

***AUSTRALIAN CATHOLIC COMMISSION FOR
EMPLOYMENT RELATIONS (ACCER)***

**WRITTEN SUBMISSION
to the
AUSTRALIAN INDUSTRIAL
RELATIONS COMMISSION
SAFETY NET REVIEW -
WAGES 1999/2000**

18th February 2000

INTRODUCTION

The Australian Catholic Commission for Employment Relations (ACCER) is a Commission established by the Australian Catholic Bishops' Conference (ACBC).

The ACCER makes this submission to the Australian Industrial Relations Commission (the Commission) on behalf of Catholic Church organisations engaged in the areas of social justice, health, education, welfare, and diocesan and parish employment.

As in previous years, this submission focuses on the achievement of a just wage for low paid employees throughout the community.

Again, it is submitted that the maintenance of a *fair and just* Federal Minimum Wage should remain a priority of the Commission, and the various parties and interveners.

Working largely in the not for profit sector, Church employers continue primarily to use the award system as a guide to the current terms and conditions of employment for their employees. For many Church organisations, due in part to funding constraints, enterprise bargaining is not a practical consideration. It is believed that employees should not be disadvantaged because of this constraint. Additionally, Catholic Social Teaching promotes the payment of a just wage to all employees, regardless of their value within the labour market. Therefore, the maintenance of the award safety net as a comprehensive set of terms and conditions of employment is very important to Church organisations.

The ACCER continues to support the introduction of set criteria, measures or indicators for the review of the Federal Minimum Wage on a regular basis. Such a review would ensure that the Federal Minimum Wage does not fall behind community standards in the payment of a just wage.

This submission is arranged into the following parts.

Part A summarises Catholic Social Teaching as relevant 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 claims of the:

- Australian Council of Trade Unions (ACTU) and;
- Australian Chamber of Commerce and Industry (ACCI).

This part also declares the position of the ACCER in relation to these claims and assesses the Commission Statement of Principles in relation to the current Safety Net Review.

Part D concludes the submission of the ACCER.

Part A

CATHOLIC SOCIAL TEACHING

Catholic Social Teaching is a collection of teachings and principles, based on Christian values and beliefs, 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, such as the Bishops' Committee for Employment Relations (BCER).

Catholic Social Teaching does not promote a particular social ideology; rather it provides a set of ideologies, teachings and principles, based on Christian values and beliefs, which can be used to assess social agendas and occurrences.

In particular, the Church does not profess to favour one system of industrial relations over another. However, it does believe that upholding the dignity of every person should be at the core of any industrial relations system. Within this context Catholic Social Teaching promotes the following fundamental principles:

- the right to work;
- the right to just wages;
- the right to form associations;
- the right to strike; and
- the right to adequate rest.

For the purposes of this submission, the right to just wages will be examined within the context of the maintenance of the award safety net.

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

A fundamental principle of Catholic Social Teaching is that of the dignity of the individual. Work is considered to be one of the principal means by which people seek personal fulfilment and dignity and are able to make their contribution to the common good. Thus there is a natural priority of labour over capital and the belief that people should not be treated like any other resource or commodity in the market place. In affirming the dignity of labour, employers are challenged to provide fair wages and decent working conditions to all employees.

The Bishops' Committee for Industrial Affairs (BCIA), in a published paper titled "*Industrial Relations - The Guiding Principles*"¹ (the Guiding Principles), expressly states that "every family has the right to sufficient income through work," and that "workers have the right to just and minimum wages and to just and safe working conditions." In this context 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.

¹ Attachment A

Therefore, it is believed that employers have a moral obligation to pay a just wage. Additionally, it is believed that *the State* has a duty to ensure that employers meet this moral obligation.

"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 consignment of the needs of the work and his or her dependents.²

Therefore, while it is considered to be a 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.

Furthermore, it is not considered to be appropriate for the welfare system to be used as a means of substitution for the payment of a just wage. This is the responsibility of each employer.

The ACCER recognises that the current wages system is predicated on the use of enterprise bargaining and agreements to form the wages and conditions at an individual workplace level. However, it maintains that awards remain the most important feature of Australia's conciliation and arbitration system, as:

- they establish the minimum terms and conditions of employment, as well as minimum wages, for several million Australian workers, in their own right;
- are used as a benchmark for the *no disadvantage test*; and
- create a starting point for enterprise negotiations.

