

Fair Work Commission

Fair Work Act 2009

Annual Wage Review 2018-19

Living Wage Claim and Submission

by the

Australian Catholic Bishops Conference

15 March 2019

This submission by the Australian Catholic Bishops Conference (ACBC), as prepared by the Bishops Commission for Social Justice (BCSJ), is made in support of providing the lowest paid of our workers with a decent standard of living through the setting of a fair minimum wage.

The ACBC is a permanent institution of the Catholic Church in Australia and the vehicle used by the Australian Catholic Bishops to address issues of national significance.

The BCSJ is one of a number of commissions established by the ACBC to address important issues both within the Church and in the broader Australian community. The BCSJ has responsibility for social justice issues in all areas of life.

The Catholic community is the largest religious denomination in Australia with more than one in five Australians identifying as Catholic. Catholic organisations currently employ about 220,000 employees in health, aged care, education, welfare and administration.

The ACBC seeks to participate in public debate by making reasoned arguments that can be respectfully considered by all people of goodwill.

The ACBC appreciates the opportunity to make a submission to the Annual Wage Review 2018-19. This submission focuses on setting a just and fair minimum wage for all workers.

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List of Abbreviations

ABS	Australian Bureau of Statistics
ACBC	Australian Catholic Bishops Conference
ACCER	Australian Catholic Council for Employment Relations
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
FWC	Fair Work Commission
HDI	Household Disposable Income
June 2010 decision	<i>Annual Wage Review 2009-10, Decision</i> [2010] FWAFB 4000
June 2011 decision	<i>Annual Wage Review 2010-11, Decision</i> [2011] FWAFB 3400
June 2012 decision	<i>Annual Wage Review 2011-12, Decision</i> [2012] FWCFB 5000
June 2013 decision	<i>Annual Wage Review 2012-13, Decision</i> [2013] FWAFB 4000
June 2014 decision	<i>Annual Wage Review 2013-14, Decision</i> [2014] FWCFB 3500
June 2015 decision	<i>Annual Wage Review 2014-15, Decision</i> [2015] FWCFB 3500
June 2017 decision	<i>Annual Wage Review 2016-17, Decision</i> [2017] FWCFB 3500
June 2018 decision	<i>Annual Wage Review 2017-18, Decision</i> [2018] FWCFB 3500
May 2016 decision	<i>Annual Wage Review 2015-16, Decision</i> [2016] FWCFB 3500
MEDHI	Median Equivalised Disposable Household Income
NMW	National Minimum Wage
OECD	Organisation for Economic Co-operation and Development
SPRC	Social Policy Research Centre

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CHAPTER 1

The failure of minimum wage decisions to provide a Living Wage

1.A. The values underpinning the *Fair Work Act 2009*

1.B. Working families on the margins of society

1.C. The way forward

1.A. The values underpinning the *Fair Work Act 2009*

1. This submission to the Annual Wage Review 2018-19 by the Australian Catholic Bishops Conference (ACBC) is informed by the Catholic Church's experience as the largest non-Government employer in Australia, with about 220,000 employees in health, aged care, education, welfare and administration. About 75% of these employees are covered by collective agreements, with most of the rest covered by awards made by the Fair Work Commission (FWC). Church agencies have direct experience in the operation of industrial instruments and in the legal and practical challenges in the application of the rights of employers and employees.
2. However, the advocacy in this submission 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. This is a standard that has wide community support and, for reasons explained in this submission, is consistent with the application of the minimum wage provisions of the *Fair Work Act* and relevant human rights instruments.
3. The Catholic Church in Australia has, for more than a century, been a strong supporter of the kind of employment protection now in the hands of the FWC when it undertakes an annual wage review. The origins of the present wage-setting system are partly found in the political agitation for wage protection by working class Catholics in the late nineteenth century, in the advocacy of Church figures, such as Cardinal Moran of Sydney, before and after Federation and in the impact that Pope Leo XIII's 1891 encyclical *Rerum Novarum* had on the understanding of the inherent rights of workers. The agitation for the introduction into legislation of a right to a Living Wage, i.e. a wage that would support workers and their families, united a wide range of Australians.
4. This year marks the 10th anniversary of the enactment of the *Fair Work Act 2009*, which came into operation in January 2010. The decision in the current Annual Wage Review

will be the tenth made under this legislation. One of the main purposes of the legislation was to set aside and replace the wage-setting system established under the earlier *Work Choices* system introduced by the controversial *Workplace Relations Amendment (Work Choices) Act 2005*. In November 2005 the Australian Catholic Bishops issued a Statement which called in vain for changes to be made to the then pending legislation. The full text of the Statement is in Appendix C. The Statement included the following in relation to wages:

“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.

....

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.”

5. In a Statement in May 2011, commemorating the 120th anniversary of *Rerum Novarum*, the ACBC referred to the submissions then made in the Annual Wage Review 2010-11, noting the consistency between the objective set out in the 2005 Statement and the terms of the *Fair Work Act*:

“On Monday 16 May 2011, almost exactly 120 years after *Rerum Novarum*, Fair Work Australia will begin hearing final submissions in this year’s Annual Wage Review. The Australian Catholic Council for Employment Relations has filed extensive submissions in support of low paid workers with family responsibilities. The Tribunal will make a decision under provisions in the *Fair Work Act 2009* that are consistent with the objective stated in the 2005 Statement. However, it is only by the outcomes of the decisions that the success of the legislation can be measured.” (The Statement was produced to the tribunal on 18 May 2011; see transcript at PN1169-PN1171. The full text of the Statement is in Appendix C.)

6. The statement made the point that we can only know whether the *Fair Work Act* has been successful in achieving its aims and fulfilling the expectations of those who supported its enactment by its results, especially from the perspective of low paid workers and working families.
7. It has become evident in the years since 2011 that the *Fair Work Act 2009* has failed to provide fair safety net wages for low paid workers with family responsibilities; instead, the National Minimum Wage (NMW) is set at a level that provides a reasonable wage

for a single worker without family responsibilities; see the references to budget standards research in Chapter 3.C. and Chapter 4.D.(4) and(5). This is not the outcome intended by the legislation.

