly illustrated in regard to the sections concerning discrimination. Discrimination is not permitted, not on the basis of any assessment of fairness to employees and employers, but by reason of the fundamental human rights of employees. Discrimination on the basis of race, marital status and family responsibilities, among other grounds, is prohibited; see sections 153 (award provisions), 195 (enterprise agreements), 351 (adverse action by an employer) and 772 (unfair dismissal). The exceptions to these provisions are carefully crafted; and are not based on the consideration of fairness to an employer, but by reference to the nature of the work that is being performed. It should be noted that by section 578(2) the FWC is obliged to help prevent and eliminate discrimination on the basis of the same range of factors.

Q. THE LEGISLATION IS TO BE GIVEN A BENEFICIAL CONSTRUCTION

1332. ACCERs' March 2017 submission argued that the provisions of the *Fair Work Act* which deal with the setting of the NMW should be "treated as beneficial legislation and should not be construed or applied narrowly". The FWC agreed "that it is appropriate to characterise the statutory provisions relating to the variation of the NMW as remedial or beneficial provisions" (paragraph 134) and that the NMW "is intended to create a regulatory instrument which intervenes in the market setting minimum wages, to lift the floor of such wages" (paragraph 135).

1333. The legal principles regarding the characterisation of the legislation had been addressed in an earlier decision of a Full Bench of the FWC in *Bowker and others v DP World Melbourne Limited T/A DP World, Maritime Union of Australia and others*, [2014] FWCFB 9227. That decision included the following passages:

‘The characterisation of these provisions as remedial or beneficial has implications for the approach to be taken to their interpretation. As the majority (per Gibbs CJ, Mason, Wilson and Dawson JJ) observed in *Waugh v Kippen*:

“...the court must proceed with its primary task of extracting the intention of the legislature from the fair meaning of words by which it has expressed that intention, remembering that it is a remedial measure passed for the protection of the worker. It should not be construed so strictly as to deprive the worker of the protection which Parliament intended he should have.”

Any ambiguity is to be construed beneficially to give the fullest relief that a fair meaning of its language will allow, provided that the interpretation adopted is

‘restrained within the confines of the actual language employed that is fairly open on the words used.’ As their Honours Brennan CJ and McHugh J put it in *IW v City of Perth*:

“...beneficial and remedial legislation, like the [Equal Opportunity] Act, is to be given a liberal construction. It is to be given ‘a fair, large and liberal’ interpretation rather than one which is ‘literal or technical’. Nevertheless, the task remains one of statutory construction. Although a provision of the Act must be given a liberal and beneficial construction, a court or tribunal is not at liberty to give it a construction that is unreasonable or unnatural.”
(Footnotes omitted)

1334. The FWC adopted these views in the June 2017 decision, noting further that they were supported by section 15AA of the *Acts Interpretation Act 1901*, which provides: “In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.”

A qualification on the beneficial construction

1335. The FWC continued its analysis of this issue with reference to a qualification to the operation of a beneficial provision: a beneficial purpose a statutory provision may be constrained in its operation if it represents a compromise between competing intentions. It referred to observations by Gleeson CJ in *Carr v Western Australia* [2007] 232 CLR 138, at paragraph 5:

"That general rule of interpretation, however, may be of little assistance where a statutory provision strikes a balance between competing interests, and the problem of interpretation is that there is uncertainty as to how far the provision goes in seeking to achieve the underlying purpose or object of the Act. Legislation rarely pursues a single purpose at all costs. Where the problem is one of doubt about the extent to which the legislation pursues a purpose, stating the purpose is unlikely to solve the problem. For a court to construe the legislation as though it pursued the purpose to the fullest possible extent may be contrary to the manifest intention of the legislation and a purported exercise of judicial power for a legislative purpose."

1336. This view was supported by similar views in two other authorities cited by the FWC. It sought to apply those views to the terms of the *Fair Work Act*. At paragraph 141, which we quoted earlier, the FWC sets out the factors which lead it to a conclusion in the following paragraph:

“[142] It follows that while the statutory provisions relating to the Review and to NMW orders are properly characterised as remedial or beneficial provisions, the extent to which they are to be given ‘a fair, large and liberal’ interpretation in pursuit of that broad purpose is constrained by the fact that the relevant provisions seek to strike a balance between competing interests.”

1337. How should the position explained by Gleeson CJ be applied in regard to the NMW?
1338. Before addressing this question, there are two matters that should be noted. First, the term “competing interests” used by Gleeson CJ need not be limited to personal interests, such as those of employers and employees, but may include broad social and economic interests.
1339. Second, it should also be noted that the Gleeson CJ’s view on competing interests did not negative a beneficial construction, but, rather, in his view the statutory recognition of competing interests might prevent the statutory purpose or object to be pursued “to the fullest possible extent”. If we find a constraint on the statutory purpose or object, then we should seek to understand how that constraint is to operate. It is clear from the Chief Justice’s approach to statutory construction that we need to identify the essential purpose of the legislation and the way in which giving effect to that purpose is constrained. His view does not treat the purpose and the constraint as being of equal weight and consideration: the purpose is still the purpose and it has primacy, subject to a consideration of the constraint.
1340. The FWC identifies a constraint, in the legislation, constituted by the need to be fair to employers as well as employees, and its construction of the section that treats a decent standard of living as only a consideration in the setting of minimum wages. It does not address the relationship between the fundamental purpose of the safety net and the constraint in the legislation. By focussing on the matters that it has to take into account, rather than on the obligation to set a safety net, it has relegated the real purpose of safety net (providing a decent standard of living) to being just one part of the considerations which need to be balanced against each other in setting a minimum wage rate. In treating social and economic considerations as matters to be balanced in the interests of employers and employees, and without any of the considerations having any primacy, it has failed to identify how that constraint will work in respect of the statutory purpose of establishing a safety net wage that is fair to employees.

What a beneficial interpretation means

1341. Simply stating that legislation is to be treated beneficially is not enough. It needs to be demonstrated how the legislation will guide and direct the decision making process.
1342. There are a number of aspects of decision making that gives effect to the object of establishing the NMW as fair safety net wage while taking into account all relevant factors, particularly economic constraints. First, the legislation concerning the setting

of the NMW is remedial legislation which is intended to be beneficial to employees. Second, the beneficial construction of the wage safety net means that the purpose of the legislation is to ensure a decent standard of living, or some similar formulation, for workers. Third, the safety net is intended to provide a decent standard of living for workers and their dependents. Fourth, in recognition that the circumstances of workers vary, the beneficial construction would extend that protection and standard of living rather than restrict it: an expansive view should be taken. Fifth, the legislation recognises that the setting of the safety net wage might in some circumstances have negative economic consequences and may constrain the ability to set the safety net wage at the level that the FWC has concluded is appropriate. Sixth, as a constraint on the setting of the safety net, adverse economic consequences would have to be demonstrated and not assumed.

1343. In the face of evidence demonstrating that many low paid workers and their families are living in poverty and are unable to achieve a decent standard of living, the FWC has refused applications to provide relatively greater increases for low paid work classifications. The FWC has not *demonstrated* an economic argument against further support for the lowest paid workers. Its reliance on the wages relativities policy to deny wage increases is inconsistent with the intended beneficial purpose of the legislation: improving the living standards of the lowest paid and providing them with a safety net wage that will provide a decent standard of living. The FWC's failure to take any further action to assist the low paid to avoid poverty and achieve a decent standard of living is inconsistent with the beneficial purpose of the legislation.

R. THE FWC'S WAGES RELATIVITIES POLICY IS CONTRARY TO LAW

1344. One of the legal issues raised by ACCER in its March 2017 submission was what it characterised as the FWC's "wages relativities policy". This policy had been the reason for awarding uniform percentage increases in each year since 2011. It was argued that the policy was contrary to law for the reasons that are now found in paragraphs 1015-19, above. ACCER argued that the FWC's obligation under the *Fair Work Act* to take into account the "needs of the low paid", when setting the NMW (see section 284(1)(c)) and award rates of pay (see section 134(1)(a)) are effectively disregarded by this policy. The argument was rejected; see June 2017 decision, at paragraphs 146-65. For the reasons that we come to that rejection was unsound.

1345. The relativities between the NMW and the various wage rates, including the relativities of award rates to each other are now the same as they were in early 2011. Since then the FWC has adopted a policy to maintain those award relativities. We have traced the history and application of this policy from the June 2011 decision (see paragraphs 113-142) above and addressed the issue in the March 2017 submission, the relevant parts of which are at paragraphs 1005-1019, above. The origin of the policy is in the following paragraph from the June 2011 decision:

“[307] Section 134 of the Fair Work Act requires the Panel to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net. The matters which must be taken into account in an annual wage review include relative living standards and the needs of the low paid. *The nature of increases to award rates in annual reviews over the last twenty years has compressed award relativities in the award classification structures and reduced the gains from skills acquisition. The position of the higher award classifications has also been reducing relative to market rates and to average earnings.* Furthermore, while the real value of minimum wages has been maintained at the lower award classification levels, it is clear that the real value of minimum wages above those levels has fallen. On the information available to us at present we accept that many people have their wages set at award rates higher up the scale. *The ACTU's approach, which involves a dollar increase at the lower levels, would involve further compression of relativities below the C10 level.* For these reasons we consider that in this review we should decide on an increase which will not further compress award relativities and which will at least maintain the real value of minimum award wages.” (Emphasis added.)

1346. ACCER argued that a review of the May 2016 decision, like earlier decisions, showed that the reasoning leading to the increases to the NMW and award rates had been conflated and that the NMW was treated as ancillary to the award system, which meant that the adjustment to the NMW was constrained by the decision in regard to award rates.

1347. The relativities policy is relevant in two ways to the claims before the FWC. First, it was a barrier to ACCER's proposal to increase the NMW by relatively greater increases over a period of time. Second, it was a barrier to the awarding of greater percentage increases for low paid workers as proposed by the ACTU and ACCER. It would be permissible for the FWC to develop policies about wage relativities within those award classifications, but it would be impermissible for those policies to constrain the setting of the NMW and to constrain the obligation on the FWC to take into account the needs of the low paid, as it is required to do under sections 284(1) and 134(1). This constraint

on the proper assessment of the needs of the low paid has inhibited the setting of an adequate safety net wage.

1348. Over the years 2011 to 2015 the paragraphs announcing the FWC’s decisions on award increases became a little shorter, but the substance remained the same. In the June 2015 decision it said:

“[76] As to the form of the increase, past flat dollar increases in award minimum rates have compressed award relativities and reduced the gains from skill acquisition. The position of the higher award classifications has reduced relative to market rates and to average earnings and has fallen in terms of real purchasing power. These matters have led us to determine a uniform percentage increase. The considerations to which we have referred have also led us to award an increase in modern award minimum wages that is less than last year. We have decided to also increase modern award minimum wages by 2.5 per cent. Weekly wages will be rounded to the nearest 10 cents.”

1349. We have quoted from the June 2015 decision in order to show how the FWC has sought to strengthen its position on wage relativities in the last two years. The following paragraph from the June 2017 decision contains the additions of the last two decisions. The italicised sentence first appeared in the May 2016 decision. The underlined passages first appeared in the June 2017 decision. The only other change was the percentage increase, which changed each year.

“[99] As to the form of the increase, past flat dollar increases in award minimum rates have compressed award relativities and reduced the gains from skill acquisition. In doing so, classification structures designed to properly remunerate work according to its value, and to ensure that equal minimum rates are provided for work of equal or comparable value both within and across awards, have been distorted to a degree. A fundamental feature of the minimum wage objective is the requirement to establish and maintain ‘a safety net of fair minimum wages’, and a necessary element of this is that the level of those wages bears a proper relationship to the value of the work performed. Flat dollar increases may have had the effect of undermining the achievement of the objective in this respect. The position of the higher award classifications (applying to work of higher value) has reduced relative to market rates and to average earnings and has fallen in terms of real purchasing power. *A uniform percentage increase will particularly benefit women workers, because at the higher award classification levels women are substantially more likely than men to be paid the minimum award rate rather than a bargained rate.* These matters have led us to determine a uniform percentage increase. The considerations to which we have referred have led us to increase modern award minimum wages by 3.3 per cent.” (Footnote omitted, emphasis added.)

Equal remuneration

1350. The passage regarding women workers in paragraph 99 is based a range of matters canvassed in Chapter 8 of the 2017 decision and the conclusion “the grant of a

uniform percentage adjustment to the NMW and modern award wage rates would be the approach most consistent with the equal remuneration principle” (see paragraph 77). This conclusion is made in the context of evidence that there are more low paid minimum wage-dependent women than there are minimum wage-dependent women working in higher wage classification. Lower paid women would be advantaged by a flat dollar increase, rather than a percentage increase, as proposed by ACCER. ACCER argued that the economic interests of women would be best served by a flat dollar increase.

1351. However, the choice confronting the FWC was not simply between a percentage increase and a flat dollar increase. The ACTU’s tiered claim of a flat dollar increase for low paid workers and a percentage increase for higher paid workers would serve the interests of both groups. Despite the ACTU’s claim, the FWC’s consideration of the application of the equal remuneration principle was only concerned with a choice between a flat dollar increase and a percentage increase.
1352. The FWC’s obligation to take into account the principle of equal remuneration for work of equal or comparable value means that it is not able to discriminate between men and women in regard to the rates that it sets. Discrimination may be direct or indirect. Indirect discrimination will occur where the award wage rates for an occupation with a predominantly female workforce are undervalued compared to the same or similar work in an occupation with a predominantly male workforce. However, the conclusion from Chapter 8 does not turn on these aspects. Rather, it turns on the gender pay gap.
1353. The FWC’s discussion on the earning of women extends into the well-documented and concerning gender pay gap in Australia. It refers to its observation in the May 2016 that:
- “... the causes of the gender pay gap were complex and influenced by factors such as: differences in types of jobs performed by men and women; discretionary payments; workplace structures and practices; and the historical undervaluation of female work and female-dominated occupations.” (Paragraph 644, footnote omitted)
1354. The gender pay gap is caused by factors outside the award system. In those occupations covered by an award, overaward payments favour men over women. The gender pay gap is notorious in occupations not covered by awards, which are typically areas of higher paid employment. The gender pay gap appears to increase at higher income levels. Higher paid women, including those who are on award wage rates, are

more likely to experience the gender pay gap than lower paid women, who are more likely to be on award wage rates. The FWC found:

“There are a higher proportion of women reliant upon award wages at the lower end of the pay scale. At the higher award classifications, women are more likely to be paid the award rather than the bargained rate than are men. Further, the gender pay gap is highest at the higher end of the pay scale among non-award reliant employees.” (Paragraph 656, footnote omitted)

1355. It is the conclusion in the last sentence that underpins the FWC’s choice in favour of a percentage increase in award rates.
1356. The FWC believes that it can do something towards closing the gender pay gap at higher income levels by the decision that it makes in the annual wage review. However, it has not demonstrated the way in which it becomes a permissible consideration under section 284(1). There are two legal questions. Is it a permissible consideration? If so, how is it to be taken into account when there is a specific obligation to take into account the needs of the low paid? The better view is that it is not a permissible matter. In taking into account an extraneous matter, the FWC necessarily and improperly constrained the setting of the wage safety net and its proper consideration of the relative living standards and the needs of the low paid. It has compromised the setting of a fair safety net for those who are most in need of financial support.
1357. These are important questions, but they do not need to be answered if we focus on the ACTU’s claim, which would recognise the interests of higher and lower paid women. Yet there is no reference to the ACTU’s tiered claim in Chapter 8. Nor is there any consideration of the ACTU’s claim elsewhere in the decision. Apart from recording that it has been made, the claim is ignored. By ignoring the ACTU’s tiered claim the FWC presents a choice between a flat dollar increase and a uniform percentage increase. There is no consideration of, for example, whether the awarding of a tiered increase, rather than a percentage increase, would reduce the increase available to higher income workers (because of potential disemployment effects) and, if so, whether that outcome would be desirable or undesirable. There is nothing in the decision on the broader question of the impact that wage increases awarded to lower paid classifications have any economic effect on the employment of higher paid workers and vice versa.
1358. We are driven to the conclusion that the real reason for the decision to award a uniform increase is the wages relativities policy. The reference to the equal remuneration

principle in paragraph 99 of the June 2017 decision does not detract from that conclusion.