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 that employees receive a just wage.

These are the principles and values against which the ACCER assesses the ACTU *Living Wage Claim 1999/2000* and the ACCI submission in support of an *Orientation* or *Induction Wage* and the creation of a *Bargaining Division*.

² Bishops Committee for Industrial Relations *Industrial Relations - The Guiding Principles*, page 5.

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."³

The methods by which this 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 market⁴; 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 Act⁵; and
- 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 standards⁶; and
- providing the means to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment⁷; and
- providing a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement making and ensures that they abide by awards and agreements applying to them⁸.

The Act establishes the award system as the means of maintaining a safety net of fair minimum terms and conditions of employment.⁹ Such a safety net is to provide a foundation of minimum standards on which enterprise bargaining may be based.

Within this context it is believed to be important for the Federal Minimum Wage to reflect the payment of a *fair* wage and not just that of a statutory minimum. The review and maintenance of the Federal Minimum Wage should seek to *improve* the living standards of the low paid, in that they are assisted to better meet their needs. While it is acknowledged that the deliberations of the Commission are governed by consideration of the macroeconomic imperatives - productivity, inflation and employment - it must also "ensure that any such increases have regard to the needs of the low paid and the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community."¹⁰ The ACCER submits that there is still a requirement for a comprehensive safety net of minimum wages and conditions as the means of protection for low paid and vulnerable workers.

³ *Workplace Relations Act 1996 (Cth)* section 3.

⁴ *ibid* section 3(a)

⁵ *ibid* section 3(c)

⁶ *ibid* section 3(d)(i)

⁷ *ibid* section 3(d)(ii)

⁸ *ibid* section 3(e)

⁹ *ibid* section 88A

¹⁰ Australian Industrial Relations Commission *Safety Net Review- Wages- 1998* Print Q1998 p.40.

The ACCER supports enterprise bargaining as a suitable means of establishing wages and conditions of employment for some but not necessarily for all employers and employees. Additionally, the ACCER suggests that the maintenance of comprehensive awards does not necessarily hinder the ability of employers and employees to develop innovative enterprise agreements. The present *no disadvantage test* permits the introduction of other approaches to workplace conditions and practices. This has already been demonstrated in some of the agreements that have been registered before the *simplification* of awards process has been completed. Indeed, this has been acknowledged in a Ministerial Discussion Paper titled *Flexibilities available in agreement-making*, released in May 1998 by the Minister for Employment, Workplace Relations and Small Business. This Ministerial paper stated that:

Recently formalised agreements illustrate the scope for flexibility and innovation provided by the WRA [Workplace Relations Act (Cth) 1996] by going to a range of issues previously beyond workplace influence, and include variations to award provisions which placed particular constraints on workplace productivity. Typically, these agreements address matters such as the ordinary hours of work; removal of penalty rates; rationalisation of allowances; more flexible leave arrangements, including sick leave; more flexible remuneration arrangements and productivity measures.¹¹

Significantly, the Ministerial paper, in its Conclusion, made the following point:

The flexibilities available should be not be viewed simply as methods to reduce old award based restrictions, but as a means to introduce innovation.¹²

Therefore, the ACCER believes it is not necessary or appropriate for the award structure to be minimised or reduced to a set of basic principles in order to encourage enterprise bargaining. This includes the maintenance of award rates of pay.

Additionally, the ACCER submits that, as stated in section 3(c), organisations should be able to "choose the most appropriate form of agreement for their particular circumstances." As such it is believed that organisations should not be forced into an enterprise bargaining arrangement purely because the award system is no longer seen or is able to provide fair increases in wages or conditions of employment. The absence of an enterprise agreement in a workplace does not mean axiomatically that there is an absence of efficiency, flexibility or productivity in that workplace. Enterprise agreements can but do not necessarily address these matters and may represent no more than a confirmation of new pay rates and conditions without any attendant regard for matters of productivity, innovation or the needs of the enterprise.

Therefore, it is submitted that the maintenance of the award system should not be neglected because of the promotion of enterprise bargaining and other workplace arrangements.