8. The setting of the NMW at a level that is reasonable for a single worker without dependants is contrary to the landmark and celebrated *Harvester* judgment of Justice Higgins in November 1907 (*Ex parte H V McKay* (1907) 2 CAR 1).
9. *Harvester* became the foundational decision of the Australian wage protection system and the decision that gave effective recognition to the Living Wage principle. The critical element of that judgment, which was made under legislation that required an assessment of “fair and reasonable” wages, was that workers, even if unskilled, should receive a wage that would support themselves and their families in “frugal comfort estimated by current human standards”, a criterion that easily translates to a “decent standard of living by reference to contemporary living standards”. It accepted that the right to a fair wage, capable of supporting a family, was a right that derived from the essential human dignity of both the worker and those who depend on the worker. It recognised the importance of protecting children against poverty and disadvantage, both in their own interests and in the interests of society as a whole.
10. Nor is the current NMW consistent with the universal right of workers to fair wages and a decent standard of living for themselves and their families which is recognised in Article 7(a) of the *International Covenant on Economic, Social and Cultural Rights* (*International Covenant*), an international convention that binds Australia and which, by section 3(a) of the *Fair Work Act*, is to be taken into account, among other matters, when setting the NMW. The wage to which the *International Covenant* refers expresses the nature and purpose of the Living Wage.
11. The NMW is not a Living Wage consistent with the right to a wage that is sufficient to provide workers and their families with a decent standard of living by reference to contemporary Australian living standards.
12. Generally expressed human rights, such as the right to fair wages in the *International Covenant* and the right to fair wages in the *Fair Work Act* do not require minimum wages to be set by reference to unusual or exceptional cases, such as for workers with nine dependent children, but they must be set so as to provide a fair wage for the usual or expected circumstances in which workers live. Laws and decisions giving effect to generally expressed rights need to be reasonable and proportionate. The NMW should

extend to and protect families with the average number of children, i.e. two, whether they be couple or sole parent families, as well as one child families and single workers without family responsibilities. The NMW does not meet this test. It is not a Living Wage.

13. Justice Michael Kirby, formerly of the High Court of Australia remarked on the role that *Harvester* has played in Australian and in our understanding of fundamental human rights in an address marking the centenary of the *Conciliation and Arbitration Act 1904*. In doing so he referred to the impact that *Rerum Novarum* had on the understanding of these rights.

“... 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 underpinning 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.

In his famous *Harvester* judgment, Justice Higgins noted that he had been accorded the responsibility of determining a "fair and reasonable remuneration" for employees in Australia. This required him to conceive of a wage which permitted the ordinary Australian to enjoy "a condition of frugal comfort [as estimated by current human standards]". These were the exact words used by Pope Leo XIII in *Rerum Novarum*.

Even for an Australian of Ulster Protestant lineage, this was an idea that seemed right to Higgins. Its centrality in industrial relations and economic organisation has changed over the century. But the germ of the idea of an essential "safety net" to protect the dignity of every Australian employee - and thereby the dignity of all those who employ them - remains in the ongoing function that Australians expect of their national tribunal for industrial conciliation and arbitration.” (*Industrial Conciliation and Arbitration in Australia – A Centenary Reflection*, footnotes omitted)

14. This address pre-dated the changes introduced by the *Work Choices* legislation in 2005, changes which many saw as being inconsistent with the essential nature of Australian minimum wage history and the values that underpinned it. There was, as a result, substantial support for change, evidenced by the *Forward With Fairness* policy of April 2007 which the then Federal Opposition took to the 2007 Federal election. It was a policy that emphasised the needs of working families; and a policy that led to the enactment of the *Fair Work Act* in 2009 and a new system for the setting of both the NMW and the award wage rates that sit above the NMW. The policy included:

“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)

15. There was a clear expectation that the minimum wage changes would support working families and not leave them to rely on a NMW that is set at a level that provides reasonable to support single workers without family responsibilities and, as a result, is incapable of providing low paid working families with a decent standard of living.
16. 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 reference to the Living Wage and a decent standard of living:

“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.)

17. The *Forward With Fairness* policy was explicitly relied upon in the *Explanatory Memorandum* to the *Fair Work Bill*, a matter that reinforces the legal argument that the intention of the minimum wage provisions of the *Fair Work Act* were intended to support and protect working families by providing a fair wage for workers with family responsibilities.
18. This is the context in which the Parliament enacted legislation that permits and, we submit, requires the application of the Living Wage principle, the essential values of *Harvester* and the now-recognised human rights of workers and their dependants. Despite its terms, the legislation has not delivered the protection and benefits that were anticipated before its enactment.
19. A major part of this submission concerns the basis upon which minimum wages have been set. We contend that the NMW been not been set by the FWC in the way intended by Parliament. Its obligation under section 284(1) is to set a *safety net* of *fair* minimum wages after taking into account social and economic factors. The subsection 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; ..."
20. A safety net is intended to protect workers against poverty and disadvantage and provide them with a decent standard of living, consistent with proper account being taken of the social and economic factors. To the contrary of this, the FWC has set minimum wage rates on the basis that a decent standard of living is a "need of the low paid" and is only one of the factors to be taken into account when setting minimum wage rates, with none of them having primacy or priority. It is a view that ignores the statutory *objective* of setting minimum wages to protect the interests of workers, subject, of course, to relevant economic circumstances. It moves the Living Wage from the objective of the legislation to a consideration that has no primacy or priority. We return to this in Chapter 2.E. and Chapter 6.
21. Decisions under the *Fair Work Act* have failed to address the well-documented failure of earlier minimum wage decisions to maintain the relative value of minimum wage rates. For a number of years increases in minimum wage rates had lagged behind

increases in median and average wages. Over the period 1997 to 2009 the Federal Minimum Wage, the direct predecessor of the NMW, had fallen from 61.9% to 54.4% of median wages and from 50.5% to 44.4% of average ordinary time earnings (see Tables A9 and A10 in Appendix A). Other low paid rates had larger wage cuts. As a consequence many more workers and their families were living in poverty and disadvantage. After nine decisions under the *Fair Work Act* we have seen the NMW at 54.1% of median in August 2018 and at 44.8% of average ordinary time earnings in November 2018. The decisions under the *Fair Work Act* have maintained these earlier cuts and have failed to meet expectations that came with the introduction of the new wages system.

22. These nine decisions by the FWC have not addressed the unfair legacy of earlier national tribunals. The earlier decisions to cut wages were not made on the basis of an economic need to do so, but even if they were, the tribunals would have to confront an important principle: 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.
23. Instead of addressing this legacy, the FWC has effectively locked in the earlier wage cuts. What was in 1997 an inadequate wage to support working families is now a reasonable wage for a single person without family responsibilities.
24. In each year since 2011 the FWC has increased minimum wages by a uniform percentage, each year rejecting claims for relatively greater increases to be awarded to the lower paid, to those most in need. Not one extra dollar has been awarded to alleviate the poverty and disadvantage suffered by many working families. The reason given each year since 2011 has been the need to avoid compressing the relativities between minimum wage rates.
25. Also in each year since 2011 the FWC has rejected claims to award a relatively greater increase in the NMW so that it could move over time to a Living Wage and provide an appropriate wage floor upon which the award system would set wage rates in recognition of the skills and responsibilities required by award work classifications. Again, these claims were rejected on the basis that they would compress minimum wage relativities. In its June 2018 decision the FWC added a further reason: it said that to increase the NMW by a greater amount than award rates would risk disemployment effects. In effect, it was put as a reason for refusing workers an opportunity to recover

the lost value of their wages. The risk of disemployment has weighed against any further alleviation of poverty and disadvantage. We contest this assessment of risk and argue that the decisions have failed to take sufficient account of the social objectives of the legislation and the objective of protecting those in poverty and disadvantage.