The FWC attempts to reinforce the relativities argument

1359. The passages added by the June 2017 decision seek to justify the wages relativities policy and in doing so highlight the fact that the uniform percentage increases are driven by the application of a policy. Of course, the FWC argues that this is not just a policy, but an implicit requirement of the legislation: “A fundamental feature of the minimum wage objective is the requirement to establish and maintain ‘a safety net of fair minimum wages’, and a necessary element of this is that the level of those wages bears a proper relationship to the value of the worked performed.”
1360. We accept that it is implicit in the minimum wages objective that recognised work classifications should be remunerated in a way that reflects their relative work values and that the FWC should make decisions so that “equal minimum rates are provided for work of equal or comparable value both within and across awards”. We also accept that “Flat dollar increases *may* have had the effect of undermining the achievement of the objective in this respect” (emphasis added).
1361. However, these considerations are subject to the clear obligation on the FWC to first provide a safety net wage that will provide a decent standard of living. The FWC has the wrong priorities: it seeks to advance the interests of higher paid workers at the expense of lower paid workers, while knowing that lower paid workers are living in poverty and unable to achieve a decent standard of living. There is nothing in section 284(1) that would support this kind of approach to wage setting; indeed it is to the contrary. The wage setting system established by the *Fair Work Act* intends that the wage relativities in the award system operate on the basis of a fair safety net designed to provide a decent standard of living. The FWC does not rely on any evidence or argument that this would make higher paid workers worse off, financially or otherwise. In these circumstances, whose interests are being prejudiced? It is significant that the ACTU, as the peak body representing Australian workers, seeks this outcome. Does it really matter in these circumstances that relativities might be compressed by the decisions that would deliver a small degree of fairness and justice to low paid workers?

The FWC's rejection of ACCER's submission

1362. We now turn to the FWC's rejection of the ACCER's criticisms of the wages relativities policy in its March 2017 submission. Two reasons were given by the FWC for the rejection. First, because

"... there is little practical difference between the range of considerations the Panel is obliged to take into account in making a NMW order and in reviewing and varying modern award minimum wages. In such circumstances it is hardly surprising that the 2, separate, functions have yielded the same result." (Paragraph 149)

1363. We have already responded to this reason at paragraph 1233, where we made the point that the statutory functions are quite separate and raise different considerations. We also made the point that, contrary to the FWC's claim that it is hardly surprising that the separate functions would have yielded the same increases, it is very surprising that for seven years, and in the face of continuing levels of poverty among low paid workers and their families, the FWC could award the same percentage increases to the lowest paid and the highest paid.

1364. The second reason given for rejecting ACCER's criticisms of the award relativities policy concerns the construction of section 284(1):

"ACCER's submission seeks to elevate *one* of the considerations the Panel is obliged to take into account—the needs of the low paid—above all others. ACCER *appears* to take 2 passages from previous Review decisions out of context and combine them into a composite formulation which it describes as 'the operational objective of the NMW'" (Paragraph 150, emphasis added)

1365. This matter is sufficiently covered in our commentary in sections N and O, above.

Single breadwinner families prejudiced

1366. One of the consequences of the application of the relativities policy is that it has ensured that low paid single breadwinner families will continue to live in, or at risk of, poverty. The June 2017 decision, like previous decisions, failed to raise the relative living standards of low paid single breadwinner couple families with children who rely on the NMW and low paid award rates. This is of particular importance because of their particularly poor standard of living.

1367. The FWC's own figures show that in December 2016 the disposable income of the NMW-dependent family of a couple and two children in primary school was 10% below the FWC's measure of a standard of living that those in full time employment are entitled to expect; see paragraph 463 of the June 2017 decision and paragraph 1195, above. That measure was 60% of median equivalised disposable household income.

The FWC calculated that 60% of the median was \$1,098.32 per week in December 2016 for this family of four; see Table 5.9 of the June 2017 decision. The 10% gap represented a shortfall in disposable income of \$109.82 per week. The 60% of median measure may also be regarded as a risk of poverty measure; and a family 10% below that measure can, we believe, be reasonably be described as living in poverty.

1368. The FWC's calculations for December 2016 also show that a similar family, but one dependent on the lowest wage rate for a trade-qualified worker, the C10 rate in the *Manufacturing and Associated Industries and Occupations Award*, was 3% below the 60% of median measure and was at risk of poverty, at least. The position of this family, like all other families with school age children, worsened in January 2017 when they no longer received the Schoolkids Bonus, as Table 41, above, shows.
1369. The only way in which these families can escape poverty and reach the 60% of median standard would be by the breadwinner working overtime or finding a second job, or by the principal carer of the children obtaining employment or being on the Newstart allowance while waiting for a job.

The FWC's attitude to single breadwinner families

1370. There are some passages in the June 2017 decision which suggest that the FWC is not prepared to set minimum wages by any, or any substantial, reference to the needs and living standards of the single breadwinner family. As we noted earlier, the FWC has been unmoved by the plight of the single breadwinner couple parent family with children, as if the family's poverty is self-inflicted and that they have chosen to live in poverty (see paragraph 1271, above). We have referred to passages in the decision that provide support for this view. The fact that in the June 2014 decision the FWC adopted the single person criterion for wage setting, and did so as a matter of policy and not as a matter of law, suggests that, even though has abandoned that position in the face legal argument, it might still have the same attitude that caused it to formally adopt the single person criterion.
1371. Our concern about the FWC's attitude to single breadwinner families were specifically raised in our March 2017 submission, as it had been in 2016; see paragraphs 979-85, above. We asked the FWC to respond to this question: "When a family is living in poverty on a wage that 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?” In both years the question was not answered even though it is a matter of great relevance to the operation of the minimum wages system. Withholding these views is inconsistent with the FWC’s statutory obligation to “perform its functions and exercise its powers in a manner that ... is open and transparent”; section 577(c). Workers and the public at large are entitled to know the basis upon which wages are being set.

1372. The FWC is obliged to exercise its powers in a way that is reasonable and proportionate to the powers conferred upon it. Having regard to the large number of single breadwinner families (see Chapter 8G, above), it would be unreasonable for the FWC to ignore or discount the interests of single breadwinner workers and their rights to a decent standard of living for themselves and their families. As we asked earlier (at paragraph 1273) when discussing the poor living standards of low paid single breadwinner families, “By what reasoning has the FWC concluded that the single breadwinner family of a couple and two children is not entitled to a standard of living in excess of poverty and to an income that will enable it to achieve a decent standard of living by contemporary Australian standards?”
1373. The setting of a safety net wage without taking into account the living standards and needs of single breadwinner families would be contrary to the *Fair Work Act*. Similarly, setting the safety net wage on the basis that both parents in couple parent families work, or should work, would be contrary to the Act. Setting wage rates in these ways would be contrary to the obligation for reasonable and proportionate application of the statutory rights and, further, would fail to give effect to the beneficial purpose of safety net wages, which we discussed in section Q, above.
1374. As we have made clear, this does not mean that the FWC is required to set the safety net wage at a level that will provide the 60% of median standard of living without proper regard to economic considerations. That measure, which is used and accepted by the FWC as a measure of the standard of living in excess of poverty that full time workers are entitled to expect (see paragraph 1195, above) is the proper objective, but the progress towards that objective has to take into account economic and other relevant considerations.
1375. We can expect that the FWC would be reluctant to answer the straightforward question put to it about single breadwinner families. If it were to answer in the affirmative, there would be grounds for concluding that it had discriminated against single breadwinner

workers and their families on the basis of how they have chosen to exercise their family responsibilities. Section 578 (c) requires that in “performing functions or exercising powers ... under a part of this Act ... the FWC must 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 or carer's responsibilities ...”. If the FWC were to answer the question in the negative it would highlight the FWC’s failure to exercise its wage setting powers in a reasonable and proportionate way, as required by law.

1376. A second and related question raised by ACCER in its 2016 and 2017 submissions concerned the FWC’s statements that those in full time employment have a reasonable expectation of a standard of living in excess of full time employment and an income that enables them to purchase the essential for a decent standard of living. ACCER asked the FWC to indentify “the workers and their families who are within the objectives stated by it, i.e. those who have a reasonable expectation of standard of living that exceeds poverty levels and the income that is needed to purchase the essentials for a decent standard of living” (see paragraph 984, above).
1377. Again, there was no response from the FWC to a matter that is of particular importance to the operation of the wage setting system. We should know which cohorts of workers are, in the FWC’s view, within the ambit of the protection of living standards intended by the legislation.
1378. It has to be remembered that the focus on particular cohorts of workers does not exclude the interests of other workers. It is the promotion of the interests of those within the immediate circle of minimum wage protection has a flow-on effect to other groups. Obviously increasing NMW to a point where it provides a decent standard of living for single breadwinner families will have the effect of improving the lives of, say, sole parents working 15 hours per week. This emphasises that having the NMW set by reference to, first, cohorts of workers identified through the application of the obligation to provide reasonable and proportionate safety net wage protection and, second, an appropriate living standard, is in the interests of the diversity of Australian workers living in a diversity of family circumstances.
1379. These issues concerning single breadwinner couple families have not been confronted by the FWC because the wages relativities policy has determined its decision making. It might be said in support of the FWC that the wages relativities policy is the FWC’s

defence to any claim that it was discriminating against single breadwinner couple parent families. However, the wages relativities policy is contrary to law and once abandoned, as it must be, the questions concerning the proper protection to be given to low paid workers and their families will need to be answered.

APPENDICES

- Appendix A Family Profiles and Incomes, August 2011
- Appendix B Catholic social teaching on work, economic relations
and the rights of workers
- Appendix C The Bishops' 2005 Statement on *Work Choices*

**Working Australia, 2017:
wages, families and poverty**



APPENDIX A: Family Profiles and Incomes, August 2011

Source of data: Australian Bureau of Statistics - 2011 Census of Population and Housing
(TableBuilder - CDCF by FINF)

Tables prepared by the Pastoral Research Office of the Australian Catholic Bishops Conference
(www.pro.catholic.org.au)

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APPENDIX A: Family Profiles and Incomes August 2011

Table 1. Count of Dependent Children in Couple Parent Families by Total Family Income (weekly), 2011

	Negative and Nil income	\$1-\$199 (\$1- \$10,399)	\$200- \$299 (\$10,400- \$15,599)	\$300- \$399 (\$15,600- \$20,799)	\$400- \$599 (\$20,800- \$31,199)	\$600- \$799 (\$31,200- \$41,599)	\$800- \$999 (\$41,600- \$51,999)	\$1,000- \$1,249 (\$52,000- \$64,999)	\$1,250- \$1,499 (\$65,000- \$77,999)	\$1,500- \$1,999 (\$78,000- \$103,999)	\$2,000- \$2,499 (\$104,000- \$129,999)	\$2,500- \$2,999 (\$130,000- \$155,999)	\$3,000 or more (\$156,000 or more)	Partial income stated and All incomes not stated	Total
Couple family with: No dependent children	1,695	857	1,515	822	4,503	14,051	14,948	30,312	29,452	57,743	56,418	44,293	95,668	95,856	448,133
Couple family with: One dependent child	4,304	5,152	2,361	4,274	18,729	33,414	39,156	54,277	58,606	110,258	96,767	80,133	131,772	97,548	736,751
Couple family with: Two dependent children	3,912	4,859	1,988	3,963	17,362	33,023	45,030	66,606	75,790	143,665	117,138	116,608	162,771	105,170	897,885
Couple family with: Three dependent children	1,501	1,929	917	1,710	7,690	13,923	18,349	28,551	30,280	54,539	37,984	44,336	53,127	44,063	338,899
Couple family with: Four dependent children	513	670	317	679	3,016	4,912	6,016	8,298	8,400	13,736	8,051	9,326	9,615	12,783	86,332
Couple family with: Five dependent children	94	157	83	165	807	1,201	1,453	1,864	1,820	2,799	1,667	1,426	1,390	2,991	17,917
Couple family with: Six or more dependent children	87	78	52	81	362	646	692	916	870	1,332	752	492	523	1,603	8,486
Total	12,106	13,702	7,233	11,694	52,469	101,170	125,644	190,824	205,218	384,072	318,777	296,614	454,866	360,014	2,534,403

Table 2. Count of Dependent Children in Sole Parent Families by Total Family Income (weekly), 2011

	Negative and Nil income	\$1-\$199 (\$1- \$10,399)	\$200- \$299 (\$10,400- \$15,599)	\$300- \$399 (\$15,600- \$20,799)	\$400- \$599 (\$20,800- \$31,199)	\$600- \$799 (\$31,200- \$41,599)	\$800- \$999 (\$41,600- \$51,999)	\$1,000- \$1,249 (\$52,000- \$64,999)	\$1,250- \$1,499 (\$65,000- \$77,999)	\$1,500- \$1,999 (\$78,000- \$103,999)	\$2,000- \$2,499 (\$104,000- \$129,999)	\$2,500- \$2,999 (\$130,000- \$155,999)	\$3,000 or more (\$156,000 or more)	Partial income stated and All incomes not stated	Total
One parent family with: No dependent children	1,998	3,140	2,086	5,500	16,622	41,217	33,597	39,795	26,950	36,375	24,208	11,332	11,974	45,954	300,748
One parent family with: One dependent child	6,337	8,183	17,006	30,604	57,603	41,399	30,777	28,534	19,437	22,928	6,009	10,971	2,912	29,735	312,435
One parent family with: Two dependent children	3,342	3,907	8,768	15,205	42,516	29,322	19,665	17,432	11,343	12,913	2,336	6,822	1,119	19,864	194,554
One parent family with: Three dependent children	1,038	1,128	2,664	5,011	15,073	13,136	6,469	5,207	3,239	3,299	582	1,628	300	8,153	66,927
One parent family with: Four dependent children	295	280	700	1,359	4,048	4,851	1,879	1,403	750	682	161	303	64	2,652	19,427
One parent family with: Five dependent children	67	71	199	355	979	1,303	738	371	218	198	54	64	21	857	5,495
One parent family with: Six or more dependent children	33	20	54	94	261	415	302	188	110	89	29	33	13	412	2,053
Total	13,110	16,729	31,477	58,128	137,102	131,643	93,427	92,930	62,047	76,484	33,379	31,153	16,403	107,627	901,639

Table 3. Labour Force Status of Parents in Couple Parent Families by Total Family Income (weekly), One Dependent Child in Family, 2011

	Negative and Nil income	\$1-\$199 (\$1- \$10,399)	\$200-\$299 (\$10,400- \$15,599)	\$300-\$399 (\$15,600- \$20,799)	\$400-\$599 (\$20,800- \$31,199)	\$600-\$799 (\$31,200- \$41,599)	\$800-\$999 (\$41,600- \$51,999)	\$1,000- \$1,249 (\$52,000- \$64,999)	\$1,250- \$1,499 (\$65,000- \$77,999)	\$1,500- \$1,999 (\$78,000- \$103,999)	\$2,000- \$2,499 (\$104,000- \$129,999)	\$2,500 or more (\$130,000 or more)	Partial income stated and All incomes not stated	Total
Couple family: Both employed, worked full-time	637	470	73	109	532	1,119	2,578	3,981	9,085	23,052	34,020	78,413	14,069	168,138
Couple family: One employed full-time, other part-time	418	509	101	197	986	2,819	6,429	15,503	18,996	40,034	36,418	64,396	13,453	200,259
Couple family: One employed full-time, other away from work	80	62	21	26	138	374	771	1,649	2,213	5,336	7,371	15,305	1,938	35,284
Couple family: One employed full-time, other unemployed	76	84	42	64	446	1,443	1,991	2,481	2,244	3,166	1,170	3,588	1,051	17,846
Couple family: One employed full-time, other not in the labour force	508	634	236	475	3,086	9,283	13,280	17,175	15,056	22,975	7,544	32,294	7,702	130,248
Couple family: One employed full-time, other labour force status not stated	12	11	5	9	31	102	99	109	93	128	56	133	17,940	18,728
Couple family: Both employed, worked part-time	126	199	55	161	886	2,129	3,139	3,310	3,002	4,448	3,306	4,669	2,012	27,442
Couple family: One employed part-time, other away from work	46	45	15	40	168	354	612	890	1,001	1,884	1,697	2,729	996	10,477
Couple family: One employed part-time, other unemployed	34	122	84	217	817	1,088	810	675	456	581	338	528	373	6,123
Couple family: One employed part-time, other not in the labour force	191	499	380	984	3,409	5,124	3,931	3,264	2,285	2,812	1,296	2,566	2,166	28,907
Couple family: One employed part-time, other labour force status not stated	3	7	0	12	27	40	28	26	19	32	10	22	12,336	12,562
Couple family: Both employed, away from work	71	41	13	14	107	193	305	507	645	1,363	1,591	3,153	1,571	9,574
Couple family: One away from work, other unemployed	5	24	13	28	104	187	171	148	138	179	107	197	157	1,458
Couple family: One away from work, other not in the labour force	97	125	78	150	552	956	1,107	1,233	966	1,477	530	1,752	1,386	10,409
Couple family: One away from work, other labour force status not stated	5	3	4	5	15	23	27	23	28	32	16	25	2,578	2,784
Couple family: Both unemployed	219	223	104	157	581	534	232	147	112	131	49	81	218	2,788
Couple family: One unemployed, other not in the labour force	387	567	305	507	1,652	1,600	678	499	298	370	146	388	506	7,903
Couple family: One unemployed, other labour force status not stated	4	0	11	4	14	6	4	0	0	3	3	0	1,334	1,383
Couple family: Both not in the labour force	1,341	1,494	790	1,078	5,082	5,936	2,894	2,580	1,907	2,172	1,061	1,606	3,277	31,218
Couple family: One not in the labour force, other labour force status not stated	24	17	21	24	50	45	38	36	22	24	11	23	9,859	10,194
Couple family: Both labour force status not stated	20	16	10	12	47	59	34	42	40	60	29	35	2,625	3,029
Total	4,304	5,152	2,361	4,273	18,730	33,414	39,158	54,278	58,606	110,259	96,769	211,903	97,547	736,754

