

*Australian Catholic Commission for Industrial
Relations (ACCIR)*

**WRITTEN SUBMISSION
to the
AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION**

LIVING WAGE CASE

19th February 1999

INTRODUCTION

The Australian Catholic Commission for Industrial Relations (ACCIR) is a Commission established by, and responsible to, the Australian Catholic Bishops' Conference.

The ACCIR makes this submission on behalf of various Catholic Church employers involved in the areas of health, education, welfare, diocesan and parish administration.

This submission, as in previous years, focuses on the achievement of a just wage for truly low paid employees.

It is submitted that the maintenance of the Federal Minimum Wage should remain a priority of the Australian Industrial Relations Commission [AIRC], the various parties and interveners. The ACCIR continues to support the introduction of set criteria, measures or indicators for the review of the Federal Minimum Wage.

Part A summarises the Social Teachings of the Catholic Church with regard to the employment relationship and the payment of a just wage.

Part B addresses issues in granting the claim with respect to the statutory framework of the *Workplace Relations Act 1996 (Cth)*.

Part C assesses the claim of the Australian Council of Trade Unions [ACTU] by reference to its stated objectives of "*providing protection for low paid workers by raising the minimum rates of pay*".

It examines the submission of the Australian Chamber for Commerce and Industry [ACCI].

Part C also states the position of the ACCIR in relation to the ACTU claim and the ACCI submission.

This part also assesses the AIRC Statement of Principles in relation to the current Living Wage Claim.

Part D examines the need for the introduction of criteria, indicators and measures for the assessment of Federal Minimum Wage.

Part E addresses issues resulting from the relationship between Enterprise Bargaining and the award system, and the not for profit sector.

Part F is a summary of key points, concluding the submission for the ACCIR.

PART A

CATHOLIC SOCIAL TEACHING

This part of the ACCIR submission explains the Social Teachings of the Catholic Church with regard to the employment relationship and the payment of a just wage.

What is Catholic Social Teaching?

Catholic Social Teaching is a set of teachings and principles, based on firm Christian values, which aim to bring about a good and fair society for the benefit of all.

Official texts establishing Catholic Social Teachings include papal documents (known as encyclical letters), documents of the Second Vatican Council (1962-1965), and the statements of local and regional conferences of Catholic Bishops.

Catholic Social Teaching, the employment relationship and a just wage.

The Catholic Church has consistently affirmed the dignity of labour. Statements in encyclical letters and other Church documents challenge employers to provide fair wages and decent working conditions.

The Bishops Committee for Industrial Affairs [BCIA], a Committee of the Australian Catholic Bishops' Conference, in a published paper titled "***Industrial Relations - The Guiding Principles***" (Attachment A) expressly states that "*workers have the right to just and minimum wages and to just and safe working conditions.*" The BCIA also states that "*every family has the right to sufficient income through work.*"

In other documents, the Catholic Church maintains that employers have a moral responsibility to pay a just wage. A just wage is considered to take into account the needs of the individual and not just his or her value within the labour market. (Attachment B)

Furthermore, the State has a duty to ensure that employers are meeting this moral responsibility.

"In circumstances of exploitation and coercion, the indirect employer [the State] must provide opportunities for the just settlement of disputes. They may also think it wise to set down a code of minimum standards of wages and conditions based on respect for the dignity of each human person engaged in the workplace and cognisant of the needs of the worker and his or her dependents." (Industrial Relations - The Guiding Principles)

Therefore, while it is considered to be the primary duty of the employer to pay a just wage, the State should establish a statutory minimum wage to ensure a just wage is paid to all employees. This safeguards wages from dropping below such a level that it becomes impossible to sustain a decent standard of living.

However, the setting of a statutory minimum wage by the State should not be a substitute for the moral responsibility of employers to pay a just wage.

Catholic Social Teaching does not regard the State welfare system as a means of substitution for the payment of a just wage.

The Church considers the use of enterprise bargaining and agreements to outline the wages and conditions of an individual workplace to be important. However, it maintains that "*awards remain the most important features of Australia's conciliation and arbitration system.*" Awards are important as "*they establish the minimum terms and conditions of employment, as well as minimum wages, for several million Australian workers,*" in their own right and as the benchmark for the "no disadvantage test" under enterprise bargaining.

In conclusion, Catholic Social Teaching proclaims that:

- employees are entitled to decent working conditions and just wages and benefits;
- employers are morally responsible to pay a just wage; and;
- the State is to ensure employees receive a just wage.

These are the values against which the ACCIR assesses the ACTU Living Wage Claim and the ACCI submission.