26. In its decision in June 2014 the FWC adopted the single person criterion for setting minimum wage rates. It was a matter of policy and not as a result of any analysis of the terms of the legislation. It was only reversed in the following year after legal arguments were raised against it. However, the policy that underpinned the 2014 decision has been, we contend, implicit in the decisions since 2015.
27. It appears that the FWC has taken a policy decision, first manifest in its June 2014 decision that the responsibility for providing for the support dependants in low income families is to be met from the public purse, despite the fact that Governments have not done so and there is no reasonable basis for the FWC to conclude that this will change.
28. This position has major consequences for public policy and the alleviation of poverty.
29. The current level of the NMW falls far short of the objective identified and set by *Harvester* in a much less prosperous Australia 112 years ago. Australia now has a much greater economic capacity to support working families and protect children against poverty than it did more than a century ago, especially because the modern social safety net that supplements the wage incomes of families has reduced, but not eliminated, the work that needs to be done by the wage packet to support families at a reasonable standard of living.

1.B. Working families on the margins of society

30. The focus of this submission is on low income working families in which the wages earned by workers do not provide a decent standard of living and in which many parents and children are living in poverty. We seek to speak on behalf of these working families whose standard of living largely depends on the decisions of the FWC. The workers in these families are a large part of Australia's working poor. Advocacy on behalf of low income families is needed because their interests are not being sufficiently protected by the decisions in the annual wage reviews.
31. These working families are broadly identified in Appendix B hereto, in data drawn from the national Census of August 2016. We have analysed that data in order to provide the FWC with a better understanding of important aspects of the lives of low income Australian families. The data identified the composition, work patterns and incomes of

581,360 low-income families, including 1,095,888 dependent children for whom a decent standard of living is elusive and where poverty is real or threatened. The selection of these families is based on the “best fit” application of the 60% of median relative poverty line, a measure which we explain in Chapter 3. Families falling below this line are in or at risk of poverty. Families below this line do not have sufficient for a decent standard of living. They are disadvantaged. This data from the 2016 Census adds to a large body of research in Australia on poverty and disadvantage.

32. These working families comprise 12.8%, or about one in eight, of couple parent families and 47.8%, or almost half, of sole parent families. Not all of these families are in employment. Among couple parent families, 62.4% have at least one parent in full time employment and, in homes without a full time worker, a further 19.9% have at least one parent in part time employment. Single breadwinner families comprise the largest component of couple parent working families.
33. Among the sole parent families living in or near poverty, 40.9% of sole parents are in full or part time work. Of these working sole parents 75.3% are employed part time: 30.8% are in part time work and 10.1% per cent are in full time work.
34. Not all of these workers will only be paid the minimum wage rate. Some will be paid a wage above the NMW or the applicable award rate, but still left disadvantaged.
35. The material drawn from the 2016 Census further demonstrates that for many low paid workers and their families, full-time employment and even full time employment supplemented by part time employment is not a pathway out of poverty and into a decent standard of living. The interests of part time employees are promoted by the setting of fair wage rates set for full time work.

Single breadwinner couple families

36. It has been suggested from time to time that we should have less focus on the position of single breadwinner couple parent families because "it is no longer the norm". This tends to result in views such as the single breadwinner low income families are the architects of their own poverty and disadvantage or, more compassionately, that the Government should support them through the welfare system. The proper view, we contend, is that families should have an effective choice as to how they will balance their work and families responsibilities and that, taking into account current Government payments and current economic constraints, wages should be set on the basis that average single breadwinner families will be supported at a decent standard of

living. This is consistent with the reasonable and proportionate application of human rights.

37. The figures drawn from the 2016 Census demonstrate single breadwinner families are by far the major category in the labour force profile of low income couple parent families, despite the inevitable economic pressure on the parents for both of them to be in employment. However, even with the extra income from the second parent working many families still find themselves living in or at the risk of poverty.
38. A comparison of single breadwinner families (where the parent is working full time or part time) and dual breadwinner families (where both parents are employed in either full time or part time employment) shows that 66.5% of these low income couple parent families are single breadwinner families.
39. The data from the 2016 Census enable an estimation of the number of children and adults living in these low-income working families who were living in or near poverty in August 2016. With 82.3% of couple parent families being engaged in full time and/or part time employment, we can make a pro rata estimate of the numbers in these low income couple parent working families: 459,211 children and 472,008 adults. In sole parent families, where 40.9% of parents are engaged in full time or part time work, pro rata estimates are that 220,007 children and 120,409 adults are in sole parent working families.
40. It is fair to say that about 680,000 children and about 590,000 adults are living in or near poverty in wage-dependent Australian families. The lives and future prospects of these children and the ability of their parents to nurture and educate them depend to a large extent on the minimum wage decisions made by the FWC. The main reason for our participation in this Annual Wage Review is to represent the interests of about 1,270,000 Australian workers, parents and children in disadvantaged low income working families.

1.C. The way forward

41. This submission argues that the FWC has failed to provide reasonable support for the hundreds of thousands of wage-dependent families who do not have a decent standard of living by contemporary standards and, in particular, has failed to alleviate the suffering and disadvantage of hundreds of thousands of children who are living in poverty in working families.