Table 4. Labour Force Status of Parents in Couple Parent Families by Total Family Income (weekly), Two Dependent Children in Family, 2011

	Negative and Nil income	\$1-\$199 (\$1- \$10,399)	\$200-\$299 (\$10,400- \$15,599)	\$300-\$399 (\$15,600- \$20,799)	\$400-\$599 (\$20,800- \$31,199)	\$600-\$799 (\$31,200- \$41,599)	\$800-\$999 (\$41,600- \$51,999)	\$1,000- \$1,249 (\$52,000- \$64,999)	\$1,250- \$1,499 (\$65,000- \$77,999)	\$1,500- \$1,999 (\$78,000- \$103,999)	\$2,000- \$2,499 (\$104,000- \$129,999)	\$2,500- \$2,999 (\$130,000- \$155,999)	\$3,000 or more (\$156,000 or more)	Partial income stated and All incomes not stated	Total
Couple family: Both employed, worked full-time	612	508	104	158	640	1,360	3,167	4,159	9,493	24,459	36,520	23,115	64,328	13,068	181,691
Couple family: One employed full-time, other part-time	515	763	181	339	1,400	3,835	9,062	20,946	28,652	62,321	57,104	36,977	68,579	15,237	305,911
Couple family: One employed full-time, other away from work	84	76	13	26	126	352	814	1,630	2,279	5,226	5,911	3,945	8,145	1,913	30,540
Couple family: One employed full-time, other unemployed	60	84	27	62	406	1,219	1,998	2,958	2,635	4,030	1,089	3,919	1,387	1,163	21,037
Couple family: One employed full-time, other not in the labour force	488	685	285	511	3,092	8,779	14,948	22,767	20,986	31,471	6,463	39,392	9,678	8,422	167,967
Couple family: One employed full-time, other labour force status not stated	12	4	5	6	54	80	142	163	128	156	59	157	65	17,530	18,561
Couple family: Both employed, worked part-time	106	189	46	199	779	2,011	3,488	3,796	3,668	5,112	3,962	1,979	3,809	1,941	31,085
Couple family: One employed part-time, other away from work	34	55	12	34	175	380	620	1,072	1,202	2,402	2,054	1,338	2,083	1,097	12,558
Couple family: One employed part-time, other unemployed	22	103	69	195	754	1,110	933	703	478	619	309	320	380	396	6,391
Couple family: One employed part-time, other not in the labour force	170	382	313	787	3,015	5,036	4,409	3,611	2,325	2,643	967	1,624	925	1,857	28,064
Couple family: One employed part-time, other labour force status not stated	9	7	7	12	35	40	43	33	22	22	18	11	12	16,835	17,106
Couple family: Both employed, away from work	84	43	11	21	81	214	361	554	717	1,413	1,443	923	1,974	1,603	9,442
Couple family: One away from work, other unemployed	14	17	4	28	75	152	155	146	140	187	73	153	75	178	1,397
Couple family: One away from work, other not in the labour force	106	109	71	153	539	972	1,194	1,517	1,291	1,780	426	1,808	499	1,672	12,137
Couple family: One away from work, other labour force status not stated	0	3	3	4	8	26	24	31	22	15	6	22	11	2,507	2,682
Couple family: Both unemployed	191	217	96	141	531	562	247	155	115	114	43	59	61	177	2,709
Couple family: One unemployed, other not in the labour force	301	432	221	395	1,486	1,727	800	529	322	361	103	302	157	501	7,637
Couple family: One unemployed, other labour force status not stated	3	0	3	7	3	9	7	4	3	3	0	3	3	1,499	1,547
Couple family: Both not in the labour force	1,050	1,148	507	866	4,066	5,066	2,544	1,755	1,252	1,256	559	545	570	2,248	23,432
Couple family: One not in the labour force, other labour force status not stated	24	22	6	7	57	46	34	34	23	24	3	5	4	12,780	13,069
Couple family: Both labour force status not stated	25	10	4	13	40	45	41	42	39	53	26	11	22	2,550	2,921
Total	3,910	4,857	1,988	3,964	17,362	33,021	45,031	66,605	75,792	143,667	117,138	116,608	162,767	105,174	897,884

Table 5. Labour Force Status of Parents in Couple Parent Families by Total Family Income (weekly), Three or more Dependent Children in Family, 2011

	Negative and Nil income	\$1-\$199 (\$1- \$10,399)	\$200-\$299 (\$10,400- \$15,599)	\$300-\$399 (\$15,600- \$20,799)	\$400-\$599 (\$20,800- \$31,199)	\$600-\$799 (\$31,200- \$41,599)	\$800-\$999 (\$41,600- \$51,999)	\$1,000- \$1,249 (\$52,000- \$64,999)	\$1,250- \$1,499 (\$65,000- \$77,999)	\$1,500- \$1,999 (\$78,000- \$103,999)	\$2,000- \$2,499 (\$104,000- \$129,999)	\$2,500 or more (\$130,000 or more)	Partial income stated and All incomes not stated	Total
Couple family: Both employed, worked full-time	275	205	63	87	331	673	1,421	1,797	3,544	8,602	12,111	28,704	6,465	64,278
Couple family: One employed full-time, other part-time	271	336	117	189	764	1,832	4,267	8,854	12,318	26,435	23,630	45,938	9,357	134,308
Couple family: One employed full-time, other away from work	42	34	6	10	75	172	394	729	1,018	2,169	2,161	4,686	1,063	12,559
Couple family: One employed full-time, other unemployed	20	34	16	33	163	390	670	1,375	1,286	1,877	493	2,045	671	9,073
Couple family: One employed full-time, other not in the labour force	324	384	222	395	1,819	4,575	7,873	16,094	15,524	23,666	5,306	29,829	7,230	113,241
Couple family: One employed full-time, other labour force status not stated	0	3	0	4	35	56	78	126	108	108	26	145	6,232	6,921
Couple family: Both employed, worked part-time	41	70	31	75	370	833	1,581	1,738	1,582	2,290	1,598	2,290	1,109	13,608
Couple family: One employed part-time, other away from work	10	13	12	15	78	155	289	476	536	1,010	869	1,351	666	5,480
Couple family: One employed part-time, other unemployed	13	31	37	97	354	516	511	398	287	328	130	289	279	3,270
Couple family: One employed part-time, other not in the labour force	103	276	194	452	1,873	3,296	3,521	3,215	1,924	2,071	617	1,391	1,773	20,706
Couple family: One employed part-time, other labour force status not stated	3	7	6	3	18	28	34	27	19	16	5	10	7,496	7,672
Couple family: Both employed, away from work	29	24	7	15	53	106	191	252	327	603	553	1,032	904	4,096
Couple family: One away from work, other unemployed	13	11	7	13	41	75	81	107	93	99	28	95	116	779
Couple family: One away from work, other not in the labour force	80	74	47	115	376	670	932	1,315	1,126	1,436	336	1,381	1,486	9,374
Couple family: One away from work, other labour force status not stated	0	14	3	0	14	20	18	20	20	22	4	15	1,246	1,396
Couple family: Both unemployed	90	91	56	90	322	394	220	170	88	82	25	61	242	1,931
Couple family: One unemployed, other not in the labour force	189	318	147	318	1,344	1,770	1,110	696	372	333	104	284	660	7,645
Couple family: One unemployed, other labour force status not stated	0	4	0	4	6	12	4	3	3	0	0	0	779	815
Couple family: Both not in the labour force	658	880	389	692	3,760	5,006	3,241	2,188	1,161	1,206	449	664	2,659	22,953
Couple family: One not in the labour force, other labour force status not stated	15	16	3	14	38	56	43	28	17	28	4	7	8,951	9,220
Couple family: Both labour force status not stated	19	10	6	9	41	47	28	25	16	24	3	22	2,056	2,306
Total	2,195	2,835	1,369	2,630	11,875	20,682	26,507	39,633	41,369	72,405	48,452	120,239	61,440	451,631

Table 6. Labour Force Status of Parents in Sole Parent Families by Total Family Income (weekly), One Dependent Child in Family, 2011

	Negative and Nil income	\$1-\$199 (\$1- \$10,399)	\$200-\$299 (\$10,400- \$15,599)	\$300-\$399 (\$15,600- \$20,799)	\$400-\$599 (\$20,800- \$31,199)	\$600-\$799 (\$31,200- \$41,599)	\$800-\$999 (\$41,600- \$51,999)	\$1,000- \$1,249 (\$52,000- \$64,999)	\$1,250- \$1,499 (\$65,000- \$77,999)	\$1,500- \$1,999 (\$78,000- \$103,999)	\$2,000- \$2,499 (\$104,000- \$129,999)	\$2,500 or more (\$130,000 or more)	Partial income stated and All incomes not stated	Total
One parent family: Employed, worked full-time	430	650	516	1,021	5,211	13,270	14,965	16,682	12,742	16,256	4,044	10,693	9,704	106,184
One parent family: Employed, worked part-time	286	1,530	2,725	6,290	20,275	16,695	8,953	6,618	3,831	3,594	1,030	1,531	5,785	79,143
One parent family: Employed, away from work	122	222	344	658	1,618	1,472	1,090	1,054	753	905	258	553	1,507	10,556
One parent family: Unemployed	884	1,253	2,877	4,603	5,346	1,628	931	689	332	380	97	206	1,431	20,657
One parent family: Not in the labour force	4,502	4,458	10,392	17,854	24,980	8,216	4,763	3,451	1,753	1,767	570	890	7,616	91,212
One parent family: Labour force status not stated	114	70	152	179	173	118	74	38	25	26	11	13	3,691	4,684
Total	6,338	8,183	17,006	30,605	57,603	41,399	30,776	28,532	19,436	22,928	6,010	13,886	29,734	312,436

Table 7. Labour Force Status of Parents in Sole Parent Families by Total Family Income (weekly), Two Dependent Children in Family, 2011

	Negative and Nil income	\$1-\$199 (\$1- \$10,399)	\$200-\$299 (\$10,400- \$15,599)	\$300-\$399 (\$15,600- \$20,799)	\$400-\$599 (\$20,800- \$31,199)	\$600-\$799 (\$31,200- \$41,599)	\$800-\$999 (\$41,600- \$51,999)	\$1,000- \$1,249 (\$52,000- \$64,999)	\$1,250- \$1,499 (\$65,000- \$77,999)	\$1,500- \$1,999 (\$78,000- \$103,999)	\$2,000- \$2,499 (\$104,000- \$129,999)	\$2,500- \$2,999 (\$130,000- \$155,999)	\$3,000 or more (\$156,000 or more)	Partial income stated and All incomes not stated	Total
One parent family: Employed, worked full- time	191	338	260	493	2,522	6,300	7,679	9,102	7,095	9,033	1,435	5,318	750	6,169	56,685
One parent family: Employed, worked part- time	134	780	1,589	3,433	13,502	13,524	7,796	5,116	2,614	2,281	497	808	183	4,639	56,896
One parent family: Employed, away from work	61	110	188	306	1,033	881	602	571	381	409	94	188	36	890	5,750
One parent family: Unemployed	395	466	1,283	1,856	4,591	1,354	631	415	199	175	47	87	20	1,051	12,570
One parent family: Not in the labour force	2,514	2,184	5,376	9,030	20,744	7,198	2,924	2,197	1,036	1,013	261	410	126	5,013	60,026
One parent family: Labour force status not stated	47	33	72	86	125	66	34	29	18	4	3	8	0	2,105	2,630
Total	3,342	3,911	8,768	15,204	42,517	29,323	19,666	17,430	11,343	12,915	2,337	6,819	1,115	19,867	194,557

Table 8. Labour Force Status of Parents in Sole Parent Families by Total Family Income (weekly), Three or more Dependent Children in Family, 2011

	Negative and Nil income	\$1-\$199 (\$1- \$10,399)	\$200- \$299 (\$10,400- \$15,599)	\$300- \$399 (\$15,600- \$20,799)	\$400- \$599 (\$20,800- \$31,199)	\$600- \$799 (\$31,200- \$41,599)	\$800- \$999 (\$41,600- \$51,999)	\$1,000- \$1,249 (\$52,000- \$64,999)	\$1,250- \$1,499 (\$65,000- \$77,999)	\$1,500- \$1,999 (\$78,000- \$103,999)	\$2,000- \$2,499 (\$104,000- \$129,999)	\$2,500 or more (\$130,000 or more)	Partial income stated and All incomes not stated	Total
One parent family: Employed, worked full-time	44	63	93	165	779	1,682	2,042	2,412	1,981	2,407	372	1,580	2,287	15,907
One parent family: Employed, worked part-time	46	224	503	1,053	4,212	4,985	3,397	2,327	1,123	836	208	361	2,387	21,662
One parent family: Employed, away from work	31	32	55	108	387	441	260	268	137	137	23	61	467	2,407
One parent family: Unemployed	129	174	385	654	1,984	1,410	432	238	116	105	21	38	710	6,396
One parent family: Not in the labour force	1,162	990	2,550	4,808	12,929	11,139	3,243	1,912	949	780	199	365	4,770	45,796
One parent family: Labour force status not stated	17	18	29	37	69	50	15	11	14	3	5	8	1,456	1,732
Total	1,429	1,501	3,615	6,825	20,360	19,707	9,389	7,168	4,320	4,268	828	2,413	12,077	93,900

Table 9. Count of Dependent Children in couple and Sole parent Families by Total Family Income (weekly) August 2011

	Negative and Nil income	\$1-\$199 (\$1- \$10,399)	\$200-\$299 (\$10,400- \$15,599)	\$300-\$399 (\$15,600- \$20,799)	\$400-\$599 (\$20,800- \$31,199)	\$600-\$799 (\$31,200- \$41,599)	\$800-\$999 (\$41,600- \$51,999)	\$1,000- \$1,249 (\$52,000- \$64,999)	\$1,250- \$1,499 (\$65,000- \$77,999)	\$1,500- \$1,999 (\$78,000- \$103,999)	\$2,000- \$2,499 (\$104,000- \$129,999)	\$2,500 or more (\$130,000 or more)	Partial income stated and All incomes not stated	Total
Total families with one dependent child	10,642	13,335	19,367	34,878	76,333	74,813	69,934	82,810	78,042	133,187	102,779	225,789	127,281	1,049,190
<i>Total families with one dependent child (% of total)</i>	<i>1.0</i>	<i>1.3</i>	<i>1.8</i>	<i>3.3</i>	<i>7.3</i>	<i>7.1</i>	<i>6.7</i>	<i>7.9</i>	<i>7.4</i>	<i>12.7</i>	<i>9.8</i>	<i>21.5</i>	<i>12.1</i>	<i>100</i>
Total families with two dependent children	7,252	8,768	10,756	19,168	59,879	62,344	64,697	84,035	87,135	156,582	119,475	287,309	125,041	1,092,441
<i>Total families with two dependent children (% of total)</i>	<i>0.7</i>	<i>0.8</i>	<i>1.0</i>	<i>1.8</i>	<i>5.5</i>	<i>5.7</i>	<i>5.9</i>	<i>7.7</i>	<i>8.0</i>	<i>14.3</i>	<i>10.9</i>	<i>26.3</i>	<i>11.4</i>	<i>100</i>
Total families with three or more dependent children	3,624	4,336	4,984	9,455	32,235	40,389	35,896	46,801	45,689	76,673	49,280	122,652	73,517	545,531
<i>Total families with three or more dependent children (% of total)</i>	<i>0.7</i>	<i>0.8</i>	<i>0.9</i>	<i>1.7</i>	<i>5.9</i>	<i>7.4</i>	<i>6.6</i>	<i>8.6</i>	<i>8.4</i>	<i>14.1</i>	<i>9.0</i>	<i>22.5</i>	<i>13.5</i>	<i>100</i>