The Commission has been charged with the responsibility of maintaining the award safety net. Section 88B(2) of the Act establishes that the Commission, in performing its functions must "ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following:

¹¹ Hon P Reith MP *Flexibilities available in agreement-making* May 1998 p.1

¹² *ibid.* p.30

- (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."

In his message to the people of the Catholic Church on the World Day of Peace, Pope John Paul II offered an invitation to "economists and financial professionals, as well as political leaders, to recognise the urgency of the need to ensure that economic practices and related political policies, have as their aim the good of every person and the whole person."¹³

This section reiterates the support of the ACCER for the establishment and maintenance of a system of fair and just minimum terms and conditions of employment, and the protection of the low paid and vulnerable workers. It is concerned about the apparently widening gap between those who are employed on award rates of pay, average earnings and enterprise agreements. The examination and understanding of the needs of the low paid is not assisted by the seemingly excessive salaries paid to some corporate executives. As the Commission recognised in its Safety Net Review decision of April 1999:

*'There is clearly a gap between income levels derived from bargaining and those provided by the award system. Many low paid employees are unable to afford what are regarded as necessities by the broader Australian community.'*¹⁴

¹³ Pope John Paul II. "Peace on Earth to those whom God Loves" - message to the people of the Catholic Churches on the World Day of Peace. 1 January 2000.

¹⁴ Australian Industrial Relations Commission Full Bench decision *Safety Net Review April 1999* Print R1999, paragraph 81, p.31

Part C

THE SAFETY NET REVIEW - WAGES 1999/2000

The ACTU Claim

The Australian Council of Trade Unions (ACTU) claim seeks "an increase of \$24 per week in award rates of pay up to and including the equivalent of the C7 classification in the *Metal, Engineering and Associated Industries Award* and a 4.5% pay increase for award rates of pay thereafter"¹⁵.

Additionally, the ACTU seeks commensurate adjustments of allowances which relate to work or conditions of employment which have not changed, consistent with previous safety net adjustments and the *Furnishing and Glass Industries Allowances* decision.

The ACTU claim is based on the prevailing strength of economic growth, the high level of new private investment, continuing employment growth and falling unemployment rates in Australia. Additionally, "the international economic uncertainties to which the Commission pointed a year ago have not undercut Australian economic performance."¹⁶

The ACTU argues that:

*"Last year's Living Wage increase has not jeopardised continuing reduction in the unemployment rate, nor did the previous year's increase."*¹⁷

The ACCI Submission in Support of Orientation or Induction Wage and Bargaining Division Applications

The Australian Chamber of Commerce and Industry's (ACCI) position is that an annual increase in award rates of pay should not be seen as an entrenched practice. It is concerned about the size of the claim of the ACTU and its possible impact upon the employment opportunities of the unemployed. It suggests that a "more appropriate method of setting the parameters of these cases must be found."¹⁸

Accordingly, the ACCI submits that the consideration of the claims of the ACTU be deferred until a later date. It is particularly concerned that "the ACTU claims have accelerated in recent years."¹⁹ The ACCI calculates that in the period from 1997 to 1999, the quantum of the claim of the ACTU has more than tripled.

The ACCI seeks to provide a role for the Federal Minimum Wage as an orientation or induction wage to be used during the first 6 months of employment, and secondly, through the use of the Federal Minimum Wage as a bargaining wage.

The ACCI proposal for the introduction of an orientation or probationary wage is designed "to correct the lack of progress in spreading agreements to the services sector, and to provide

¹⁵ ACTU Living Wage Claim 1999/2000 Written Submission p.3

¹⁶ *ibid.* p.2

¹⁷ *ibid.* p.2-3

¹⁸ ACCI Submission in Support of Orientation or Induction Wage and Bargaining Division Applications p.1

¹⁹ *ibid.* p.3

employers with greater scope to take a risk and try out a new employee, particularly one who might otherwise be overlooked because of lack of experience, long unemployment period, or other difficulties."²⁰

The ACCI contends that "a considerable reason for the lack of spread of enterprise agreements in service sector awards is the level of award classification wage rates, which operate as the market rates for a large proportion of the award covered employees. Providing some greater flexibility in award rates through a Bargaining Division will enable workplaces to develop enterprise agreements."²¹