42. Just as the current situation is the result of years of cuts in the relative value of minimum wage rates, the remedy has to be implemented over a number of years in a transparent process that is consistent with the objects of the legislation and mindful of its constraints.
43. Our goal is to have the NMW set at a level where it is a Living Wage. In order to do that it is necessary to understand what the term means and to obtain and take proper account of the relevant evidence. The term Living Wage is often used without any definition or description and with no indication of how it might be given a dollar value.
44. In our view the Living Wage must be the wage that is identified in the *International Covenant on Economic, Social and Cultural Rights*, which recognises a universal right:

"...to the enjoyment of just and favourable conditions of work which ensure, in particular: ... Remuneration which provides all workers, as a minimum, with ... Fair wages and... A decent living for themselves and their families." (Article 7(a)).
45. This Covenant has been adopted by Australia and its is obliged to give effect to its terms. Section 3 of the *Fair Work Act* states that one of its objects is to "take into account Australia's international labour obligations". The right in Article 7 of the Covenant may be regarded as the fundamental right of workers. In the following chapters we address the practical application of this right, according to the principle that reasonable and proportionate effect must be given to these kinds of rights, and argue that the protection conferred by the right extends to couple parent and sole parent families with two children (the average number of children in contemporary Australia), as well as covering families with one child and workers without dependent children.
46. We also argue that the Living Wage should be based on the best evidence available about the costs of the goods and services that are required for a decent standard of living. The best evidence available in Australia about the costs of the goods and services that are reasonably required for a decent standard of living is in the budget standards research that we describe in Chapters 3.C. and 4.D. (4) and (5).
47. This submission has been prepared by the Bishops Commission for Justice and Service, a commission of the Australian ACBC, on behalf of the ACBC. It refers to and builds upon submissions made in past Annual Wage Reviews by the Australian Catholic Council for Employment Relations (ACCER), which was an agency of the ACBC. As a result of administrative change in the ACBC, ACCER has been abolished and replaced the Employment Relations Reference Group (ERRG). Submissions to Annual Wage Reviews will now be made following consultations with the ERRG, Catholic Social

Services Australia and other relevant agencies. As in past submissions by ACCER, this submission is written so that readers who are unfamiliar with the matters raised in minimum wage reviews may appreciate the background and nature of a range of issues that should be considered in the Annual Wage Review.

CHAPTER 2

Australia needs a Living Wage and fair award wages

2.A. Introduction

2.B. Claims for a Living Wage and fair award wages

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2.E. Legal issues raised

2.A. Introduction

48. This submission contends that the current level of the NMW, currently at \$719.20 per week, is manifestly inadequate and does not meet the objectives of the *Fair Work Act*. The NMW is not a Living Wage that can support working families at a decent standard of living. Families cannot have a decent standard of living on a wage that is set at a level that provides a reasonable standard of living for a single worker without family responsibilities.
49. The NMW has not been set at a level where it can provide a proper basis for the setting of award wage rates. The NMW is intended to be the basis upon which award wage rates will be set so as to reflect the skills, responsibilities and circumstances of the work covered by awards and their work classifications. At its current level the NMW is not the basic wage on which the award system can function as intended.
50. This submission also contends that the wage rates set for award work classifications are not fair and relevant because of the failure to provide appropriate margins for the skills and responsibilities required of workers covered by those classifications.
51. It is, we submit, fair to conclude that the minimum wage setting system is in crisis.
52. In order to address these matters, we propose:

- a process for increasing the NMW so that it will progress towards a Living Wage and a proper basis upon which award rates may be set; and
 - processes for reviewing award wage rates to determine whether their level and relativities are fair and relevant and for giving effect to the findings of that review
53. Our proposals for the reform of the minimum wages system is made with the knowledge that the FWC must take appropriate account of relevant economic factors when setting the NMW and award wage rates and that these factors may affect the timing of the implementation of the reforms that we seek. We seek the progressive alleviation of poverty and disadvantage among working families by progressive steps towards a Living Wage and a decent standard of living for low paid working families; and the progressive adjustment of wage rates set for award classifications so that they reflect a fair level of remuneration for the skills and responsibilities of the workers covered by those classifications.

2.B. Claims for a Living Wage and fair award wages

54. The ACBC seeks the following orders by the FWC:
- The National Minimum Wage (NMW) be set at \$760.00 per week and \$20.00 per hour.
 - Award wage rates up to the C10 award classification rate in the *Manufacturing and Associated Industries and Occupations Award* (currently \$837.40 per week) be increased by \$31.00 per week and award wage rates above the C10 rate be increased by 3.7%.
 - No award rate shall be less than the NMW.
55. The increase of \$31.00 per week is designed to provide lower paid workers with a relatively greater increase than that sought for higher paid workers because it provides relatively more to those most in need. The claimed amount for the NMW is an increase of \$40.80 per week over the current level of the NMW and \$9.80 per week more than the claim in respect of award wages for lower paid workers.
56. The claim for a further increase of \$9.80 per week in the NMW is made on the basis that it would be the first step in a process of reform of minimum wage rates for unskilled workers. Currently the minimum wage rate for unskilled work varies across the industries and occupations covered by awards. This causes unfairness and uncertainty in the protection of low paid workers and in the enforcement of their rights. The proposed increases in the NMW will move it towards a Living Wage and, over time,

remove these inconsistencies, provide clarity of minimum wage rights and establish a fair minimum award rate for unskilled work.

57. In addition to the failure of the NMW to provide a Living Wage which can support families at a decent standard of living, the award system does not provide fair and reasonable wages for semi-skilled and skilled workers. Under the current minimum wages system it is necessary for a worker to secure a skilled job in order to receive a Living Wage.
58. In future Annual Wage Reviews the ACBC will seek the progressive adjustment of the NMW to the wage rate set for the frequently-used C12 classification rate in the *Manufacturing and Associated Industries and Occupations Award* (currently \$768.30 per week or \$20.22 per hour) which is, in effect, the minimum award wage rate set for cleaners in the *Cleaning Services Award* (currently \$768.10 per week or \$20.21 per hour).
59. As we explain in the following section, over time this process would result in the abolition of introductory or transitional award wage rates (which generally apply for the first three months of employment) that are currently below the C12 rate and the adjustment of wage rates for work classifications that are below the C12 rate, so that no work classification provides a wage rate that is below the C12 rate. The adjustment process would maintain existing substantive award classifications through the adjustment process described in the following section.
60. These changes regarding the NMW are proposed in the context of a proposal for a comprehensive review and reform of the wage rates set in the award system, which, we contend, have lost contemporary relevance. The proposals for reform of the NMW are not conditional upon the broader review of award rates and can be undertaken independently of the proposed process for the broader review and reform of award wages.

2.C. Review and reform of the NMW and award relativities

61. The ACBC asks the FWC to review and reform the minimum wages system for the purpose of ensuring that the NMW and award wages are set at levels that are consistent with the objects and provisions of the *Fair Work Act*. A comprehensive reform of the NMW and award wage rates is required if minimum wage rates are to have contemporary relevance consistent with the objects and terms of the *Fair Work Act*.