PART B

THE STATUTORY FRAMEWORK

The principal objective of the *Workplace Relations Act 1996 (Cth)* [the Act] is "to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia" (s. 3).

The methods by which the principal objective is to be achieved, include:

- *encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market* (s. 3(a))
- *providing the means for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, upon a foundation of minimum standards* (s. 3(d)(i))
- *to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment* (s. 3(d)(ii)).

Following from s. 3(d)(ii) **Part VI - Dispute Prevention and Settlement**, s. 88A states:

The objects of this Part are to ensure that:

- (a) wages and conditions of employment are protected by a system of enforceable awards established and maintained by the Commission; and*
- (b) awards act as a safety net of fair minimum wages and conditions of employment....*

Section 88B of the Act details the performance of the AIRC in regards to dispute prevention and settlement.

In performing its functions it is specified that the AIRC must, under s.88B(2) of the Act, ensure that a safety net of fair minimum wages and conditions of employment is established and maintained.

Furthermore, the Act requires the AIRC to protect the rights of the low paid through the establishment and maintenance of a statutory minimum. In particular the Act states:

- *the need to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment* (s. 3(d)(ii))
- *the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community* (s88B(2))
- *when adjusting the safety net, the need of the low paid* (s 88B(2)(c)).

It is acknowledged that the Act encourages the making of agreements between employers and employees by:

- *ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level (s. 3(b)), and*
- *enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not that form is provided for by this Act (s. 3(c))*

However, underpinning the promotion of enterprise bargaining, the structure and focus of the Act supports maintenance of effective awards as a safety net of fair minimum wages and conditions and the ongoing protection of low paid workers.

The ACCIR supports enterprise bargaining as an effective means of establishing wages and conditions of employment in certain circumstances.

However, the ACCIR submits that there is still a strong requirement for a safety net of minimum wages and conditions as the means of protection for low paid and vulnerable workers.

Therefore, it is submitted that the maintenance of fair and minimum wages and the need of the low paid is of equal importance to the promotion of enterprise bargaining.

As Pope John Paul II confirmed in *Centesimus Annus*:

"the right to a just wage, which cannot be left to the 'free consent of the parties' so that the employer having paid what was agreed upon, has done his part and seemingly is not called upon to do anything beyond... one finds instances of contracts between employees and employers which lack reference to the most elementary justice regarding the employment of... women, working hours, the hygienic condition of the workplace and fair pay."

Therefore, the ACCIR strongly believes that the award system must provide a true safety net of minimum wages and conditions in its own right, irrespective of the hypothetical outcomes promised by enterprise bargaining.

PART C

THE 1999 LIVING WAGE CASE

The ACTU Claim

The ACTU's Living Wage Claim 1999 seeks:

- *increases of \$26.60 per week for all award rates of pay up to \$527.80 per week (skill classification C7 in the Metal Industry) and 5% for all award rates of pay above that level, subject to absorption in the normal way.*
- *commensurate adjustment of allowances which relate to work or conditions that have not changed and service increments, consistent with the Commission's [AIRC's] approach in recent safety net decisions. (ACTU Written Submission Living Wage 1999, page 5)*

If granted this claim would increase the Federal Minimum Wage to \$400 per week (from \$373.30) for ordinary hours of work.

ACCI Submission

The ACCI submits that it is "*not appropriate*" to hear the ACTU wage claims at the present time. (Submission in Support of the ACCI/VECCI Minimum Wage Application - Volume 1. page 1)

The ACCI seeks to make two changes to the existing Federal Minimum Wage clause:

- the function of the clause is to be changed. The Federal Minimum Wage clause will operate in awards as the wages comparator for the "no disadvantage test," and
- penalty rates and loadings will not be included in the Federal Minimum Wage. (Submission in Support of the ACCI/VECCI Minimum Wage Application - Volume 1. page 3-7).

ACCIR Position

The ACCIR supports the ACTU in its objective "*to provide protection for low paid workers by raising minimum rates of pay*"

The ACCIR believes that the structure of the ACTU claim is focussed on the needs of the low paid where it submits that the changes in awards and/or working conditions are to be:

- on the basis of flat dollar amounts;
- absorbed against above award payments and agreements; and
- comparable to amounts and/or conditions previously awarded in safety net adjustments.

The ACCIR believes that an adequate minimum wage is one that allows a worker and his or her family not to be dependent on the social welfare system to supplement their income. Catholic Social Teachings states that the "*wage ought not to be in any way insufficient for the bodily needs of a temperate and well-behaved worker.*"

The ACCIR does not submit a quantitative amount for the Federal Minimum Wage at this time. It is not in a position to assess the economic merits of the respective positions of the ACTU and the ACCI. The ACCIR believes that the actual quantum of any increase should be determined by an independent review, undertaken by the AIRC, using established guidelines and benchmarks.