The ACCER Position

The ACCER believes that a fair and just minimum wage is one that allows a worker and his or her family to maintain a reasonable standard of living, without being dependent on the social welfare system to supplement this income. Catholic Social Teaching states that the "public authority show proper concern for the worker so that from what he contributes to the common good he may receive what will enable him, housed, clothed, and secure, to live his life without hardship."²²

As in previous years, the ACCER does not submit a quantitative amount for the Federal Minimum Wage, as it is not in the position to assess the relative merits of the economic claims of either the ACTU or ACCI. Furthermore, the appropriate amount of any increase may not be reflected by either of these respective positions. For another perspective, the ACCER draws the attention of the Commission to the Hongkong and Shanghai Banking Corporation (HSBC) Wages Report No.26 (Monday 14 February 2000) [attachment B]. The HSBC Wages Report includes a preview of the current case before the Commission. Pertinently, it states that "few of the arguments used by employers and the federal government to oppose last year's claim [are] still valid". It states further that:

"For the past four years the government and employers have argued for lower safety net payments on various grounds: wages growth was too high, inflation was low and would remain so, the economy was slowing, productivity or employment growth were at risk, etc. None of these arguments currently hold. Yet AIRC concern over the growing pay gap between employees covered by industrial awards and those in the bargaining sector remains."

The HSBC Wages Report has calculated that a \$16 per week increase for those on lower award rates of pay and a \$14 per week increase for others would raise wages for someone earning Average Weekly Ordinary Time Earnings (AWOTE) by "a modest 1.8%, while providing more benefit for lower income earners." With approximately 25% of the workforce covered by the award system, "such an outcome would only lift aggregate annual wage growth by about 0.1%."

The ACCER contends that the quantitative amount of the Federal Minimum Wage should be determined by the Commission, using a set of established guidelines and principles. It is submitted that in establishing a "safety net of fair and minimum wages"²³ the Commission

²⁰ ACCI Submission op.cit. p.8

²¹ *ibid.* p.14

²² Leo XIII *Rerum Novarum* - *On the Condition of the Working Classes* St Paul Publications. p 31.

²³ *Workplace Relations Act (Cth) 1996* section 88B(2)

should determine a set of criteria, measures or indicators to assist in establishing the needs of the low paid, and whether or not an increase in the Federal Minimum Wage is required to maintain the safety net. The ACCER acknowledges that the Commission has considered that it does not have the jurisdiction to conduct a review of the safety net in the absence of a claim. In the view of the ACCER, this is unfortunate in that the Commission is not able - of its own volition - to exercise its statutory requirement "to have regard, when adjusting the safety net, to the needs of the low paid" and to secure an award safety net of secure minimum wages. This is despite the Commission having established the Federal Minimum Wage as an outcome of the April 1997 Safety Net Review - Wages Decision, even though there was not a direct claim before it for such an outcome. In that decision, the Commission considered that it had the power under the Act to establish the Federal Minimum Wage. Yet it is unable to review the Federal Minimum Wage unless an application is made by a party to vary awards.

The intended approach of the ACCER would still allow for the submissions of the interested parties but they would have to address their remarks to the criteria, instead of to a *claim* or *position*. In this way, the ambit of claims and positions might be avoided or at least minimised and the real needs of the low paid identified as the focus of concern. It is suggested that the analysis provided by the HSBC Wages Report demonstrates that it is possible to consider this matter by reference to some form of statistical reasoning. This could be supplemented by consideration of the other relevant factors, including the social and industrial implications of any increase to award rates of pay.

Indeed, the need for a different approach is suggested also in the submission of the ACCI (though it is acknowledged that it is proposed for different reasons) wherein it seeks "a more considered approach to lifting award wage rates"²⁴.

The ACCER suggests that the impact of the Federal Minimum Wage on skill differentials should be examined on an award by award basis. In this manner, the different skill relativities in each award would be taken into account. While the ACCER supports the use of flat adjustments rather than percentage increases to improve the relative position of the low paid; it does not support the *significant* compression of award classification relativities, which are based on skill. This scenario creates other issues of potential inequity among employees. It is suggested that there needs to be careful examination of internal award classification relativities to ensure that this does not occur to the detriment of the integrity of the classification structure.