62. The evident objectives of the minimum wages provisions of the *Fair Work Act* are that the NMW should be a fair safety net wage for unskilled work; award rates for unskilled work should be no less than the NMW; and awards should provide higher wage rates for workers who exercise skills and responsibilities. Contrary to these objectives, a major feature of the current award system is inconsistent minimum wage rates for unskilled work across industries so that unskilled workers are treated differently according to the industry in which they are employed.
63. Of particular relevance to our submission is the scope and operation of the *Miscellaneous Award* and a decision by a Full Bench of the FWC in 2018, regarding its application to low paid workers, in *United Voice v Gold Coast Kennels Discretionary Trust Pty Ltd* [2018] FWCFB 128 (*Gold Coast Kennels*). The *Miscellaneous Award* is a “default” award that covers a range of workers who are not covered by another award. It was introduced into the national award system in 2010 following the award modernisation process in 2008 and 2009 by the Australian Industrial Relations Commission (AIRC). The AIRC undertook this comprehensive review of then existing awards in order to draft new “modern awards” before it was replaced in 2010 by the FWC (which was then called Fair Work Australia). The new awards, including the *Miscellaneous Award*, commenced operation in January 2010. Further references to the award and to this decision are in Chapter 4.E.
64. The *Gold Coast Kennels* decision held that the *Miscellaneous Award* covered the employment of low paid workers who are not covered by other modern awards. The award provides an introductory rate equal to the NMW for the first three months of employment and four substantive award classifications (Levels 1 to 4) with wage rates aligned to some of those in the *Manufacturing and Associated Industries and Occupations Award 2010*. After 3 months an unskilled employee moves to the Level 1 rate, which is set at the C12 rate.
65. Unlike other modern awards, where classifications and wage rates reflected past classification structures, the *Miscellaneous Award* included a contemporary assessment of the appropriate wage for unskilled workers. The Level 1 rate, at \$49.10 per week in excess of the NMW, emphasises the inconsistency of wage rates for unskilled work and supports the contention that rates below the C12 rate should be adjusted to that rate.
66. Our proposal for the reform of the award wage relativities is focussed on determining the appropriate margins for skills and responsibilities, i.e. work value, of two key award

wage rates: the base trade-qualified wage rate, the "C10" rate, in the *Manufacturing and Associated Industries and Occupations Award 2010* and the first year graduate wage rate in the *Professional Employees Award 2010*.

2.D. Wage protection in crisis: the need for reform

67. The minimum wage system in Australia is in crisis:

- first, the NMW is not a Living Wage capable of supporting working families and, is set at a rate that provides a reasonable standard of living for a single worker without dependants; and,
- second, the higher minimum wage rates set by awards to cover work classifications do not provide fair, relevant and contemporary margins for the skills and responsibilities of workers employed in those classifications.

68. These two shortcomings are illustrated by the changes in minimum wage rates over the period since 1997. Table 1 shows the increases in various minimum wage rates and in median average and mean average wages over the 21-year period 1997 to 2018. (Hereafter, we use the term “median wages” to indicate median average wages and “average wages” to indicate mean average wages.) Median and average wages increased at a much greater rate than minimum wage rates, particularly for higher skilled classifications.

Table 1
Increases in various minimum wage rates and in median and average wages
1997 – 2018
(\$ per week, unless otherwise stated)

	FMW/NMW/ C14	C 13	C 12	C10	C4	Median wages	Average wages
1997	359.40	376.10	398.60	451.20	597.20	581.00	712.10
2018	719.20	739.90	768.30	837.40	1005.90	1330.00	1604.90
% increase	100.1%	96.7%	92.7%	85.6%	68.4%	128.9%	125.4%

Notes: Median wages; see Table A9 in Appendix A. Average wages; see Table A10 in Appendix A.

69. The 1997 wage rates were set by the AIRC in the *Safety Net Review Case, April 1997*. The 2018 wage rates were set by the FWC in the June 2018 decision and commenced on 1 July 2018. The Federal Minimum Wage (FMW) became the NWM in 2010. The FMW was introduced in the 1997 decision and was set at the C14 classification wage

rate in the *Metal Industry Award 1984 - Part 1*, which also included the other award classification wage rates in Table 1. Since 2010 these award classifications and wage rates have been in the *Manufacturing and Associated Industries and Occupations Award 2010* and have continued to be reflected in the wage rates in a range of other awards.

70. The following comparisons (drawn from Tables A9 and A10 in Appendix A) illustrate the changes in the relationships between minimum rates and median wages and in the relativities between the various minimum wage rates. They illustrate the depth of the problem for minimum wage-dependent workers who have no capacity to bargain for adequate wage rates.

- In 1997, after the FMW was introduced, the FMW was 61.9% of median wages and the frequently-used C12 wage rate was 68.6% of median wages; but in late 2018 the NMW had fallen to 54.1% of median wages and the C12 rate had fallen to 57.8% of median wages.
- If in late 2018 the NMW and the C12 award wage rates had been at the same level relative to median wages as their predecessors were in 1997, the NMW would have been \$823.27, not \$719.20 per week, equivalent to a loss of \$104.07 per week and the C12 rate would have been \$912.38, not \$768.30 per week, equivalent to a loss of \$144.08 per week. These are enormous cuts for low paid workers, with the average annual loss for the lowest paid workers over the 21 years being \$4.96 per week; and \$6.86 per week for low paid workers on the C12 wage rate.
- Over the same period the wages of skilled workers in the C10 and C4 classifications had declined even more relative to community wage increases: the C10 classification had fallen from 77.7% to 63.4% of median wages and the C4 classification had fallen from 2.8% above median wages to 32.2% below median wages.
- In 1997 the base rate of pay for a trade-qualified worker (the C10 wage rate) was 25.5% above the FMW and 13.2% above the C12 wage rate, but since July 2018 those margins have been 16.4% and 9.0% respectively.
- In 1997 the C4 wage rate was 66.2% above the FMW and 49.8% above the C12 wage rate, but since July 2018 those margins have been 39.9% and 30.9%, respectively.

71. Comparisons with average weekly earnings show a slightly lower loss/These cuts translate into substantial losses for low paid workers. In November 1997 the FMW was 50.5% of Average Weekly Ordinary Time Earnings and by November 2018 it had fallen to 44.8%. Had the NMW maintained its relativity to this measure of average wages, the NMW would now be \$810.47, \$91.27 per week more than it is.
72. Using both measures as a guide to the loss, we can say that the cuts in relative wages since 1997 have been in excess of \$100.00 per week, with substantially greater losses by skilled workers. It should be added that the evidence before the AIRC in April 1997 when the FMW was set, was that the FMW that was set was insufficient to provide for the needs of the low paid and left an unacceptable number in poverty; see Chapter 3F.
73. The changes in relativities between minimum wage rates came about as the result of the awarding of money increases, and not percentage increases, over the years to 2010, with the effect that relativities were compressed. However, since 2011 the FWC has only awarded uniform percentage increases, thereby maintaining the relativities set in 2010 by the first decision made under the *Fair Work Act*.
74. Those increases awarded by the FWC have been in line with increases in median wages. Over the period August 2010 to August 2018 median wages increased by 26.7% and over the period November 2010 to November 2018 average weekly earnings have increased by 26.0%. From July 2010 to July 2018 minimum wage rates increased by 26.2%, falling between the two community-wide measures; see Tables A9 and A10 in Appendix A. Since 2010 there has been no reversal of the pre-2010 trend: the NMW as a percentage of median wages has fallen from 54.3% to 54.1% and its percentage of average weekly earnings has risen from 44.7% to 44.8%; see Tables A9 and A10.
75. The generally expressed purpose of these money increases awarded prior to 2011 was to provide relatively more support to the low paid. However, it is clear from the figures that the low paid have suffered very large relative cuts in their minimum wage rates. This has had a substantial deleterious impact on their relative living standards and on the level of poverty and disadvantage among minimum wage-dependent workers. Wage inequality for this cohort of workers has increased substantially.
76. In Chapter 3.B. we set out changes in relative living standards over the past 15 years and current living standards of low paid minimum wage-dependent workers and their families after taking into account relevant taxes and transfers. For example, the C12-dependent family of a couple with two children has fallen from 61.1% to 56.8% of