The ACCIR submits that the AIRC should work incrementally towards a fair and just minimum wage. One way of achieving this is through an annual review of the Federal Minimum Wage conducted in a fact-finding way, based on established principles and guidelines.

ACCI proposes that the Federal Minimum Wage should become the basis of wage comparison for the no disadvantage test. ACCIR believes that this may encourage the payment of below award wages when bargaining. This would significantly undermine the award system as the safety net of minimum wages.

It is submitted that the AIRC in establishing and determining "*a safety net of fair and minimum wages*"(s. 88B(2) The Act) must take into consideration the consequential impact upon penalty rates, overtime, and other allowances.

The removal of penalty rates and other matters from application of the Federal Minimum Wage, and hence from the no disadvantage test, would further reduce the minimum requirements offered to workers undertaking enterprise bargaining.

The ACCIR believes that the impact of the Federal Minimum Wage on skill differentials should be examined on an award by award basis, taking into account the different skill relativities in each award. While it supports the use of flat adjustments to improve the position of the low paid; it does not support the significant compression of relativities based on skill. This scenario would create other issues of inequity.

Statement of Principles

In the 1997 - 98 Living Wage Case, the AIRC determined to maintain a Statement of Principles, in a simplified and updated manner.

The ACCIR seeks change to the AIRC's Statement of Principles only where appropriate in order to maintain the relevance and accuracy of the Principles. The ACCIR supports the view expressed by the Full Bench in the April 1998 Safety Net Review decision that a Statement of Principles promotes consistency and enhances the stability of the industrial relations system and contributes to "*more equitable outcomes.*"

In line with the stated position of ACCIR for an annual review of the Federal Minimum Wage, it is suggested that an additional clause to this effect be inserted into the Statement of Principles.

PART D

INDICATORS, CRITERIA AND MEASURES

In the 1998 ACCIR Living Wage Case submission, a number of issues were raised.

In particular:

- what is meant by the low paid?
- what are the needs of the low paid?
- what are the prevailing living standards?
- what criteria should be considered in assessing living wage standards?

The ACCIR believes that these issues remain relevant to the deliberations of the AIRC in this Living Wage Case and future cases.

The ACCIR believes that an attempt should be made to establish criteria, measures and indicators - however imperfect or subjective - so that the needs of the low paid can be truly understood and reflected in adjustments to be made to the Federal Minimum Wage.

In particular, the ACCIR believes that the review of the Federal Minimum Wage should be based upon established principles and guidelines, so that proceedings are conducted in a fact-finding manner.

This removes:

- some pressure for the AIRC to arbitrarily find a figure between the outer reaches of the ACTU claim and those parties who believe no increase is necessary; and
- the opportunity for these wage cases to become an intrusive examination of individual workers, their wage rates, and their lives.

The ACCI considers that "*strong recognition should be given to the approaches taken to the minimum wage in other industrialised nations, and in Western Australian and Victoria.*"

The ACCIR agrees that the AIRC should consider other methods of determining the Federal Minimum Wage.

In particular the ACCIR draws the AIRC's attention to elements of the **Western Australian Minimum Wage System**, as an example of a non-adversarial approach to the setting of minimum wages.

The Western Australian Minimum Wage System relies on an independent report to be made to the Western Australian Industrial Relations Commission, recommending variances to the minimum wage.

The ACCIR submits that this method would remove the adversarial nature of the Living Wage Cases, ensuring that the focus of such proceedings is on low paid workers.

Furthermore, the ACCIR submits that, in using this method, the report should be received by AIRC so as to preserve the independence of the process. The ACCIR believes that an objective and independent body is required to ensure standards of fairness, equity and justice for all involved in the employment relationship.

The ACTU, in its written submission, presented the **Report of the Budget Standards Unit**, which attempts develop budget standards for the Australian community. As submitted by the ACTU, "*budget standards estimate the cost of buying commodities and services and activities needed to attain a given standard of living...*" (ACTU Written Submission Living Wage 1999, page 52)

The ACCIR submits that the **Budget Standards Report** would appear to provide a reasonable indication of the prevailing living standards within the community.

The ACCIR submits that the Budget Standards method be examined for reliability and validity as a method of estimating the prevailing standards of living within the community. By obtaining estimations of the different standards of living, it is possible that the needs of the low paid may be also estimated.