Table 10. Count of Dependent Children in Couple Parent Families by Total Family Income (weekly) August 2011

	Negative and Nil income	\$1-\$199 (\$1- \$10,399)	\$200-\$299 (\$10,400- \$15,599)	\$300-\$399 (\$15,600- \$20,799)	\$400-\$599 (\$20,800- \$31,199)	\$600-\$799 (\$31,200- \$41,599)	\$800-\$999 (\$41,600- \$51,999)	\$1,000- \$1,249 (\$52,000- \$64,999)	\$1,250- \$1,499 (\$65,000- \$77,999)	\$1,500- \$1,999 (\$78,000- \$103,999)	\$2,000- \$2,499 (\$104,000- \$129,999)	\$2,500 or more (\$130,000 or more)	Partial income stated and All incomes not stated	Total
Total couple families with one dependent child	4,304	5,152	2,361	4,273	18,730	33,414	39,158	54,278	58,606	110,259	96,769	211,903	97,547	736,754
Total couple families with one dependent child (% of total)	0.6	0.7	0.3	0.6	2.5	4.5	5.3	7.4	8.0	15.0	13.1	28.8	13.2	100
Total couple families with two dependent children	3,910	4,857	1,988	3,964	17,362	33,021	45,031	66,605	75,792	143,667	117,138	279,375	105,174	897,884
Total couple families with two dependent children (% of total)	0.4	0.5	0.2	0.4	1.9	3.7	5.0	7.4	8.4	16.0	13.0	31.1	11.7	100
Total couple families with three or more dependent children	2,195	2,835	1,369	2,630	11,875	20,682	26,507	39,633	41,369	72,405	48,452	120,239	61,440	451,631
Total couple families with three or more dependent children (% of total)	0.5	0.6	0.3	0.6	2.6	4.6	5.9	8.8	9.2	16.0	10.7	26.6	13.6	100

Table 11. Count of Dependent Children in Sole Parent Families by Total Family Income (weekly) August 2011

	Negative and Nil income	\$1-\$199 (\$1- \$10,399)	\$200-\$299 (\$10,400- \$15,599)	\$300-\$399 (\$15,600- \$20,799)	\$400-\$599 (\$20,800- \$31,199)	\$600-\$799 (\$31,200- \$41,599)	\$800-\$999 (\$41,600- \$51,999)	\$1,000- \$1,249 (\$52,000- \$64,999)	\$1,250- \$1,499 (\$65,000- \$77,999)	\$1,500- \$1,999 (\$78,000- \$103,999)	\$2,000- \$2,499 (\$104,000- \$129,999)	\$2,500 or more (\$130,000 or more)	Partial income stated and All incomes not stated	Total
Total sole parent families with one dependent child	6,338	8,183	17,006	30,605	57,603	41,399	30,776	28,532	19,436	22,928	6,010	13,886	29,734	312,436
Total sole parent families with one dependent child (% of total)	2.0	2.6	5.4	9.8	18.4	13.3	9.9	9.1	6.2	7.3	1.9	4.4	9.5	100
Total sole parent families with two dependent children	3,342	3,911	8,768	15,204	42,517	29,323	19,666	17,430	11,343	12,915	2,337	7,934	19,867	194,557
Total sole parent families with two dependent children (% of total)	1.7	2.0	4.5	7.8	21.9	15.1	10.1	9.0	5.8	6.6	1.2	4.1	10.2	100
Total sole parent families with three or more dependent children	1,429	1,501	3,615	6,825	20,360	19,707	9,389	7,168	4,320	4,268	828	2,413	12,077	93,900
Total sole parent families with three or more dependent children (% of total)	1.5	1.6	3.8	7.3	21.7	21.0	10.0	7.6	4.6	4.5	0.9	2.6	12.9	100

Table 12
Working patterns of couple parent families with one child

	Total income less than \$1000 per week		Total income \$1000 per week or more		Total families	
	N	%	N	%	N	%
1. One full time and other not in labour force	26,994	26.2	95,044	17.9	122,038	19.2
2. One part time and other not in labour force	14,327	13.9	12,223	2.3	26,550	4.2
3. One away from work and other not in labour force	2,968	2.9	5,958	1.1	8,926	1.4
4. One unemployed and other not in labour force	5,309	5.1	1,701	0.3	7,010	1.1
5. Both not in labour force	17,274	16.8	9,326	1.8	26,600	4.2
6. Both full time	4,881	4.7	148,551	27.9	153,432	24.2
7. One full time and other part time	11,041	10.7	175,347	33.0	186,388	29.4
8. Both part time	6,569	6.4	18,735	3.5	25,304	4.0
9. Both (employed and) away from work	673	0.7	7,259	1.4	7,932	1.2
10. One away from work and other unemployed	527	0.5	769	0.1	1,296	0.2
11. One part time and other away from work	1,234	1.2	8,201	1.5	9,435	1.5
12. One full time and other away from work	1,392	1.4	31,874	6.0	33,266	5.2
13. One full time and other unemployed	4,070	3.9	12,649	2.4	16,719	2.6
14. One part time and other unemployed	3,138	3.0	2,578	0.5	5,716	0.9
15. Both unemployed	1,831	1.8	520	0.1	2,351	0.4
16. Status of one or both not stated	860	0.8	1,080	0.2	1,940	0.3
Totals	103,088	100.0	531,815	100.0	634,903	100.0

Table 13
Working patterns of couple parent families with two children

	Total income less than \$1000 per week		Total income \$1000 per week or more		Total families	
	N	%	N	%	N	%
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	3.6
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
Totals	106,223	100.0	680,914	100.0	787,137	100.0

Table 14**Working patterns of couple parent families with three or more children**

	Total income less than \$1,250 per week		Total income \$1,250 per week or more		Total families	
	N	%	N	%	N	%
1. One full time and other not in labour force	31,362	29.7	74,325	26.3	105,687	27.2
2. One part time and other not in labour force	12,827	12.2	6,003	2.1	18,830	4.9
3. One away from work and other not in labour force	3,529	3.3	4,279	1.5	7,808	2.0
4. One unemployed and other not in labour force	5,703	5.4	1,093	0.4	6,796	1.8
5. Both not in labour force	16,156	15.3	3,480	1.2	19,636	5.1
6. Both full time	4,577	4.3	52,961	18.7	57,538	14.8
7. One full time and other part time	16,359	15.5	108,321	38.3	124,680	32.1
8. Both part time	4,698	4.5	7,760	2.7	12,458	3.2
9. Both (employed and) away from work	648	0.6	2,515	0.9	3,163	0.8
10. One away from work and other unemployed	335	0.3	315	0.1	650	0.2
11. One part time and other away from work	1,038	1.0	3,766	1.3	4,804	1.2
12. One full time and other away from work	1,420	1.3	10,034	3.6	11,454	3.0
13. One full time and other unemployed	2,681	2.5	5,701	2.0	8,382	2.2
14. One part time and other unemployed	1,944	1.8	1,034	0.4	2,978	0.8
15. Both unemployed	1,343	1.3	256	0.1	1,599	0.4
16. Status of one or both not stated	911	0.9	622	0.2	1,533	0.4
Totals	105,531	100.0	282,465	100.0	387,996	100.0

Table 15
Working patterns of sole parent families with one child

	Total income less than \$800 per week		Total income \$800 per week or more		Total families	
	N	%	N	%	N	%
1. Employed, full time	20,668	13.4	75,382	62.0	96,050	34.8
2. Employed, part time	47,515	30.7	25,557	21.0	73,072	26.4
3. Employed, away from work	4,314	2.8	4,613	3.8	8,927	3.2
4. Unemployed	15,707	10.1	2,635	2.2	18,342	6.6
5. Not in labour force	65,900	42.6	13,194	10.9	79,094	28.6
6. Labour force status not stated	692	0.4	187	0.2	879	0.3
Totals	154,796	100.0	121,568	100.0	276,364	100.0

Table 16
Working patterns of sole parent families with two children

	Total income less than \$800 per week		Total income \$800 per week or more		Total families	
	N	%	N	%	N	%
1. Employed, full time	9,913	9.9	40,412	56.4	50,325	29.4
2. Employed, part time	32,828	32.9	19,295	26.9	52,123	30.4
3. Employed, away from work	2,518	2.5	2,281	3.2	4,809	2.8
4. Unemployed	9,550	9.6	1,574	2.2	11,124	6.5
5. Not in labour force	44,532	44.7	7,967	11.1	52,499	30.6
6. Labour force status not stated	382	0.4	96	0.1	478	0.3
Totals	99,723	100.0	71,625	100.0	171,358	100.0

Table 17**Working patterns of sole parent families with three or more children**

	Total income less than \$1,000 per week		Total income \$1,000 per week or more		Total families	
	N	%	N	%	N	%
1. Employed, full time	4,824	7.9	8,752	46.1	13,576	16.9
2. Employed, part time	14,374	23.4	4,855	25.6	19,229	23.9
3. Employed, away from work	1,283	2.1	626	3.3	1,909	2.4
4. Unemployed	5,039	8.2	518	2.7	5,557	6.9
5. Not in labour force	35,659	58.1	4,205	22.1	39,864	49.6
6. Labour force status not stated	218	0.4	41	0.2	259	0.3
Totals	61,397	100.0	18,997	100.0	80,394	100.0

Table 18

**Working patterns of couple parent families with one child
Supplementary**

	Total income less than \$800 per week		Total income \$800 per week or more		Total families	
	N	%	N	%	N	%
1. One full time and other not in labour force	13,714	21.5	108,324	19.0	122,038	19.2
2. One part time and other not in labour force	10,396	16.3	16,154	2.8	26,550	4.2
3. One away from work and other not in labour force	1,861	2.9	7,065	1.2	8,926	1.4
4. One unemployed and other not in labour force	4,631	7.2	2,379	0.4	7,010	1.1
5. Both not in labour force	14,380	22.5	12,220	2.1	26,600	4.2
6. Both full time	2,303	3.6	151,129	26.5	153,432	24.2
7. One full time and other part time	4,612	7.2	181,776	31.8	186,388	29.4
8. Both part time	3,430	5.4	21,874	3.8	25,304	4.0
9. Both (employed and) away from work	368	0.6	7,564	1.3	7,932	1.2
10. One away from work and other unemployed	356	0.6	940	0.2	1,296	0.2
11. One part time and other away from work	622	1.0	8,813	1.5	9,435	1.5
12. One full time and other away from work	621	1.0	32,645	5.7	33,266	5.2
13. One full time and other unemployed	2,079	3.3	14,640	2.6	16,719	2.6
14. One part time and other unemployed	2,328	3.6	3,388	0.6	5,716	0.9
15. Both unemployed	1,599	2.5	752	0.1	2,351	0.4
16. Status of one or both not stated	630	1.0	1,310	0.2	1,940	0.3
Totals	63,930	100.0	570,973	100.0	634,903	100.0

Note: The data in this table can be compared with the data in Table 12. The difference between the two is the income to distinguish between the two income categories. This table uses the transition point as \$800 per week, whereas Table 12 uses \$1,000 per week.

Table 19

**Working patterns of sole parent families with one child
Supplementary**

	Total income less than \$600 per week		Total income \$600 per week or more		Total families	
	N	%	N	%	N	%
• Employed, full time	7,398	6.5	88,652	54.4	96,050	34.8
• Employed, part time	30,820	27.2	42,252	25.9	73,072	26.4
• Employed, away from work	2,842	2.5	6,085	3.7	8,927	3.2
• Unemployed	14,079	12.4	4,263	2.6	18,342	6.6
• Not in labour force	57,684	50.9	21,410	13.1	79,094	28.6
• Labour force status not stated	574	0.5	305	0.2	879	0.3
Totals	113,397	100.0	162,967	100.0	276,364	100.0

Note: The data in this table can be compared with the data in Table 15. The difference between the two is the income to distinguish between the two income categories. This table uses the transition point as \$600 per week, whereas Table 15 uses \$800 per week.

Appendix B

CATHOLIC SOCIAL TEACHING ON WORK, ECONOMIC RELATIONS AND THE RIGHTS OF WORKERS

A. *Rerum Novarum*

1. Catholic teaching on the spiritual, economic and social aspects of modern industrial societies has its genesis in Pope Leo XIII's 1891 encyclical *Rerum Novarum*. *Rerum Novarum*'s specific purpose was to address the "social question" of its time, the relation between Labour and Capital, but the encyclical was about much more than that:

“[*Rerum Novarum*] expounds ... the Catholic doctrine on work, the right to property, the principle of collaboration instead of class struggle as the fundamental means for social change, the rights of the weak, the dignity of the poor and the obligations of the rich, the perfecting of justice through charity, on the right to form professional associations” (*Guidelines for the Study and Teaching of the Church's Social Doctrine in the Formation of Priests*, Congregation for Catholic Education, quoted at Compendium of the Social Doctrine of the Church, paragraph 89.)
2. Pope Leo XIII realised the potential for his encyclical to be misused, but was not deterred from addressing the issues involved:
 - i. “The discussion is not easy, nor is it void of danger. It is no easy matter to define the relative rights and mutual duties of the rich and of the poor, of capital and of labour. And the danger lies in this, that crafty agitators are intent on making use of these differences of opinion to pervert men's judgments and to stir up the people to revolt.” (*Rerum Novarum*, paragraph 2)
3. So it was not surprising that the Catholic Church became linked to the great political and economic developments of the twentieth century. For a major part of the twentieth century Catholic social teaching, and its consequential political activity, was concerned with the ideological and political clashes between communism and capitalism. The Catholic Church was one of the strongest opponents of communism in western societies *and* a forceful critic of important aspects of capitalism in those societies.
4. Although these systemic clashes framed the public articulation of Catholic teaching, the underlying concern was, and remains, the centrality of work, not just for human survival, but for personal, economic and spiritual development. In evaluating economic systems, or subsets of economic systems, the Church gives particular attention to their capacities to provide for these needs. A study of what the Church has to say about economics has to start from that point, not from some economic framework or ideology.
5. The importance of work is evident in the *Rerum Novarum*, where Pope Leo addressed a range of issues raised by the Industrial Revolution and capitalism and their impact on the livelihoods

of great masses of people. Coming into the Industrial Revolution in the early nineteenth century the economic paradigm and the Church's natural frame of reference was the land-based economic system, supplemented by local craft-based manufacturing and very limited regional and international trade.

6. It should be noted that at this time the majority of Europeans and Catholics (who were mostly European) lived rural lives which, in many respects, were the same as their ancestors had lived for more than a millennium. So one sees in Catholic writings at this time a concern for the position of small landholders seeking to support themselves and their families through what they can produce on their land, whether for direct consumption or for trade. The position of rural workers and small scale farmers continues to be a major subject of Catholic social teaching because a large proportion of the world's population, and of the world's Catholics, depend on the land and what it can produce. This is particularly evident in an address given by Pope Francis on 9 July 2015 to the Second World Meeting of Popular Movements in Santa Cruz de la Sierra, Bolivia, where the Pope highlighted the importance of land to rural workers and families. Catholic social teaching on work and economic issues has to take into account a diversity of economic circumstances in which people find themselves. Economic prescriptions, if given, need to take into account the particular circumstances.