median equivalised disposable household income over the period January 2004 to January 2019; see Table A3 in Appendix A. This represents a loss in January 2019 of \$79.75 per week.

Comparisons with pensioners

77. In January 2019 a C10-dependent single breadwinner family of a couple and two children had a lower standard of living than pensioners in receipt of disability or age pensions; see Table 2 and associated paragraphs in Chapter 3.B. Something is seriously wrong when a skilled worker working full time is unable to support an average family at a higher standard of living than pensioners receive from the public purse.
78. In the past ACCER has relied on these kinds of comparisons in its submissions in support of the low paid and the adjustment of the NMW. In the May 2016 decision, the FWC held that “a comparison with pensioners for the purpose of assessing the relative standards of the low paid is of very limited relevance” (paragraph 354) and refused ACCER’s application in the following year for it to depart from that view (June 2017 decision, paragraph 368). We contend that the average citizen would think that a very relevant consideration in the setting of the wages safety net for the lowest paid working Australians is the level of age pension payments that are received by approximately 2.5 million age pensioners, 61% of whom receive the full pension; *Annual Report 2017-18* Department of Human Services, page 46. Apart from fairness as between significant groups in the community, it is, we contend, poor public policy to disconnect the wages safety and social safety nets.

The FWC's wages relativities policy

79. Each year from 2011 the FWC has rejected claims that have sought relatively greater increases for low paid workers by the awarding of money increase to classifications up to the C10 level and a percentage increase above that rate (being the percentage value of the money increase at the C10 level).
80. Each year since 2011, the FWC has also rejected claims by ACCER for a greater increase in the NMW than that applied to award rates so that the NMW would move towards a Living Wage standard for unskilled workers and be a proper basis for the setting of award wage rates to reflect the skills and responsibilities of higher work classifications
81. The rejected claims had sought fairness to low paid workers and fairness to higher paid workers through percentage increases. Under these rejected claims the relativities

among the higher paid classifications would have been unchanged, with the compression of relativities occurring only as between higher paid and lower paid employees and within the ranks of the lower paid.

82. Since 2011 the FWC has increased all minimum wage rates by the same percentage, so as not to compress *any* of the then existing wage relativities, regardless of need and living costs: not one extra dollar has been provided to the lowest paid workers. The avoidance of any compression of relativities was given priority over wages rises that would alleviate poverty and disadvantage among low paid workers.
83. In Chapter 6.C. we argue that the FWC's wages relativities policy is contrary to the terms of the *Fair Work Act 2009*. Unlike in the earlier years, from 2010 there has been a statutory requirement for the NMW to be set independently of the award system and, consequentially, the setting of the NMW should not be compromised by the failure to set appropriate relativities in award wages. However, the FWC's concerns about wage relativities can be addressed without compromising the proper setting of the NMW.
84. The proposals that we have put forward for the reform of award relativities address an issue that has concerned the FWC for some time. The issue was identified in the following passage in the June 2017 decision:

[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 worked 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." (Footnote omitted)

85. The same kind of passage did not appear in the June 2018 decision, but it may be assumed that the concerns expressed in 2017 continued.
86. The June 2018 decision saw the FWC support the policy on wage relativities by reference to fairness as between NMW-dependent workers and those on higher wage rates. In its rejection of ACCER's claim for further increases in the NMW, i.e. for the granting of relatively greater increases in the NMW so as to move it towards a Living Wage and a proper base for award rates (which we now claim), it was said that to do so

would not be "fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative 'work value.'" (June 2018 decision, paragraph 105).

87. The FWC has placed the perceived fairness to higher paid workers above fairness to those most in need; and it has apparently assumed (and, we submit, assumed without foundation) that higher paid workers would begrudge a wage rise to the workers most in need of a wage increase. This kind of assessment has underpinned the FWC's repeated failure since 2011 to provide relatively greater wage increases for low paid workers, despite the fact that many working families are living in poverty and disadvantage.
88. For reasons given in Chapter 6.C., we contend that the reason given in paragraph 105 of the June 2018 decision in respect of award relativities is contrary to law.
89. The following proposals for the adjustment of the NMW and award wages seek to break the perceived constraint on the awarding of a fair wage to the neediest of workers, will allow the FWC's concerns about wage relativities to be addressed, and will enable the NMW to move towards a Living Wage and provide fairness to those employed in higher paid classifications.

2.E. A blueprint for reform

2.E.(1) Introduction

90. The crisis in the minimum wage system is the product of two factors operating over more than the past two decades:
 - the failure of successive tribunals to increase minimum wage rates, including the NMW and its predecessor, the FMW, in line with rising community-wide median and average incomes; and
 - the further reduction in the value of the wage rates set for higher paid work classifications causing award wage relativities to be compressed to the extent that they no longer reflect a fair and relevant assessment of the skills and responsibilities of the work performed in those classifications.
91. We propose that the unfairness of this situation and its inconsistency with the minimum wages objective of the *Fair Work Act* be addressed through two processes:
 - First, by the *progressive* adjustment of the NMW relative to award rates so that it is increased to the frequently-used C12 rate, which is currently \$49.10 per week more than the NMW. The adjustment would occur in the context of an award

system that provides inconsistent wage rates for unskilled workers. The C12 wage rate is the rate for unskilled work in, for example, the *Cleaning Services Award* (where the base rate for cleaners is only 20 cents per week less than the C12 rate) and in the *Miscellaneous Award* (the Level 1 rate). This adjustment would be the first stage in the process to transition the NMW to a Living Wage.