Therefore, the ACCIR submits that the **Budget Standards Report** may be particularly valuable to the Full Bench of the AIRC, which must have regard to the needs of the low paid and the prevailing living standards within the community when establishing and maintaining the safety net. (s. 88B(2)(a) and (c))

The use of the Budget Standards method may allow the AIRC to objectively look at the needs of the low paid and the prevailing living standards, independently of the current market rates of pay.

The ACCIR does not submit that the Budget Standards method be used as a rigid benchmark by which to determine the Federal Minimum Wage. Rather, the ACCIR submits that the Budget Standards Report should be used in conjunction with other economic and social criteria, measures and indicators when determining the Federal Minimum Wage. Additionally, independent economic analysis would assist the AIRC in assessing the impact of Federal Minimum Wage changes on both the low paid and the broader community.

As in last year's submission, the ACCIR strongly submits that the Federal Minimum Wage should be reviewed on an ongoing annual basis.

PART E

ENTERPRISE BARGAINING

The ACCIR supports enterprise bargaining as an effective means of establishing wages and conditions of employment in certain circumstances.

However, enterprise bargaining may not be an appropriate means of determining terms and conditions of employment for all workers. Industrially weaker groups such as part time/casual workers, migrants, and workers in small to medium enterprises, may not have the necessary skills or bargaining power to obtain just and fair wages and working conditions. Such workers rely on means other than bargaining to determine wages and conditions. They look to the award system and the AIRC for protection.

Enterprise Bargaining and the Award System.

The ACCIR believes that the Award System must be maintained to provide a safety net of minimum wages and conditions and to provide protection for workers when undertaking enterprise bargaining.

In order to do this the award system must remain the benchmark by which the no disadvantage test is applied. This is regardless of perceived complications about the application of the test.

As stated earlier in this submission, the introduction of the Federal Minimum Wage as the benchmark for the no disadvantage test, as submitted by the ACCI, diminishes the value of the award system in setting a safety net of fair minimum wages. This would be detrimental to Australian workers who rely on the award system to determine terms of employment and to those workers and employers who use the award system as a co-operative starting point for bargaining.

The belief that employees are already extensively protected by Statutory Provisions governing approval of Enterprise Agreements is not held by the ACCIR. Statutory Provisions governing the approval of Enterprise Agreements relate only to procedural requirements. Only one Statutory Provision relates to wage rates; that is, the application of the no disadvantage test. This accentuates the need for the comparison between award rates and enterprise agreements.

It is submitted that the pay variations in the award system have had little or no impact upon Enterprise Bargaining in the past decade. Award rates remain below the market rates of pay in most sectors. However, it is recognised that awards do provide the starting point for those parties who have not yet entered into bargaining. But it is not necessarily the case that parties have not entered into enterprise agreements because of the increases to the award rates of pay. In the remaining section of Part E of this submission, the ACCIR draws the attention of the AIRC to other issues affecting the ability of employers and employees to engage in enterprise bargaining

Enterprise bargaining and the not-for-profit sector.

The ACCIR draws the attention of the AIRC to the position of those engaged in the not for profit sector.

Church sponsored and community agencies have a charitable origin, altruistic charter or church affiliation. They do not operate to make a profit, they do not have the capability to cross subsidise nor do they have adequate cash flow to cover shortfalls or decreases in funding.

As stated last year for employers in the not for profit sectors, enterprise bargaining holds little attraction.

Employers receiving government funding or subsidies do not automatically receive additional funding for variations in award rates of pay. If government grants and subsidies are not adjusted to meet the impact of these changes in rates of pay, such increases are invariably financed through redundancies, reduction in working hours or conditions, or a reduction in services.

Yet as a matter of justice, employers in the not for profit sector do not believe that their employees should be disadvantaged because they are on Award wages.

This is why they believe that enterprise bargaining alone does not necessarily guarantee fair and just minimum standards. Therefore, there is a continued need for the AIRC to maintain the award safety net.

PART F

SUMMARY

In conclusion the ACCIR submits that:

- the Catholic Church supports just wages that take into account the needs of individual employees, allowing them to fully participate in modern society,
- there is still a strong need for a safety net of minimum wages and conditions to protect low paid and industrially weak workers
- assisting low paid workers should be a priority for the Australian Industrial Relations Commission
- the Australian Industrial Relations Commission is required to establish and maintain a fair safety net of minimum wages and conditions
- an annual review of the Federal Minimum Wage is required to maintain a fair safety net of minimum wages and conditions. Such a review may include elements of the Western Australian Minimum Wage System and other examples.
- the Budget Standards method may provide the AIRC with a reasonable indication of the prevailing living standards and the needs of the low paid
- the Budget Standards method might be used, in conjunction with other measures and criteria, to determine the Federal Minimum Wage on an annual basis.

If the Commission pleases.