B. Work is the key to the social question

7. In his 1981 encyclical *Laborem Exercens*, which was written to mark the 80th anniversary of *Rerum Novarum*, St John Paul II noted that the change in the scope of "social question" that was the subject of the Church's teaching and that the question covered both justice and peace:

"...if one studies the development of the question of social justice, one cannot fail to note that, whereas during the period between *Rerum Novarum* and Pius XI's *Quadragesimo Anno* the Church's teaching concentrates mainly on the just solution of the "labour question" within individual nations, in the next period the Church's teaching widens its horizon to take in the whole world. The disproportionate distribution of wealth and poverty and the existence of some countries and continents that are developed and of others that are not call for a levelling out and for a search for ways to ensure just development for all. This is the direction of the teaching in John XXIII's Encyclical *Mater et Magistra*, in the Pastoral Constitution *Gaudium et Spes* of the Second Vatican Council, and in Paul VI's Encyclical *Populorum Progressio*." (*Laborem Exercens*, paragraph 2)

8. *Laborem Exercens* explains that there had been a move from the social question being seen as the "class" question to an emphasis on a "world" question. Pope Paul VI's 1967 encyclical *Populorum Progressio*, an encyclical about international development, voiced a concern about "free trade" agreements between developed and developing nations where, characteristically, there was an imbalance in their respective bargaining positions:

“The teaching set forth by Our predecessor Leo XIII in *Rerum Novarum* is still valid today: when two parties are in very unequal positions, their mutual consent alone does not guarantee a fair contract; the rule of free consent remains subservient to the demands of the natural law. In *Rerum Novarum* this principle was set down with regard to a just wage for the individual worker; but it should be applied with equal force to contracts made between nations: trade relations can no longer be based solely on the principle of free, unchecked competition, for it very often creates an economic dictatorship. Free trade can be called just only when it conforms to the demands of social justice.” (*Populorum Progressio*, paragraph 59, footnote omitted)

9. St John Paul II reinforced the need to consider unjust structures on an international level:

“A complete analysis of the situation of the world today shows in an even deeper and fuller way the meaning of the previous analysis of social injustices; and it is the meaning that must be given today to efforts to build justice on earth, not concealing thereby unjust structures but demanding that they be examined and transformed on a more universal scale.” (*Laborem Exercens*, paragraph 2)

10. A chapter in *Laborem Exercens* entitled *The Question of Work, the Key to the Social Question* is introduced by the observation that the “question of human work” naturally appears in the midst of the Church’s diagnosis of objective social reality and teaching on “the complex and many-sided social question”. It continues:

“While in the present document we return to this question once more - without however any intention of touching on all the topics that concern it - this is not merely in order to gather together and repeat what is already contained in the Church's teaching. It is rather in order to highlight - perhaps more than has been done before - the fact that human work is a key, probably the essential key, to the whole social question, if we try to see that question really from the point of view of man's good. And if the solution - or rather the gradual solution - of the social question, which keeps coming up and becomes ever more complex, must be sought in the direction of "making life more human" [Second Vatican Ecumenical Council, *Pastoral Constitution on the Church in the Modern World* (*Gaudium et Spes*), 38], then the key, namely human work, acquires fundamental and decisive importance.” (*Laborem Exercens*, paragraph 3)

11. *Laborem Exercens* demonstrates four essential parts of Catholic social teaching:

- Work continues Creation

“The word of God's revelation is profoundly marked by the fundamental truth that man, created in the image of God, shares by his work in the activity of the Creator and that, within the limits of his own human capabilities, man in a sense continues to develop that activity, and perfects it as he advances further and further in the discovery of the resources and values contained in the whole of creation.” (Paragraph 25)

- The priority of labour over capital

“In view of this situation we must first of all recall a principle that has always been taught by the Church: the principle of the priority of labour over capital. This principle directly concerns the process of production: in this process labour is always a primary efficient cause, while capital, the whole collection of means of production, remains a mere instrument or instrumental cause. This principle is an evident truth that emerges from the whole of man's historical experience.” (Paragraph 12)

- Work is an obligation and a source of rights

“While work, in all its many senses, is an obligation, that is to say a duty, it is also a source of rights on the part of the worker. These rights must be examined in the broad context of human rights as a whole, which are connatural with man, and many of which are proclaimed by various international organizations and increasingly guaranteed by the individual States for their citizens. Respect for this broad range of human rights constitutes the fundamental condition for peace in the modern world: peace both within individual countries and societies and in international relations, as the Church's Magisterium has several times noted, especially since the Encyclical *Pacem in Terris*. The human rights that flow from work are part of the broader context of those fundamental rights of the person.” (Paragraph 16)

- Solidarity with the poor

“In order to achieve social justice in the various parts of the world, in the various countries, and in the relationships between them, there is a need for ever new *movements of solidarity of the workers and with the workers*. This solidarity must be present whenever it is called for by the social degrading of the subject of work, by exploitation of the workers, and by the growing areas of poverty and even hunger. The Church is firmly committed to this cause, for she considers it her mission, her service, a proof of her fidelity to Christ, so that she can truly be the "Church of the poor". And the "poor" appear under various forms; they appear in various places and at various times; in many cases they appear as a *result of the violation of the dignity of human work*: either because the opportunities for human work are limited as a result of the scourge of unemployment, or because a low value is put on work and the rights that flow from it, especially the right to a just wage and to the personal security of the worker and his or her family. (Paragraph 8, italics in original.)

12. The last of these quotes is powerful summary of the nature and purpose of Catholic social teaching. The promotion of justice in employment relations is part of the social mission of the Church. The concluding words of this passage highlight and bring together three important aspects of the plight of poor and vulnerable workers: lack of employment opportunities, inadequate wages and the lack of job security. St John Paul II makes it clear that jobs alone are not sufficient to achieve justice. The dignity of the worker requires a just minimum wage and personal security.
13. This passage was used by Pope Benedict XVI in his 2009 encyclical *Caritas in Veritate* when referring to the Church's support for the International Labour Organization's Decent Work Agenda:

“No consideration of the problems associated with development could fail to highlight the direct link between *poverty and unemployment*. In many cases, poverty results from a *violation of the dignity of human work*, either because work opportunities are limited (through unemployment or underemployment), or “because a low value is put on work and the rights that flow from it, especially the right to a just wage and to the personal security of the worker and his or her family”. For this reason, on 1 May 2000 on the occasion of the Jubilee of Workers, my venerable predecessor Pope John Paul II issued an appeal for “a global coalition in favour of ‘decent work’”, supporting the strategy of the International Labour Organization. In this way, he gave a strong moral impetus to this

objective, seeing it as an aspiration of families in every country of the world. What is meant by the word “decent” in regard to work? It means work that expresses the essential dignity of every man and woman in the context of their particular society: work that is freely chosen, effectively associating workers, both men and women, with the development of their community; work that enables the worker to be respected and free from any form of discrimination; work that makes it possible for families to meet their needs and provide schooling for their children, without the children themselves being forced into labour; work that permits the workers to organize themselves freely, and to make their voices heard; work that leaves enough room for rediscovering one's roots at a personal, familial and spiritual level; work that guarantees those who have retired a decent standard of living.” (Paragraph 63, footnotes omitted.)

14. In *Laudato Si'* Pope Francis addressed the nature and purpose of work and the need for employment under the heading *The need to protect employment*.

“If we reflect on the proper relationship between human beings and the world around us, we see the need for a correct understanding of work; if we talk about the relationship between human beings and things, the question arises as to the meaning and purpose of all human activity. This has to do not only with manual or agricultural labour but with any activity involving a modification of existing reality, from producing a social report to the design of a technological development.

Underlying every form of work is a concept of the relationship which we can and must have with what is other than ourselves.” (Paragraph 125)

“We are convinced that 'man is the source, the focus and the aim of all economic and social life' [*Gaudium et Spes*, 63]. Nonetheless, once our human capacity for contemplation and reverence is impaired, it becomes easy for the meaning of work to be misunderstood. [*Centesimus Annus*, 37]. We need to remember that men and women have 'the capacity to improve their lot, to further their moral growth and to develop their spiritual endowments' [*Populorum Progressio*, 34]. Work should be the setting for this rich personal growth, where many aspects of life enter into play: creativity, planning for the future, developing our talents, living out our values, relating to others, giving glory to God. It follows that, in the reality of today's global society, it is essential that 'we continue to prioritize the goal of access to steady employment for everyone' [*Caritas in Veritate*, 32] no matter the limited interests of business and dubious economic reasoning.” (Paragraph 127)

“We were created with a vocation to work. The goal should not be that technological progress increasingly replace human work, for this would be detrimental to humanity. Work is a necessity, part of the meaning of life on this earth, a path to growth, human development and personal fulfilment. Helping the poor financially must always be a provisional solution in the face of pressing needs. The broader objective should always be to allow them a dignified life through work. Yet the orientation of the economy has favoured a kind of technological progress in which the costs of production are reduced by laying off workers and replacing them with machines. This is yet another way in which we can end up working against ourselves. The loss of jobs also has a negative impact on the economy “through the progressive erosion of social capital: the network of relationships of trust, dependability, and respect for rules, all of which are indispensable for any form of civil coexistence” [*Ibid.*]. In other words, “human costs always include economic costs, and economic dysfunctions always involve human costs” [*Ibid.*]. To stop

investing in people, in order to gain greater short-term financial gain, is bad business for society.” (Paragraph 128)

15. These passages show that the Church approaches economics and the evaluation of economic systems through a consideration of the capacity to produce work that is consistent with the promotion and protection of human dignity and human rights. Meeting material needs is necessary, but not sufficient. The Church’s evaluation of economic systems is essentially based on their capacity to provide work that will allow citizens to provide for themselves and their families.

C. Evaluating economic systems: capitalism and communism

16. In 1987, shortly before the collapse of communism, St John Paul II wrote *Sollicitudo Rei Socialis* to commemorate the twentieth anniversary of Pope Paul VI’s *Populorum Progressio*. St John Paul II’s encyclical was concerned with the development of peoples and other international issues in the context of competing economic philosophies, especially capitalism and communism. He drew an important distinction between Catholic social teaching and economic ideologies, stressing that the Church’s social doctrine is not a “third way” alternative to capitalism and communism:

“...the Church does not propose economic and political systems or programs, nor does she show preference for one or the other, provided that human dignity is properly respected and promoted, and provided she herself is allowed the room she needs to exercise her ministry in the world.

....

The Church’s social doctrine is not a “third way” between liberal capitalism and Marxist collectivism, nor even a possible alternative to other solutions less radically opposed to one another: rather, it constitutes a category of its own. Nor is it an ideology, but rather the accurate formulation of the results of a careful reflection on the complex realities of human existence, in society and in the international order, in the light of faith and of the Church’s traditions. Its main aim is to interpret these realities, determining their conformity with or divergence from the lines of the Gospel teaching on man and his vocation, a vocation which is at once earthly and transcendent; its aim is thus to guide Christian behaviour. It therefore belongs to the field, not of ideology, but of theology and particularly of moral theology. The teaching and spreading of her social doctrine are part of the Church’s evangelizing mission. And since it is a doctrine aimed at guiding people’s behaviour, it consequently gives rise to a “commitment to justice,” according to each individual’s role, vocation and circumstances.” (*Sollicitudo Rei Socialis*, paragraph 41)

17. In 1991, after the collapse of communism, in which he played a major role through his support for the Polish people, St John Paul II published the encyclical *Centesimus Annus* to mark the centenary of *Rerum Novarum*. Gone was the model of State ownership of the means of production and distribution, with centrally planned prices and investment decisions. The Pope wrote:

“It would appear that, on the level of individual nations and of international relations, the *free market* is the most efficient instrument for utilizing resources and effectively responding to needs. But this is true only for those needs which are “solvent”, insofar as they are endowed with purchasing power, and for those resources which are “marketable”, insofar as they are capable of obtaining a satisfactory price. But there are many human needs which find no place on the market. It is a strict duty of justice and truth not to allow fundamental human needs to remain unsatisfied, and not to allow those burdened by such needs to perish. It is also necessary to help these needy people to acquire expertise, to enter the circle of exchange, and to develop their skills in order to make the best use of their capacities and resources. Even prior to the logic of a fair exchange of goods and the forms of justice appropriate to it, there exists *something which is due to man because he is man*, by reason of his lofty dignity. Inseparable from that required “something” is the possibility to survive and, at the same time, to make an active contribution to the common good of humanity.” (*Centesimus Annus*, paragraph 34, italics in original)

18. This passage recognises that the market’s utility is true only for those needs which are “solvent”. There are many human needs that find no place in the market. Markets will reflect the relative resources, or the absence of resources, available to the participants. A market price will reflect the status quo. It will reflect the inequities of the status quo, not cure them. This passage makes special reference to the needy who lack skills and come to the labour market disadvantaged. Their dignity requires that they be protected against the market and, importantly, that there be appropriate intervention so that they may develop their skills in order to make the best use of their capacities and resources.

19. Later in *Centesimus Annus* Pope John Paul II referred to the goal of *a society of free work, of enterprise and of participation* and the importance of profit to the operation of enterprises:

“Such a society [*a society of free work, of enterprise and of participation*] is not directed against the market, but demands that the market be appropriately controlled by the forces of society and by the State, so as to guarantee that the basic needs of the whole of society are satisfied.

The Church acknowledges the legitimate role of profit as an indication that a business is functioning well....In fact, the purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a *community of persons* who in various ways are endeavouring to satisfy their basic needs, and who form a particular group at the service of the whole of society. Profit is a regulator of the life of a business, but it is not the only one; *other human and moral factors* must also be considered which, in the long term, are at least equally important for the life of a business.” (*Centesimus Annus*, paragraph 35, italics in original)

20. In a subsequent chapter entitled “Private Property and the Universal Destination of Goods” St John Paul II returned to the subject of capitalism and the market in the context of competing models for Third World development:

“Returning now to the initial question: can it perhaps be said that, after the failure of Communism, capitalism is the victorious social system, and that capitalism should be the goal of the countries now making efforts to rebuild their economy and society? Is this the

model which ought to be proposed to the countries of the Third World which are searching for the path to true economic and civil progress?

The answer is obviously complex. If by "capitalism" is meant an economic system which recognizes the fundamental and positive role of business, the market, private property and the resulting responsibility for the means of production, as well as free human creativity in the economic sector, then the answer is certainly in the affirmative, even though it would perhaps be more appropriate to speak of a "business economy", "market economy" or simply "free economy". But if by "capitalism" is meant a system in which freedom in the economic sector is not circumscribed within a strong juridical framework which places it at the service of human freedom in its totality, and which sees it as a particular aspect of that freedom, the core of which is ethical and religious, then the reply is certainly negative." (*Centesimus Annus*, paragraph 42)

21. This is a significant passage because it makes clear that the Church supports a "business", "market" or "free" economy, but on condition that market forces are constrained by a juridical framework that promotes and protects human freedom in its totality. The juridical framework is the responsibility of the State:

"It is the task of the State to provide for the defence and preservation of common goods such as the natural and human environments, which cannot be safeguarded simply by market forces. Just as in the time of primitive capitalism the State had the duty of defending the basic rights of workers, so now, with the new capitalism, the State and all of society have the duty of *defending those collective goods* which, among others, constitute the essential framework for the legitimate pursuit of personal goals on the part of each individual.

Here we find a new limit on the market: there are collective and qualitative needs which cannot be satisfied by market mechanisms. There are important human needs which escape its logic. There are goods which by their very nature cannot and must not be bought or sold. Certainly the mechanisms of the market offer secure advantages: they help to utilize resources better; they promote the exchange of products; above all they give central place to the person's desires and preferences, which, in a contract, meet the desires and preferences of another person. Nevertheless, these mechanisms carry the risk of an "idolatry" of the market, an idolatry which ignores the existence of goods which by their nature are not and cannot be mere commodities." (*Centesimus Annus*, paragraph 40, italics in original)

22. This passage recognises the economic advantages that a market can bring, but points out that action is needed by the State because certain collective goods cannot be protected by market mechanisms. Collective goods include environmental conditions. A warning is given against the idolatry of the market: the idolatry of the market blinds us to the goods which are not market commodities.

D. Neoliberalism is rejected

23. The Church supports a market economy based on private ownership, but it comes with limitations. This is evident in St John Paul II's warning against neoliberalism in his *Apostolic*

Exhortation following the Synod of Bishops from the Americas in 1999. Neoliberalism manifested the idolatry of the market:

“More and more, in many countries of America, a system known as “neoliberalism” prevails; based on a purely economic conception of man, this system considers profit and the law of the market as its only parameters, to the detriment of the dignity of and the respect due to individuals and peoples. At times this system has become the ideological justification for certain attitudes and behaviour in the social and political spheres leading to the neglect of the weaker members of society. Indeed, the poor are becoming ever more numerous, victims of specific policies and structures which are often unjust.” (*Ecclesia in America*, paragraph 56.)

24. The neoliberalism referred to by St John Paul II is now often termed economic libertarianism, a characteristic of which is to argue that moral laws are built into market-based mechanisms and that "markets are moral". Catholic social teaching accepts and welcomes business activity, but it does not assume that exchanges within the markets in which they operate are necessarily moral or just.
25. In his address to the Bishops of Latin America and the Caribbean in May 2007 Pope Benedict emphasised the need for just economic structures to be underpinned by a moral consensus on fundamental values. He posed a question:

“... how can the Church contribute to the solution of urgent social and political problems, and respond to the great challenge of poverty and destitution? The problems of Latin America and the Caribbean, like those of today’s world, are multifaceted and complex, and they cannot be dealt with through generic programmes. Undoubtedly, the fundamental question about the way that the Church, illuminated by faith in Christ, should react to these challenges, is one that concerns us all. In this context, we inevitably speak of the problem of structures, especially those which create injustice. In truth, just structures are a condition without which a just order in society is not possible. But how do they arise? How do they function? Both capitalism and Marxism promised to point out the path for the creation of just structures, and they declared that these, once established, would function by themselves; they declared that not only would they have no need of any prior individual morality, but that they would promote a communal morality. And this ideological promise has been proved false. The facts have clearly demonstrated it. The Marxist system, where it found its way into government, not only left a sad heritage of economic and ecological destruction, but also a painful oppression of souls. And we can also see the same thing happening in the West, where the distance between rich and poor is growing constantly, and giving rise to a worrying degradation of personal dignity through drugs, alcohol and deceptive illusions of happiness.