- Second, by a targeted review of award relativities focusing on two key award wage rates: the C10 rate for trade-qualified and equivalent skilled workers and the Level 1 rate in the *Professional Employees Award*, which is the entry level graduate rate for professional workers. The object of the review would be to establish the appropriate margins for skills and responsibilities for those workers in skilled positions, based on the NMW being set so as to provide a Living Wage for unskilled workers.

92. These processes would provide targets for minimum wage setting to be implemented over time, consistent with the FWC's obligations to set a safety net of fair minimum wages taking into account the relevant terms of the *Fair Work Act*. We now turn to each of these processes.

2.E.(2) Increases in the NMW

93. We propose that over the medium term there be increases in the NMW in addition to the general increases in minimum wage reviews so that the NMW will be adjusted towards a Living Wage. Under this process, and consistent with the *Fair Work Act*, no award wage rate would be less than the NMW.

94. This would be done starting with a two-stage process over four or five years that would move the NMW to the C12 wage rate. The first stage, over two years, would increase the NMW to the C13 wage rate (currently with a difference of \$20.70 per week over the NMW/C14 rate.). The second stage, over two or three years, would increase the NMW to the C12 wage rate (currently with a difference of \$28.40 per week over the C13 rate). We have proposed in the current review that the extra increase in the NMW be \$9.80 per week, a little short of half of the current difference between the NMW and the C13 rate.

95. In the first stage, successive increases from July 2019 and July 2020 would raise the NMW to the C13 wage rate. Award rates that fall into this range are generally "introductory" wage rates applicable to the first three months of employment. They are not appropriate in regard to unskilled work. These introductory rates would be

overtaken and become redundant to the extent that they provide a wage rate less than the C13 rate. A notable exception to this general pattern is the *Miscellaneous Award* where a worker moves to the C12 rate after three months. In this first stage, any wage rate below the C13 wage rate in a substantive award classification, of which there is a small number, would not be allowed to fall below the rising NMW and would be increased to the C13 level by the second year.

96. In the second stage, following the adjustment of the NMW to the C13 wage rate, the wage rates in award classifications would be moved to the C12 rate (currently \$28.40 per week more than the C13 rate) over two or three years. This would not affect any award where the lowest minimum rate for a substantive classification is the C12 rate or higher. The adjustment would be done in a way that would maintain current award substantive classifications. The minimum rate in these classifications would be increased in line with the rising NMW. This process would affect the wage rates up to the C10 rate, but not above that rate. Award classifications below the C10 rate would be adjusted pro rata, as we explain below. (The changes in the C10 rate and higher rates are referred to later.) The C10 wage rate is an appropriate reference point, or ceiling in this process, because its use in a range of awards does not present the kind of inconsistencies that are evident in respect of the rates for unskilled work.
97. The wage rates for the relevant classifications would be adjusted so that each wage rate maintains the relative position it had at July 2018 between the lowest substantive classification rate (which excludes introductory rates) and the C10 rate. If, for example, a classification was 40% of the difference between the lowest substantive award rate and the C10 rate at July 2018, it would continue to be set at that percentage during and at the end of the successive adjustments. This is its "transition value". For example, at July 2018, the Level 2 wage rate in the *Restaurant Industry Award* was (and still is) 29.1% of the difference between the Level 1 rate and the Level 4 rate, which is equal to the C10 rate. As the Level 1 rate is increased through the adjustment process, the Level 2 rate would continue to be 29.1% of the difference between the adjusted Level 1 rate and the Level 4 rate.
98. It should be noted that this process will result in the C12 wage rate in, for example, the *Manufacturing and Associated Industries and Occupations Award* being raised above the base rate for cleaners and the Level 2 rate in the *Miscellaneous Award*. For this

reason the target might be more usefully described as the cleaners' base rate (plus 20 cents per week) or the Level 2 rate in the *Miscellaneous Award*.

99. These kinds of adjustments would not affect, for example, the *General Retail Award* because the lowest rate at July 2018 was (and would remain) in excess of the C12/cleaners' wage rate.
100. In general, the introductory rates in awards that cover the first three months of employment are either unnecessary because the lowest substantive rate only requires the usual level of life skills (such as in the *Hospitality Industry (General) Award*) and/or where the introductory period is essentially concerned with workplace familiarisation and does not require a structured training program. We recognise that it may be claimed that the introductory rates in some awards cover genuine training processes and that 3 months is a reasonable time period. In these circumstances the classification might be kept at the adjusted NMW rate, but the next highest wage rate should not be treated as an unskilled position and should be adjusted on the basis that the introductory rate is a substantive wage rate.
101. Once the NMW is adjusted as we propose there would be the question as to whether the NMW had reached a sufficient level and could be fairly regarded as a Living Wage. Subject to any changes in taxes and transfers, that will depend on the annual increases determined by the FWC and its willingness and ability to restore the wage cuts over the past 21 years. In Chapter 3 we track changes over the past fifteen years in the living standards of working families who depend on these wage rates. We show that in January 2004 the living standard of the average couple parent family in receipt of the C12 rate (effectively the base rate for cleaners) was 1.8% above the 60% relative poverty line. As we explain in Chapter 4, budget standards evidence supports the conclusion that a decent standard of living is in excess of this measure of living standards.
102. In January 2004, the C12/cleaners' rate was 63.3% of median wages, substantially above the 57.8% in late 2018; see Table A9 in Appendix A. That is, 15 years ago the C12 wage rate was, arguably, close to a Living Wage. It is apparent from the living standards data over the past fifteen years that, if wage rates were to be increased so as to reverse the cuts in relative wage rates over most of the past 21 years, the NMW could be a Living Wage after this process is complete, subject to any deleterious changes in the tax/transfer system.

2.E.(3) Award relativities review and reforms

103. The current inadequate award relativities are the product of a number of ways in which relativities have been compressed over the years without regard to the proper recognition of the skills and responsibilities of workers in semi-skilled and skilled work classifications. The compression of relativities calls for a "decompression" of those relativities based upon a contemporary assessment of the skills and responsibilities (i.e. work value) of the award classifications.
104. The necessary decompression of award relativities to provide contemporary relevance will not be achieved by a single arithmetical formula. The following proposal provides, we submit, a transparent and fair method for addressing the issue.
105. In regard to the review of award relativities, we propose that an inquiry be established by the FWC to investigate and report on the sufficiency of each of:
 - the C10 award wage rate; and
 - the Level 1 graduate employee rate under the *Professional Employees Award* in providing fair and relevant recognition of the skills, responsibilities and other relevant factors (i.e. work value) for the classifications for which they are prescribed.
106. We propose that the review process be undertaken over a 15 month period, starting September 2019 and concluding in December 2020. The process could be commenced by an investigation and report under section 290 of the *Fair Work Act* or by a similar process being decided by the FWC. We propose that an interim report be provided and published by February 2020 and a final report by December 2020.
107. In the event that it is found that the wage rates in these classifications are insufficient to take proper account of their work values and if appropriate levels are identified, we propose that those wage rates and other wage classifications be adjusted in the manner set out below.
108. We propose that the adjustments to award rates following the relativities review commence in July 2021.
109. We accept that the transition has to be consistent with the terms of the *Fair Work Act*, including economic considerations, which may constrain the pace at which and the manner in which the transition occurs.
110. Any adjustments of the C10 wage rate and the Level 1 graduate employee rate under the *Professional Employees Award* could be undertaken concurrently or sequentially.