The ACCI proposal for an Orientation or Induction Wage appears to be based on a variation of the traditional *experience pay* system. It appears to be saying that a new employee lacks requisite experience with a new employer. While this may be generally true in the sense of a new employee not being familiar with the physical working environment of a new employer, it does not necessarily mean that the new employee is deficient in the application of his or her skills and in bringing his or her previous experience to the new workplace.

In essence, the proposal would appear to be at odds with the skill-based classification structure currently governing award classification systems. The ACCER would be concerned not only about the reduction in the payment of the appropriate wage to the new employee, but it would be concerned also about the introduction of a different rationale into the structure of the classification system. On the surface, the proposal would appear to be moving in a different direction to the removal of service-based incremental pay systems from awards. Further, little

²⁴ ACCI Submission p.2

empirical evidence is available to support the contention of the ACCI that this would lead to an increase in employment opportunities for the unemployed. The resultant effect might be that new employees are engaged at a discounted rate of pay, irrespective of their employment history, in order to replace vacancies occurring as a consequence of labour turnover. In reality, under an orientation wage, an employer may still be likely to engage a person with recent work experience rather than a person who has been unemployed for some considerable length of time.

Further, new job opportunities might be influenced more by changes in the market share of the business rather than a reduction in the cost of labour for the short duration of an orientation period. However, the ACCER shares the concern of the ACCI about the serious difficulties facing the long-term unemployed in re-entering paid employment. Further discussion on this issue is urgently required but from a wider perspective than that of the reduction of wages.

Concern is expressed also about the possible disparity in the negotiating power of employees and employers. Someone who has been unemployed for some considerable time would be in a weakened position when negotiating terms of employment. Similar concerns would apply to the relative bargaining strength of non-English-speaking workers, females, indigenous, part-time and casual workers. It is acknowledged that the ACCI proposes that if there is not an agreement reached by the end of the six month period, the relevant award classification rate would then apply. However, the reality at the workplace might be that the future employee feels compelled to accept the employer's terms for fear of continuing to be unemployed.

In respect of the submission of the ACCI that a Bargaining Division be introduced, another perspective that might need to be considered is that the *services sector* may not seek to engage in enterprise bargaining. In other words, there appears to be a presumption that employers should embrace enterprise bargaining. However, it may be the case that some employers and possibly their employees do not see any benefit arising from the pursuit of enterprise bargaining.

As organisations who operate in parts of the services sector, and in particular in the not for profit segment of the services sector, Church employers do not necessarily see any advantage in enterprise bargaining. The introduction of enterprise bargaining in the workplace does not necessarily allow the parties to freely establish terms and conditions of employment due to the predilection of some parties to adopt or to make claim for wage outcomes negotiated elsewhere. Additionally, the adversarial nature of enterprise bargaining may be extremely time consuming and costly for small organisations, which predominate in the services sector.

As stated in previous cases, the ACCER would be concerned about any undermining of the award system as the basis of the no disadvantage test for enterprise bargaining.

Statement of Principles

In the 1997-98 Safety Net Review Case, the Commission determined to maintain a Statement of Principles, in a simplified and updated manner. The ACCER supports the view expressed by the Full Bench in the April 1998 Safety Net Review decision that a Statement of Principles promotes consistency, enhances the stability of the industrial relations system and contributes to "more equitable outcomes".²⁵

²⁵ Australian Industrial Relations Commission *Safety Net Review - Wages - 1998* Print Q1998. p 54.

In the 1998-99 Safety Net Review Case, the Commission decided again to maintain a Statement of Principles.

The ACCER seeks further change to the Commission's Statement of Principles only where appropriate in order to maintain the relevance and accuracy of the Principles as a means of supporting the maintenance of the award safety net.

Part D

CONCLUSION

In conclusion, the Australian Catholic Commission for Employment Relations submits that:

- it supports just wages that take into account the needs of individual employees, allowing them to fully participate in modern society;
- it is concerned about the apparently widening gap between award rates of pay, average earnings and increases arising from enterprise bargaining;
- 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;
- the introduction of an Orientation or Induction Wage would lead to an undermining of the obligation on the employer to pay a just wage and, at a practical level, may not necessarily assist to reduce unemployment levels; and
- the introduction of a Bargaining Division would undermine the award system acting as the "no-disadvantage" test for enterprise bargaining and, at a practical level, would not necessarily encourage the spread of enterprise bargaining into the services sector.

If the Commission pleases.