Just structures are, as I have said, an indispensable condition for a just society, but they neither arise nor function without a moral consensus in society on fundamental values, and on the need to live these values with the necessary sacrifices, even if this goes against personal interest.” (Address to Inaugural

26. Pope Benedict XVI's principal exposition of Catholic social teaching on economic issues was in his 2009 encyclical *Caritas in Veritate*. Like St John Paul II's *Sollicitudo Rei Socialis*, *Caritas in Veritate* was written to commemorate Paul VI's encyclical *Populorum Progressio*. It addresses the kind of question posed in the foregoing quote: how can the Church contribute to the solution of urgent social and political problems, and respond to the great challenge of poverty and destitution? In dealing with this question Pope Benedict discussed the development of a moral consensus on which policies may be based. He wrote on a range of issues concerned with the operation of markets and two of the criteria that govern moral economic action: justice and the common good. The development of an understanding of the requirements of justice and the common good can provide a sound basis for a community consensus needed to improve the social order.

E. Justice in economic relations

27. Pope Benedict introduced the passages on justice and the common good with some general comments on the interconnectedness of justice, charity and the common good. These are particularly important for Christians because they make clear that the requirement for charity does not read down the requirement for justice. It means that we cannot tolerate an unjust social order, or unjust markets, on the basis that Christian charity, or State welfare, is, or may be, available to the poor and the marginal. Pope Benedict wrote:

*"Ubi societas, ibi ius: every society draws up its own system of justice. Charity goes beyond justice, because to love is to give, to offer what is "mine" to the other; but it never lacks justice, which prompts us to give the other what is "his", what is due to him by reason of his being or his acting. I cannot "give" what is mine to the other, without first giving him what pertains to him in justice. If we love others with charity, then first of all we are just towards them. Not only is justice not extraneous to charity, not only is it not an alternative or parallel path to charity: justice is inseparable from charity, and intrinsic to it. Justice is the primary way of charity or, in Paul VI's words, "the minimum measure" of it, an integral part of the love "in deed and in truth" (1 Jn 3:18), to which Saint John exhorts us. On the one hand, charity demands justice: recognition and respect for the legitimate rights of individuals and peoples. It strives to build the *earthly city* according to law and justice. On the other hand, charity transcends justice and completes it in the logic of giving and forgiving.*

To love someone is to desire that person's good and to take effective steps to secure it. Besides the good of the individual, there is a good that is linked to living in society: the common good. It is the good of "all of us", made up of individuals, families and intermediate groups who together constitute society. It is a good that is sought not for its own sake, but for the people who belong to the social community and who can only really and effectively pursue their good within it. To desire the *common good* and strive towards

it is a requirement of justice and charity. To take a stand for the common good is on the one hand to be solicitous for, and on the other hand to avail oneself of, that complex of institutions that give structure to the life of society, juridically, civilly, politically and culturally, making it the *pólis*, or “city”. (*Caritas in Veritate* 2009, paragraphs 6 and 7, italics in original, footnotes omitted.)

28. The operation of markets has to be judged and, where appropriate, regulated by reference to justice and the promotion of the common good. The two are connected, but the way in which they are connected is often unclear because across society the term “the common good” is sometimes used in different ways and with some imprecision. The Vatican Council described the common good as “the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfilment” (*Gaudium et Spes*, paragraph 26). The emerging body of interest in “civil society” reflects the value of sectional and broader groups in society. Discussion and writing in regard to individuals emphasises personal fulfilment and social engagement.

29. The requirements of justice and the common good for the operation of markets and economic activity are explained by Pope Benedict in *Caritas in Veritate*:

“The market is subject to the principles of so-called *commutative justice*, which regulates the relations of giving and receiving between parties to a transaction. But the social doctrine of the Church has unceasingly highlighted the importance of *distributive justice* and *social justice* for the market economy, not only because it belongs within a broader social and political context, but also because of the wider network of relations within which it operates. In fact, if the market is governed solely by the principle of the equivalence in value of exchanged goods, it cannot produce the social cohesion that it requires in order to function well. *Without internal forms of solidarity and mutual trust, the market cannot completely fulfil its proper economic function.* And today it is this trust which has ceased to exist, and the loss of trust is a grave loss.” (Paragraph 35, italics in original)

“Economic activity cannot solve all social problems through the simple application of *commercial logic*. This needs to be *directed towards the pursuit of the common good*, for which the political community in particular must also take responsibility. Therefore, it must be borne in mind that grave imbalances are produced when economic action, conceived merely as an engine for wealth creation, is detached from political action, conceived as a means for pursuing justice through redistribution.” (Paragraph 36, italics in original)

30. Catholic teaching identifies three dimensions of “basic justice”: commutative justice, distributive justice and social justice; see, for example, *Encyclopaedia of Catholicism* Richard P McBrien ed., 1995, pages 1203-5. Commutative justice requires fairness in private agreements and exchanges between individual and private entities. As Pope Benedict states in the preceding extract from paragraph 35 of *Caritas in Veritate*, commutative justice is

insufficient to achieve social cohesion (and, more so, if markets are not based on commutative justice). Distributive justice covers the public relationships in society and addresses the fair allocation of benefits and burdens to individuals and groups in society by reference to their respective capacities and needs. Social justice in modern Catholic social teaching evaluates the social, economic and political institutions and arrangements in terms of their ability to satisfy the minimum needs and basic rights of the citizenry and identifies the ways in which those institutions and arrangements can promote the common good. Social justice has been expanded beyond earlier concepts of "legal or general justice".

31. The connection for individuals between justice and the common good is illustrated in a commentary on basic justice in a Pastoral Letter issued by the National Conference of Catholic Bishops of the United States in 1986:

"These fundamental duties can be summarized this way: *Basic justice demands the establishment of minimum levels of participation in the life of the human community for all persons.* The ultimate injustice is for a person or group to be treated actively or abandoned passively as if they were non members of the human race. To treat people this way is effectively to say they simply do not count as human beings. This can take many forms, all of which can be described as varieties of marginalization, or exclusion from social life... These patterns of exclusion are created by free human beings. In this sense they can be called forms of social sin. Acquiescence in them or failure to correct them when it is possible to do so is a sinful dereliction of Christian duty.

Recent Catholic social thought regards the task of overcoming these patterns of exclusion and powerlessness as a most basic demand of justice. Stated positively, justice demands that social institutions be ordered in a way that guarantees all persons the ability to participate actively in the economic, political, and cultural life of society. The level of participation may legitimately be greater for some persons than for others, but there is a basic level of access that must be made available to all. Such participation is an essential expression of the social nature of human beings and their communitarian vocation. (*Economic Justice for All*, 1986, paragraphs 77-8, footnotes omitted, italics in original.)

32. Since 1986 the terms "social inclusion" and "social exclusion" have often been used to cover the kind of participation discussed in this extract. The critical point is that the promotion of the common good is not merely a goal of social organisation, but recognition of the right of all citizens.
33. *Caritas in Veritate* paid particular attention to Pope Paul VI's vision of development in *Populorum Progressio* and discussed the extent to which Pope Paul VI's expectations had been fulfilled by the model of development that had been adopted in recent decades. In that time economic growth had "lifted billions of people out of misery", but alongside them were

persistent and growing pockets of disadvantage. A number of the observations and issues raised in Pope Benedict's encyclical were important parts of the analysis six years later by Pope Francis in his encyclical *Laudato Si'*. Pope Benedict wrote:

- “The economic development that Paul VI hoped to see was meant to produce real growth, of benefit to everyone and genuinely sustainable. It is true that growth has taken place, and it continues to be a positive factor that has lifted billions of people out of misery — recently it has given many countries the possibility of becoming effective players in international politics. Yet it must be acknowledged that this same economic growth has been and continues to be weighed down by malfunctions and dramatic problems, highlighted even further by the current crisis.” (Paragraph 21)
- “Profit is useful if it serves as a means towards an end that provides a sense both of how to produce it and how to make good use of it. Once profit becomes the exclusive goal, if it is produced by improper means and without the common good as its ultimate end, it risks destroying wealth and creating poverty.” (Paragraph 21)
- “The world's wealth is growing in absolute terms, but inequalities are on the increase. In rich countries, new sectors of society are succumbing to poverty and new forms of poverty are emerging. In poorer areas some groups enjoy a sort of “superdevelopment” of a wasteful and consumerist kind which forms an unacceptable contrast with the ongoing situations of dehumanizing deprivation.” (Paragraph 22)
- “Yet it should be stressed that progress of a merely economic and technological kind is insufficient. Development needs above all to be true and integral. The mere fact of emerging from economic backwardness, though positive in itself, does not resolve the complex issues of human advancement, neither for the countries that are spearheading such progress, nor for those that are already economically developed, nor even for those that are still poor, which can suffer not just through old forms of exploitation, but also from the negative consequences of a growth that is marked by irregularities and imbalances.” (Paragraph 23)
- “Economic activity cannot solve all social problems through the simple application of commercial logic. This needs to be directed towards the pursuit of the common good, for which the political community in particular must also take responsibility. Therefore, it must be borne in mind that grave imbalances are produced when economic action, conceived merely as an engine for wealth creation, is detached from political action, conceived as a means for pursuing justice through redistribution.” (Paragraph 36).
- “In our own day, the State finds itself having to address the limitations to its sovereignty imposed by the new context of international trade and finance, which is characterized by increasing mobility both of financial capital and means of production, material and immaterial. This new context has altered the political power of States.” (Paragraph 24)

34. In *Caritas in Veritate* we see Pope Benedict incorporate his concern for the environment into his economic analysis. Again we see in these passages some important concerns and themes that later appear in Pope Francis' *Laudato Si'*.

“The Church has a responsibility towards creation and she must assert this responsibility in the public sphere. In so doing, she must defend not only earth, water and air as gifts of creation that belong to everyone. She must above all protect mankind from self-destruction. There is need for what might be called a human ecology, correctly understood. The deterioration of nature is in fact closely connected to the culture that shapes human coexistence: when “human ecology” is respected within society, environmental ecology also benefits. Just as human virtues are interrelated, such that the

weakening of one places others at risk, so the ecological system is based on respect for a plan that affects both the health of society and its good relationship with nature.” (51, footnote omitted)

“Let us hope that the international community and individual governments will succeed in countering harmful ways of treating the environment. It is likewise incumbent upon the competent authorities to make every effort to ensure that the economic and social costs of using up shared environmental resources are recognized with transparency and fully borne by those who incur them, not by other peoples or future generations: the protection of the environment, of resources and of the climate obliges all international leaders to act jointly and to show a readiness to work in good faith, respecting the law and promoting solidarity with the weakest regions of the planet.” (Paragraph 50, footnote omitted.)

35. *Caritas in Veritate* considered the impact of globalisation on employment and workers’ rights. Employment remains the focus, for the benefit of the individual and for the benefit of society through the protection of social capital:

“The dignity of the individual and the demands of justice require, particularly today, that economic choices do not cause disparities in wealth to increase in an excessive and morally unacceptable manner, and that we continue to prioritize the goal of access to steady employment for everyone. All things considered, this is also required by “economic logic”. Through the systemic increase of social inequality, both within a single country and between the populations of different countries (i.e. the massive increase in relative poverty), not only does social cohesion suffer, thereby placing democracy at risk, but so too does the economy, through the progressive erosion of ‘social capital’: the network of relationships of trust, dependability, and respect for rules, all of which are indispensable for any form of civil coexistence.” (Paragraph 32, footnote omitted.)

36. Globalisation does, however, have a detrimental effect on social capital through its impact on national social safety nets and the capacity of workers to protect themselves:

“From the social point of view, systems of protection and welfare, already present in many countries in Paul VI’s day, are finding it hard and could find it even harder in the future to pursue their goals of true social justice in today’s profoundly changed environment. The global market has stimulated first and foremost, on the part of rich countries, a search for areas in which to outsource production at low cost with a view to reducing the prices of many goods, increasing purchasing power and thus accelerating the rate of development in terms of greater availability of consumer goods for the domestic market. *Consequently, the market has prompted new forms of competition between States as they seek to attract foreign businesses to set up production centres, by means of a variety of instruments, including favourable fiscal regimes and deregulation of the labour market.* These processes have led to a downsizing of social security systems as the price to be paid for seeking greater competitive advantage in the global market, with consequent grave danger for the rights of workers, for fundamental human rights and for the solidarity associated with the traditional forms of the social State. Systems of social security can lose the capacity to carry out their task, both in emerging countries and in those that were among the earliest to develop, as well as in poor countries. Here budgetary policies, with cuts in social spending often made under pressure from international financial institutions, can leave citizens powerless in the face of old and new

risks; such powerlessness is increased by the lack of effective protection on the part of workers' associations. *Through the combination of social and economic change, trade union organizations experience greater difficulty in carrying out their task of representing the interests of workers, partly because Governments, for reasons of economic utility, often limit the freedom or the negotiating capacity of labour unions.* Hence traditional networks of solidarity have more and more obstacles to overcome. The repeated calls issued within the Church's social doctrine, beginning with *Rerum Novarum*, for the promotion of workers' associations that can defend their rights must therefore be honoured today even more than in the past, as a prompt and far-sighted response to the urgent need for new forms of cooperation at the international level, as well as the local level. (*Caritas in Veritate*, paragraph 25, footnote omitted, emphasis added.)

F. Corporate social responsibility

37. A distinctive feature of *Caritas in Veritate* is the emphasis on the capacity of the market system to choose goals other than profit maximization. The encyclical points to the range of values and motivations of the parties to economic transactions. At the level of individual and inter-personal transactions, we know from our own experience that factors other than profit maximisation enter into the transaction. The encyclical explains why a Christian should avoid a narrow guide to these kinds of transactions. With corporations, the Pope points out that we are seeing the emergence of a sense and practice of corporate social responsibility that recognises the fact that there are a variety of stakeholders in the economic process. Furthermore, we are seeing significant economic activity being undertaken by not-for-profit firms. There is recognition that the market can rise above the narrow confines of profit maximization.

- “The Church has always held that economic action is not to be regarded as something opposed to society. In and of itself, the market is not, and must not become, the place where the strong subdue the weak. Society does not have to protect itself from the market, as if the development of the latter were ipso facto to entail the death of authentically human relations. (Paragraph 36)
- “Admittedly, the market can be a negative force, not because it is so by nature, but because a certain ideology can make it so. It must be remembered that the market does not exist in the pure state. It is shaped by the cultural configurations which define it and give it direction. Economy and finance, as instruments, can be used badly when those at the helm are motivated by purely selfish ends. Instruments that are good in themselves can thereby be transformed into harmful ones. But it is man's darkened reason that produces these consequences, not the instrument per se. Therefore it is not the instrument that must be called to account, but individuals, their moral conscience and their personal and social responsibility.” (Paragraph 36)
- “The Church's social doctrine holds that authentically human social relationships of friendship, solidarity and reciprocity can also be conducted within economic activity, and not only outside it or ‘after’ it.” (Paragraph 36)
- “Today's international economic scene, marked by grave deviations and failures, requires a profoundly new way of understanding business enterprise. Old models are disappearing,

but promising new ones are taking shape on the horizon. Without doubt, one of the greatest risks for businesses is that they are almost exclusively answerable to their investors, thereby limiting their social value. Yet there is also increasing awareness of the need for greater social responsibility on the part of business. Even if the ethical considerations that currently inform debate on the social responsibility of the corporate world are not all acceptable from the perspective of the Church's social doctrine, there is nevertheless a growing conviction that business management cannot concern itself only with the interests of the proprietors, but must also assume responsibility for all the other stakeholders who contribute to the life of the business: the workers, the clients, the suppliers of various elements of production, the community of reference.” (Paragraph 40)

- “Striving to meet the deepest moral needs of the person also has important and beneficial repercussions at the level of economics. The economy needs ethics in order to function correctly — not any ethics whatsoever, but an ethics which is people-centred.” (Paragraph 45)
- “When we consider the issues involved in the relationship between business and ethics, as well as the evolution currently taking place in methods of production, it would appear that the traditionally valid distinction between profit-based companies and non-profit organizations can no longer do full justice to reality, or offer practical direction for the future. In recent decades a broad intermediate area has emerged between the two types of enterprise. It is made up of traditional companies which nonetheless subscribe to social aid agreements in support of underdeveloped countries, charitable foundations associated with individual companies, groups of companies oriented towards social welfare, and the diversified world of the so-called “civil economy” and the “economy of communion”. This is not merely a matter of a “third sector”, but of a broad new composite reality embracing the private and public spheres, one which does not exclude profit, but instead considers it a means for achieving human and social ends.” (Paragraph 46)

G. Pope Francis: *Evangelli Gaudium*

38. *Evangelli Gaudium* was written by Pope Francis following the Synod of Bishops in October 2012 on the theme “The New Evangelisation for the Transmission of the Christian Faith”. This Apostolic Exhortation was not intended as a social document (see paragraph 184), but it does provide some general observations on society and economics (at paragraphs 50-60) and commentary on the “inclusion of the poor into society” (at paragraphs 186-208). The commentary is preceded by a reminder of the practical limitations on the Church’s analysis of and solutions for contemporary problems:

“... neither the Pope nor the Church have a monopoly on the interpretation of social realities or the proposal of solutions to contemporary problems. Here I can repeat the insightful observation of Pope Paul VI: “In the face of such widely varying situations, it is difficult for us to utter a unified message and to put forward a solution which has universal validity. This is not our ambition, nor is it our mission. It is up to the Christian communities to analyse with objectivity the situation which is proper to their own country (Apostolic Letter *Octogesima Adveniens*, 14 May 1971, 4)].” (Paragraph 184)

39. Pope Francis’ general observations are found under a number of headings, including *No to an economy of exclusion*, *No to the new idolatry of money* and *No to a financial system which*

rules rather than serves. They show a passionate and deep commitment to the poor and the marginal:

- “Today everything comes under the laws of competition and the survival of the fittest, where the powerful feed upon the powerless. As a consequence, masses of people find themselves excluded and marginalized: without work, without possibilities, without any means of escape.” (Paragraph 53)
- “Human beings are themselves considered consumer goods to be used and then discarded. We have created a ‘throw away’ culture which is now spreading. It is no longer simply about exploitation and oppression, but something new. Exclusion ultimately has to do with what it means to be a part of the society in which we live; those excluded are no longer society’s underside or its fringes or its disenfranchised – they are no longer even a part of it. The excluded are not the ‘exploited’ but the outcast, the ‘leftovers’.” (Paragraph 53)
- “In this context, some people continue to defend trickle-down theories which assume that economic growth, encouraged by a free market, will inevitably succeed in bringing about greater justice and inclusiveness in the world. This opinion, which has never been confirmed by the facts, expresses a crude and naïve trust in the goodness of those wielding economic power and in the sacralized workings of the prevailing economic system. Meanwhile, the excluded are still waiting.” (Paragraph 54)
- “To sustain a lifestyle which excludes others, or to sustain enthusiasm for that selfish ideal, a globalization of indifference has developed. Almost without being aware of it, we end up being incapable of feeling compassion at the outcry of the poor, weeping for other people’s pain, and feeling a need to help them, as though all this were someone else’s responsibility and not our own. The culture of prosperity deadens us; we are thrilled if the market offers us something new to purchase. In the meantime all those lives stunted for lack of opportunity seem a mere spectacle; they fail to move us.” (Paragraph 54)
- “We have created new idols. The worship of the ancient golden calf (cf. *Ex* 32:1-35) has returned in a new and ruthless guise in the idolatry of money and the dictatorship of an impersonal economy lacking a truly human purpose. The worldwide crisis affecting finance and the economy lays bare their imbalances and, above all, their lack of real concern for human beings; man is reduced to one of his needs alone: consumption.” (Paragraph 55)
- “While the earnings of a minority are growing exponentially, so too is the gap separating the majority from the prosperity enjoyed by those happy few. This imbalance is the result of ideologies which defend the absolute autonomy of the marketplace and financial speculation. Consequently, they reject the right of states, charged with vigilance for the common good, to exercise any form of control. A new tyranny is thus born, invisible and often virtual, which unilaterally and relentlessly imposes its own laws and rules.” (Paragraph 56)
- “The thirst for power and possessions knows no limits. In this system, which tends to devour everything which stands in the way of increased profits, whatever is fragile, like the environment, is defenseless before the interests of a deified market, which become the only rule.” (Paragraph 56)

40. Later in the exhortation Pope Francis turns his attention to the inclusion of the poor into society:

- “The need to resolve the structural causes of poverty cannot be delayed, not only for the pragmatic reason of its urgency for the good order of society, but because society needs to be cured of a sickness which is weakening and frustrating it, and which can only lead

to new crises. Welfare projects, which meet certain urgent needs, should be considered merely temporary responses. As long as the problems of the poor are not radically resolved by rejecting the absolute autonomy of markets and financial speculation and by attacking the structural causes of inequality, no solution will be found for the world's problems or, for that matter, to any problems. Inequality is the root of social ills." (Paragraph 202, footnote omitted.)

- "The dignity of each human person and the pursuit of the common good are concerns which ought to shape all economic policies. At times, however, they seem to be a mere addendum imported from without in order to fill out a political discourse lacking in perspectives or plans for true and integral development. How many words prove irksome to this system! It is irksome when the question of ethics is raised, when global solidarity is invoked, when the distribution of goods is mentioned, when reference is made to protecting labour and defending the dignity of the powerless, when allusion is made to a God who demands a commitment to justice. At other times these issues are exploited by a rhetoric which cheapens them. Casual indifference in the face of such questions empties our lives and our words of all meaning. Business is a vocation, and a noble vocation, provided that those engaged in it see themselves challenged by a greater meaning in life; this will enable them truly to serve the common good by striving to increase the goods of this world and to make them more accessible to all." (Paragraph 203)
- "We can no longer trust in the unseen forces and the invisible hand of the market. Growth in justice requires more than economic growth, while presupposing such growth: it requires decisions, programmes, mechanisms and processes specifically geared to a better distribution of income, the creation of sources of employment and an integral promotion of the poor which goes beyond a simple welfare mentality. I am far from proposing an irresponsible populism, but the economy can no longer turn to remedies that are a new poison, such as attempting to increase profits by reducing the work force and thereby adding to the ranks of the excluded." (Paragraph 204)
- "Peace in society cannot be understood as pacification or the mere absence of violence resulting from the domination of one part of society over others. Nor does true peace act as a pretext for justifying a social structure which silences or appeases the poor, so that the more affluent can placidly support their lifestyle while others have to make do as they can. Demands involving the distribution of wealth, concern for the poor and human rights cannot be suppressed under the guise of creating a consensus on paper or a transient peace for a contented minority. The dignity of the human person and the common good rank higher than the comfort of those who refuse to renounce their privileges. When these values are threatened, a prophetic voice must be raised." (Paragraph 218)

H. Pope Francis: *Laudato Si'*

41. Pope Francis' encyclical *Laudato Si'*, published in June 2015 addresses a number of important and interconnected issues, including "other ways of understanding the economy and progress":

"As examples [of themes which will reappear as the Encyclical unfolds], I will point to the intimate relationship between the poor and the fragility of the planet, the conviction that everything in the world is connected, the critique of new paradigms and forms of power derived from technology, the call to seek other ways of understanding the economy and progress, the value proper to each creature, the human meaning of ecology, the need for forthright and honest debate, the serious responsibility of international and local policy, the throwaway culture and the proposal of a new lifestyle. These questions will not be dealt with once and for all, but reframed and enriched again and again." (Paragraph 16)

42. The encyclical has an acute sense of urgency because of the fact of climate change and the risks it poses for the world. The Pope accepts that climate change is real and is man-made:
- “A very solid scientific consensus indicates that we are presently witnessing a disturbing warming of the climatic system. In recent decades this warming has been accompanied by a constant rise in the sea level and, it would appear, by an increase of extreme weather events, even if a scientifically determinable cause cannot be assigned to each particular phenomenon. Humanity is called to recognize the need for changes of lifestyle, production and consumption, in order to combat this warming or at least the human causes which produce or aggravate it. It is true that there are other factors (such as volcanic activity, variations in the earth’s orbit and axis, the solar cycle), yet a number of scientific studies indicate that most global warming in recent decades is due to the great concentration of greenhouse gases (carbon dioxide, methane, nitrogen oxides and others) released mainly as a result of human activity.” (Paragraph 23)
 - “Many of those who possess more resources and economic or political power seem mostly to be concerned with masking the problems or concealing their symptoms, simply making efforts to reduce some of the negative impacts of climate change. However, many of these symptoms indicate that such effects will continue to worsen if we continue with current models of production and consumption. There is an urgent need to develop policies so that, in the next few years, the emission of carbon dioxide and other highly polluting gases can be drastically reduced, for example, substituting for fossil fuels and developing sources of renewable energy. Worldwide there is minimal access to clean and renewable energy.” (Paragraph 26)
43. It is important to recognise that Pope Francis does not present solutions or blueprints for action:
- “Finally, we need to acknowledge that different approaches and lines of thought have emerged regarding this situation and its possible solutions.... [There] is no one path to a solution. This makes a variety of proposals possible, all capable of entering into dialogue with a view to developing comprehensive solutions.” (Paragraph 60)
 - “On many concrete questions, the Church has no reason to offer a definitive opinion; she knows that honest debate must be encouraged among experts, while respecting divergent views. But we need only take a frank look at the facts to see that our common home is falling into serious disrepair.” (Paragraph 61)
 - “Given the complexity of the ecological crisis and its multiple causes, we need to realize that the solutions will not emerge from just one way of interpreting and transforming reality.” (Paragraph 63)
44. The economic analysis presented by the encyclical is based on two fundamental propositions: the environment is a common good in collective ownership and private property is subject to a "social mortgage":
- “The climate is a common good, belonging to all and meant for all. At the global level, it is a complex system linked to many of the essential conditions for human life. (Paragraph 23)
 - “The natural environment is a collective good, the patrimony of all humanity and the responsibility of everyone.” (Paragraph 95)

- “An integral ecology is inseparable from the notion of the common good, a central and unifying principle of social ethics. The common good is ‘the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfilment’” (Paragraph 156, footnote omitted)
- “The principle of the subordination of private property to the universal destination of goods, and thus the right of everyone to their use, is a golden rule of social conduct and “the first principle of the whole ethical and social order”. The Christian tradition has never recognized the right to private property as absolute or inviolable, and has stressed the social purpose of all forms of private property. Saint John Paul II forcefully reaffirmed this teaching, stating that ‘God gave the earth to the whole human race for the sustenance of all its members, *without excluding or favouring anyone*’. ... He clearly explained that ‘the Church does indeed defend the legitimate right to private property, but she also teaches no less clearly that there is always a social mortgage on all private property, in order that goods may serve the general purpose that God gave them’”. (Paragraph 93, footnotes omitted)
- “Here too, it should always be kept in mind that ‘environmental protection cannot be assured solely on the basis of financial calculations of costs and benefits. The environment is one of those goods that cannot be adequately safeguarded or promoted by market forces’.” (Paragraph 190, footnote omitted)
- “The principle of the maximization of profits, frequently isolated from other considerations, reflects a misunderstanding of the very concept of the economy. As long as production is increased, little concern is given to whether it is at the cost of future resources or the health of the environment; as long as the clearing of a forest increases production, no one calculates the losses entailed in the desertification of the land, the harm done to biodiversity or the increased pollution. In a word, businesses profit by calculating and paying only a fraction of the costs involved.” (Paragraph 195)

45. Pope Francis argues that issues about the content and direction of economic growth should be considered by reference to employment and the availability of work for all.

- “We are convinced that “man is the source, the focus and the aim of all economic and social life”. ... It follows that, in the reality of today’s global society, it is essential that “we continue to prioritize the goal of access to steady employment for everyone”, no matter the limited interests of business and dubious economic reasoning.” (Paragraph 127, footnotes omitted)
- “We were created with a vocation to work. The goal should not be that technological progress increasingly replace human work, for this would be detrimental to humanity. Work is a necessity, part of the meaning of life on this earth, a path to growth, human development and personal fulfilment. Helping the poor financially must always be a provisional solution in the face of pressing needs. The broader objective should always be to allow them a dignified life through work.” (Paragraph 128, footnotes omitted)
- “In order to continue providing employment, it is imperative to promote an economy which favours productive diversity and business creativity. ... Business is a noble vocation, directed to producing wealth and improving our world. It can be a fruitful source of prosperity for the areas in which it operates, especially if it sees the creation of jobs as an essential part of its service to the common good.” (Paragraph 129)

46. These views on the economic system, markets and work are established positions in Catholic social teaching. On the basis of those positions, Pope Francis asks us to pause and consider the strengths and weaknesses of the economic system:

- “Humanity has entered a new era in which our technical prowess has brought us to a crossroads. *We are the beneficiaries of two centuries of enormous waves of change: steam engines, railways, the telegraph, electricity, automobiles, aeroplanes, chemical industries, modern medicine, information technology and, more recently, the digital revolution, robotics, biotechnologies and nanotechnologies. It is right to rejoice in these advances and to be excited by the immense possibilities which they continue to open up before us*, for “science and technology are wonderful products of a God-given human creativity”. The modification of nature for useful purposes has distinguished the human family from the beginning; technology itself “expresses the inner tension that impels man gradually to overcome material limitations”. *Technology has remedied countless evils which used to harm and limit human beings. How can we not feel gratitude and appreciation for this progress, especially in the fields of medicine, engineering and communications? How could we not acknowledge the work of many scientists and engineers who have provided alternatives to make development sustainable?*” (Paragraph 102, footnotes omitted, emphasis added)
- “*The technocratic paradigm also tends to dominate economic and political life. The economy accepts every advance in technology with a view to profit, without concern for its potentially negative impact on human beings. Finance overwhelms the real economy. The lessons of the global financial crisis have not been assimilated, and we are learning all too slowly the lessons of environmental deterioration.* Some circles maintain that current economics and technology will solve all environmental problems, and argue, in popular and non-technical terms, that the problems of global hunger and poverty will be resolved simply by market growth. ... Their behaviour shows that for them maximizing profits is enough. Yet by itself the market cannot guarantee integral human development and social inclusion. At the same time, we have “a sort of ‘superdevelopment’ of a wasteful and consumerist kind which forms an unacceptable contrast with the ongoing situations of dehumanizing deprivation”, while *we are all too slow in developing economic institutions and social initiatives which can give the poor regular access to basic resources. We fail to see the deepest roots of our present failures*, which have to do with the direction, goals, meaning and social implications of technological and economic growth.” (Paragraph 109, footnotes omitted, emphasis added.)
- “Whenever these questions are raised, some react by accusing others of irrationally attempting to stand in the way of progress and human development. But *we need to grow in the conviction that a decrease in the pace of production and consumption can at times give rise to another form of progress and development.* Efforts to promote a sustainable use of natural resources are not a waste of money, but rather an investment capable of providing other economic benefits in the medium term.” (Paragraph 191, emphasis added.)

I. The rights of workers

47. Catholic social teaching has identified a number of rights of workers that flow from the dignity of the person, the function of work and the obligation to work.

48. In introducing his chapter “Rights of Workers” in *Laborem Exercens*, St John Paul II referred to the “context of human rights” and the “human rights that flow from work”:

“While work, in all its many senses, is an obligation, that is to say a duty, it is also a source of rights on the part of the *worker*. These rights must be examined in the broad *context of human rights as a whole*, which are connatural with man, and many of which are proclaimed by various international organisations and increasingly guaranteed by the individual States for their citizens. Respect for this broad range of human rights constitutes the fundamental condition for peace in the modern world: peace both within individual countries and societies and in international relations, as the Church’s Magisterium has several times noted, especially since the encyclical *Pacem in Terris*. The *human rights that flow from work* are part of the broader context of those fundamental rights of the person.” (*Laborem Exercens*, 16, italics in original.)

49. The movement towards the identification and proclamation of human rights is one of the most significant attempts to respond effectively to the inescapable demands of human dignity; *Compendium of the Social Doctrine of the Church*, paragraphs 152 - 3. In emphasising the importance of human rights, St John Paul II has said:

“These rights apply to every stage of life and to every political, social, economic and cultural situation. Together they form a single whole, directed unambiguously towards the promotion of every aspect of the good of both the person and society...The integral promotion of every category of human rights is the true guarantee of full respect for each individual right” (*Message for the 1999 World Day of Peace*, 3)

50. The proper protection of the dignity of workers and their families is a requirement of justice, not charity. The Catholic Bishops of the United States have set out a number of rights that are required by justice:

“Because work is this important, people have a right to employment.

In return for their labor, workers have a right to wages and other benefits sufficient to sustain life in dignity. As Pope Leo XIII stated, every working person has ‘the right of securing things to sustain life’.

The way power is distributed in a free market economy frequently gives employers greater bargaining power than employees in the negotiation of labor contracts. Such unequal power may press workers into a choice between an inadequate wage or no wage at all.

But justice, not charity, demands certain minimum wage guarantees.

The provision of wages and other benefits sufficient to support a family in dignity is a basic necessity to prevent this exploitation of workers.

The dignity of workers also requires adequate health care, security for old age or disability, unemployment compensation, healthful working conditions, weekly rest, periodic holidays for recreation and leisure, and reasonable security against arbitrary dismissal. These provisions are all essential if workers are to be treated as persons rather than simply a ‘factor of production.’ (*Economic Justice for All: Catholic Social Teaching and the U.S. Economy*, 103, footnotes omitted)

51. The Catholic Bishops’ Conference of England and Wales has identified a number of rights which “are superior to the rights of capital”:

“Workers have rights which Catholic teaching has consistently maintained are superior to the rights of capital. These include the\ right to decent work, to just wages, to security of employment, to adequate rest and holidays, to limitation of hours of work, to health and safety protection, to non-discrimination, to form and join trade unions, and, as a last resort, to go on strike. The Catholic Church has always deplored the treatment of employment as nothing more than a form of commercial contract. This leads to a sense of alienation between a worker and his or her labour. Instead, forms of employment should stress the integration of work and worker, and encourage the application of creative skills.” (*The Common Good and the Catholic Church’s Social Teaching*, 1996, 91)

52. One of the rights identified by the bishops of England and Wales is the right to security of employment. As noted earlier (at paragraphs 12 and 13) St John Paul II and Pope Benedict XVI identified the need for workers to have security of employment. Pope John Paul II identified the low value that is put on the personal security of the worker and his or her family as one of the circumstances that can cause workers to be poor. The plight of low paid workers is compounded when they have no security in their employment. The Bishops of the United States, quoted at paragraph 50, above, referred to the right to “reasonable security against arbitrary dismissal” as an essential right if workers are to be treated as persons rather than a factor of production. The Church’s teaching on the dignity of workers, the importance of work for workers and their families, the priority of labour over capital and the need to protect the vulnerable necessarily rejects arbitrary and unwarranted dismissals. An unconscionable dismissal, for example, would infringe on the worker’s dignity and would be unwarranted.
53. It follows that the Church’s teaching requires that a worker should have substantial security of employment. This is not to say that an employer is required to employ a worker for whom there is no work, or no suitable work, or that a worker should not be dismissed if his or her conduct or work performance justify dismissal. Nor is it to say that a worker should not be subject to a reasonable probationary period before qualifying for security of employment. The Church’s teachings do not prescribe the way in which security of employment is to be achieved; but they do require laws to remedy certain kinds of dismissals. Governments are obliged to make laws that provide appropriate procedures and remedies for those whose employment security is violated.
54. One of the rights identified by the Catholic Bishops of England and Wales is the *right to decent work*. This right has been a major concern of the International Labour Organisation (“ILO”) in recent years. Decent work is a broad term that is used to encompass a number of established specific rights. The Holy See is a member of the ILO and has been actively engaged in the organisation’s work to promote decent work. On 7 June 2005, the leader of the Holy See’s delegation to an ILO conference, His Excellency Mons. Silvano M Tomasi, told the organisation:

“The creation of decent work for all in a sustainable world has been a long-standing common base for fruitful dialogue between the ILO and the social doctrine of the Church. It is the dignity of every human person that requires access to work in condition of personal security, health, fair remuneration, a safe environment. Work is a right and the expression of human dignity. My delegation, therefore, sees unemployment as a ‘real social disaster’ and supports international organizations, employers, labour unions and governments to join forces, strengthen judicial norms of protection, [and] promote the implementation of existing conventions.” (*Intervention by the Holy See at the 93rd International Labour Conference*).

www.vatican.va/roman_curia/secretariat_state/2005/documents)

J. The right to just wages and support for the family

55. In the opening of his 1981 Apostolic Exhortation, *Familiaris Consortio*, St John Paul II made the observation that the family in the modern world, as much and perhaps more than any other institution, has been beset by the many profound and rapid changes that have affected society and culture. The future prosperity and stability of society depends upon the strength of the family unit. The strength of the family will depend to a large extent on the employment relationship and the policies of governments.
56. The *Charter of the Rights of the Family*, issued by the Holy See in October 1983, was part of the Church’s response to a wide range of issues concerning family life. It was a response framed in terms of human rights.
57. Central to Catholic social teaching on the family is the view that the family is to be supported and encouraged, for the benefit of the family and for the benefit of the broader community. It is the basic unit of society. The Preamble to the Holy See’s *Charter of the Rights of the Family* (1983) states:

“The rights of the person, even though they are expressed as rights of the individual, have a fundamental social dimension which finds an innate and vital expression in the family;....the family constitutes, much more than a mere juridical, social and economic unit, a community of love and solidarity, which is uniquely suited to teach and transmit cultural, ethical, social, spiritual and religious values, essential for the development and well-being of its own members and of society.”
58. Article 9 of the Charter is introduced by:

“Families have the right to be able to rely on an adequate family policy on the part of public authorities in the juridical, economic, social and fiscal domains, without any discrimination whatsoever.”
59. Article 10 of the Charter provides:

“Families have a right to a social and economic order in which the organization of work permits the members to live together, and does not hinder the unity, well-being, health and the stability of the family, while offering also the possibility of wholesome recreation.

 - a) Remuneration for work must be sufficient for establishing and maintaining a family with dignity, either through a suitable salary, called a "family wage," or

through other social measures such as family allowances or the remuneration of the work in the home of one of the parents; it should be such that mothers will not be obliged to work outside the home to the detriment of family life and especially of the education of the children.

b) The work of the mother in the home must be recognized and respected because of its value for the family and for society."

60. Pope Francis' Apostolic Exhortation *Amoris Laetitia*, issued on 8 April 2016 provides a wide-ranging review of marriage and family life, but with very little about the operation of economic systems and their impact family life. This is apparent from the outline given of the structure of the document:

"I will begin with an opening chapter inspired by the Scriptures, to set a proper tone. I will then examine the actual situation of families, in order to keep firmly grounded in reality. I will go on to recall some essential aspects of the Church's teaching on marriage and the family, thus paving the way for two central chapters dedicated to love. I will then highlight some pastoral approaches that can guide us in building sound and fruitful homes in accordance with God's plan, with a full chapter devoted to the raising of children. Finally, I will offer an invitation to mercy and the pastoral discernment of those situations that fall short of what the Lord demands of us, and conclude with a brief discussion of family spirituality."

61. Save for the recognition of the value of work and employment (paragraphs 23 and 25), the need for public authorities to provide decent housing, adequate health care and dignified employment (paragraph 44) and the impact that poverty has on family life (paragraph 49), this is not a document concerning socioeconomic issues and questions of social justice of the kind addressed by Pope Francis in earlier documents.

62. The principal right of the worker is the right to a just wage. In his 1961 encyclical, *Mater et Magistra*, St John XXIII wrote:

"We consider it our duty to reaffirm that the remuneration of work is not something that can be left to the laws of the marketplace; nor should it be a decision left to the will of the more powerful. It must be determined in accordance with justice and equity; which means that workers must be paid a wage that allows them to live a truly human life and to fulfil their family obligations in a worthy manner. Other factors too enter into the assessment of a just wage: namely, the effective contribution which each individual makes to the economic effort, the financial state of the company for which he works, the requirements of the general good of the particular country ... and finally the requirements of the common good of the universal family of nations ..." (*Mater et Magistra*, 71)

63. In *Laborem Exercens*, St John Paul II referred to the various rights formed within the employment relationship:

"The key problem of social ethics in this case is that of *just remuneration* for work done. In the context of the present there is no more important way for securing a just relationship between the worker and the employer than that constituted by remuneration for work....

It should also be noted that the justice of a socio-economic system and, in each case, its just functioning, deserve in the final analysis to be evaluated by the way in which man's work is properly remunerated in the system... Hence, in every case, a just wage is the concrete means of *verifying the justice* of the whole socio-economic system and, in any case, of checking that it is functioning justly. It is not the only means of checking, but it is a particularly important one and, in a sense, the key means.

This means of checking concerns above all the family. Just remuneration for the work of an adult who is responsible for a family means remuneration that will suffice for establishing and properly maintaining a family and for providing security for its future. Such remuneration can be given either through what is called a *family wage* - that is, a single salary given to the head of the family for his work, sufficient for the needs of the family without the other spouse having to take up gainful employment outside the home - or through *other social measures* such as family allowances or grants to mothers devoting themselves exclusively to their families. These grants should correspond to the actual needs, that is, to the number of dependents for as long as they are not in a position to assume proper responsibility for their own lives." (*Laborem Exercens*, 19, italics in original)

64. As St John Paul II observed, *social measures* may reduce the amount that will be needed to meet the obligation to pay a just wage. Various kinds of government transfer payments have to be taken into account when an assessment is made of the just wage and an appropriate legal minimum wage.
65. However, the receipt of transfer payments by a worker and/or the worker's dependants does not transfer to the State the obligation to provide support for dependants.
66. On the centenary of *Rerum Novarum*, the Australian Catholic Bishops referred to the need for adequate wages and other entitlements:

"It was his [Pope Leo XIII's] view that human society is built upon and around productive human work. When a person is employed to work full-time for wages, the employer, in strict justice, will pay for an honest day's work a wage sufficient to enable the worker, even if unskilled, to have the benefits of survival, good health, security and modest comfort. The wage must also allow the worker to provide for the future and acquire the personal property needed for the support of a family. To pressure or trick the worker into taking less is, therefore, unjust." (*A Century of Catholic Social Teaching*, 1991)
67. A full-time unskilled worker should be paid a wage that is sufficient to provide the benefits of survival, security and modest comfort and to allow the worker to provide for the future and acquire the personal property for the support of a family, without the need for the other parent to undertake paid employment.
68. This standard of living is the basis upon which a legal minimum wage should be fixed. This minimum wage may be described as a "Living Wage". A just wage for a particular worker may be in excess of the Living Wage because it will need to take into account a number of additional factors related to skills, work environment and the like.

69. Catholic teaching does not require a minimum standard of living that a well-governed and just society cannot afford. Specifically, workers should have a job *and* a decent wage by reference to the standards and capacities of the societies in which they live.
70. Following the introduction of the *Work Choices* legislation (the *Workplace Relations Amendment (Work Choices) Bill 2005*) into Federal Parliament in October 2005 the Catholic Bishops of Australia issued a Statement calling for changes to be made to the legislation. The Statement included:
- “Given the fact that the Catholic Church is a major employer in Australia, this legislation is of particular interest to us. We are guided by our own social teaching that offers us ethical principles and terms of reference.
- A major concern of Catholic Social Teaching is always the effect legislation has on the poor and vulnerable and its impact on family life. As Pope John Paul II wrote in his encyclical *Laborem Exercens*:
- “...in many cases they [the poor] appear as a *result of the violation of the dignity of work*; either because opportunities for human work are limited as a result of the scourge of unemployment, or because a low value is put on work and the rights that flow from it, especially the right to a just wage and to the personal security of the worker and his or her family.” (*Laborem Exercens*, 8)
- Our experience emphasises the importance that employment, fair remuneration and job security play in providing a decent life for workers and their families. They are particularly important for those who have limited job prospects and who are vulnerable to economic change. It is not morally acceptable to reduce the scourge of unemployment by allowing wages and conditions of employment to fall below the level that is needed by workers to sustain a decent standard of living.
71. The critical point from this passage is that there is a moral obligation on governments and society generally to protect workers and support employment opportunities. It is immoral to deprive workers of a decent standard of living because there are other ways in which the community can support workers (such as through the reduction in income tax on minimum wage incomes) and provide employers with assistance to minimise non-wage employment costs (such as reductions in payroll taxes imposed on employers).

Appendix C

THE BISHOPS' STATEMENT OF 25 NOVEMBER 2005 ON *WORK CHOICES*

In 2005 the then Commonwealth Government introduced legislation to amend major aspects of the national employment legislation contained in the *Workplace Relations Act 1996*. The following is a statement made by the Australian Catholic Bishops Conference on 25 November 2005 in relation to the Commonwealth Government's *Workplace Relations Amendment (Work Choices) Bill 2005*:

Introduction

The Commonwealth Government's proposals for reforms to Australian employment law have prompted wide debate throughout the country. It is a debate that has caused many of us to reflect on the fundamental values that should underpin our workplaces and society as a whole.

Economic growth is needed to provide prosperity and economic security for all and to provide equity and social cohesion. Economic growth is needed to enhance social justice.

Catholic Social Teaching

The Catholic Bishops of Australia have been scrutinising the religious and ethical implications of the Commonwealth Government Workplace Relations Amendment (Work Choices) Bill (2005). Given the fact that the Catholic Church is a major employer in Australia, this legislation is of particular interest to us. We are guided by our own social teaching that offers us ethical principles and terms of reference.

A major concern of Catholic Social Teaching is always the effect legislation has on the poor and vulnerable and its impact on family life. As Pope John Paul II wrote in his encyclical *Laborem Exercens*:

“...in many cases they [the poor] appear as a *result of the violation of the dignity of work*; either because opportunities for human work are limited as a result of the scourge of unemployment, or because a low value is put on work and the rights that flow from it, especially the right to a just wage and to the personal security of the worker and his or her family.” (*Laborem Exercens*, 8)

Our experience emphasises the importance that employment, fair remuneration and job security play in providing a decent life for workers and their families. They are particularly important for those who have limited job prospects and who are vulnerable to economic change. It is not morally acceptable to reduce the scourge of unemployment by allowing wages and conditions of employment to fall below the level that is needed by workers to

sustain a decent standard of living.

Role of Governments

Governments have a responsibility to promote employment and to ensure that the basic needs of workers and their families are met through fair minimum standards.

Catholic Social Teaching recognises and supports a proper balance between the rights and responsibilities of employers and workers. The terms of employment cannot be left wholly to the marketplace. The responsibility of government is to ensure that there is a proper balance between respective legal rights, especially when bargaining positions are not equal.

Our Concerns

Does the proposed national system of employment regulation include the objectives of employment growth, fair remuneration and security of employment? Does it promote truly cooperative workplace relations and ensure the protection of the poor and the vulnerable?

We are concerned that the proposed legislation, as it is presently drafted, does not provide a proper balance between the rights of employers and workers in several respects. Changes are necessary to alleviate some of the undesirable consequences of the legislation, especially in regard to its potential impact on the poor, on the vulnerable and on families.

Minimum Wage

Workers are entitled to a wage that allows them to live a fulfilling life and to meet their family obligations. We are concerned that the legislation does not give sufficient emphasis to the objective of fairness in the setting of wages; the provision of a fair safety net by reference to the living standards generally prevailing in Australia; the needs of employees and their families; and the proper assessment of the impact of taxes and welfare support payments.

In our view, changes should be made to the proposed legislation to take into account these concerns.

Minimum Conditions and Bargaining

The legislation proposes a major change in the guaranteed safety net for workers and the procedure for making employment agreements. Our concern is that many workers, especially the poor and vulnerable, may be placed in a situation where they will be required to bargain away some of their entitlements. In particular, we refer to overtime rates, penalty rates and rest breaks. The legislation should be amended to provide that these are appropriately protected.

Unfair Dismissals

The Government proposes the removal of unfair dismissal laws in regard to businesses with up to 100 employees and to make changes to the laws applying to larger firms. Such changes

would reduce job security. Workers should have appropriate redress against unfair dismissals. This does not ignore that termination of employment is justified in particular cases. There is also a case for the amendment of the existing unfair dismissal laws to improve their efficiency and effectiveness. However, unfair dismissal rights should not be dependent upon the size of the employer's undertaking.

The Role of Unions

The legislation should enable cooperation between workers so that they can advance their mutual interests and enable them to participate freely in unions. The legitimate rights of unions are derived from the rights of their members. In their proper role in the workplace they are not "third parties" or outsiders to the employment relationship. We ask the Parliament to give close consideration to the potential impact of the proposed legislation on the capacity of unions to represent their members. It would be wrong for the Parliament to enact laws that impede or frustrate unions in carrying out their lawful representative activities.

Conclusion

The integration of economic growth and social justice is a fundamental obligation of government. They must be pursued in ways that are fair and equitable to the society as a whole. In this context, our proposals for change to the *Workplace Relations Amendment (Work Choices) Bill 2005* seek to moderate the impact on the poor, the vulnerable and families and limit any consequences on social cohesion.