111. Any increase in the C10 wage rate would impact on the classifications above and below that wage rate.
112. In regard to award wage rates below the C10 rate, we propose that the same kind of adjustment process occur as we have described in connection with the adjustment of award rates as a consequence of the adjustments to the NMW.
- In the case of awards that are being adjusted by a rising NMW, the wage rates can also be adjusted by a rising C10 rate through the maintenance of their pro rata position at July 2018, i.e. according to their transition value at July 2018.
 - In the case of awards where the lowest substantive classification rate has not been adjusted under the NMW adjustment process, we propose that each classification be adjusted so as to maintain its relative position between the C12 and C10 wage rates as at July 2018. For example, in the case of the *General Shops Award* the Level 2 wage rate of \$808.70 per week in July 2018 was 58.5% of the difference between the C12 and C10 rates. This percentage would be maintained following one or more adjustments to the C10 rate.
113. In regard to classification wage rates between the C10 and the Level 1 graduate employee rate under the *Professional Employees Award*, a similar process would apply as that described earlier: each classification would maintain its relative position (according to its transition value) in July 2018 between the two wage rates (the C10 and the Level 1 graduate rates) as they are adjusted over time.
114. In regard to wage classification rates above the Level 1 graduate employee rate under the *Professional Employees Award*, we propose that the increase in the Level 1 rate be applied to those rates. We recognise that another party may argue for relatively greater increases to higher award classifications than that applied to the Level 1 graduate rate as a result of the compression of relativities over the years.
115. A matter that needs further consideration is the adjustment of incremental wage rates within each classification. Some awards have a number of pay points within each classification (for example, the *Social, Community, Home Care and Disability Services Industry Award*, clause 15) or annual increments within each classification (for example, the *Clerks—Private Sector Award*, clause 16). We propose that the starting rate in each classification would be adjusted in accordance with the adjustment formula proposed above. In relation to the further payments, the question is whether they should be adjusted by reference to their July 2018 relativity to the base rate (for

example, a second year rate continuing to be 2% above the base rate) or that they be adjusted according to the same formula applied to the base rate. Different approaches may be taken to pay point increments and annual increments.

116. We submit that the *Fair Work Act* enables these variations to the wage rates set for award classifications. The adjustments to particular award classification rates can be made by the FWC pursuant to section 285 and changes in respect of any introductory award classifications that have become redundant by reason of adjustments to the NMW can be made by the FWC, differently constituted, pursuant to section 157.

2.E.(4) Potential issues regarding the review and reform process

117. There may be an issue raised as to whether the FWC can or should embark on a reform process that would extend beyond the current annual review. In particular, it may be said that the members hearing the current annual review should not seek to bind the members hearing a future review. This kind of argument should be rejected. We submit that the FWC has the capacity to adopt policies in relation to the setting of classifications and the wage rates for those classifications. However, the exercise of that discretion cannot be inconsistent with the obligation to take into account the matters specified in the legislation when undertaking each annual review. The legislation does not intend that each Annual Wage Review is disconnected from other annual reviews.
118. A statutory tribunal such as the FWC is entitled to adopt policies to guide the way in which it exercises its jurisdiction. 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 reform of the award minimum wages system would have to be implemented over time in order to take proper account of the relevant legislative provisions, including economic impact.
119. 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.”

120. Our proposals for the review and reform of the NMW and award wages may also prompt some parties to rely on a decision on a preliminary issue made by the FWC in the course of the Annual Wage Review 2016-17; *Annual Review 2016–17 Preliminary decision* [2017] FWCFB 1931, (*Preliminary decision*) of 7 April 2017. The decision concerned an application by United Voice for the FWC to adopt a medium-term target for the NMW, to be set at 60% per cent of median adult ordinary time earnings. The submissions in support “argued that a medium-term target was necessary to assist the Panel with its consideration of the relative living standards and needs of the low paid, by addressing inequality, particularly the minimum wage relative to median earnings” (June 2017 decision, paragraph 32). In referring to the Preliminary decision in the June 2017 decision the FWC summarised its decision in the following terms:

[34] In essence, we did not adopt the medium-term target proposal because to adopt such a target would effectively elevate one statutory consideration (‘relative living standards and the needs of the low paid’) above the other considerations we are required to take into account.

121. The review and adjustment processes that we have proposed are distinguishable from the matters that were before the FWC in the medium term target application because we have focussed on the nature and purpose of the wage safety net and have proposed a timetable that enables the FWC to take into account all of the relevant matters in the legislation.

122. Furthermore, as we contend in Chapter 6, the construction of section 284(1) adopted by the FWC in the *Preliminary decision* was erroneous.
123. Our proposals mean that the continued adjustments of the NMW might overlap the adjustments to higher wage rates following the reviews of the C10 and Level 1 graduate entry rates. If a choice is to be made about the priorities for reform, it is our submission that the reform should be a "bottom up" process, which gives priority to the lowest paid. This means that the adjustment of the NMW should be given priority.

2.E.(5) Conclusion

124. The origins of the current award classifications are found in the classification reviews undertaken by the AIRC and State industrial tribunals in the early 1990s. Under that co-operative process award classifications and wage rates were reviewed and adjusted to promote the structural efficiency of the award system and career-based work classifications. The origins of the process are referred to in Schedule B of the *Manufacturing and Associated Industries and Occupations Award 2010*, entitled "Classification Structure and Definitions". The Schedule links each of the current award classifications to the relativity established in that process. Clause B2.2 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 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."

125. Print J2043 was the Order of Deputy President Keogh made on 12 April 1990. The wage levels and relativities in that order became the basis upon which Federal and State awards were reformed in the early 1990s. Since then there has been no such systemic review of award relativities and the adequacy of the wage rates prescribed for those classifications. The award modernisation process of 2008 and 2009 leading into the operation of the *Fair Work Act* did not undertake such a task.
126. After 29 years it is time for another systemic review of the wage rates and relativities set by national awards. Our proposal is for a targeted and transparent process capable of addressing the problems that we have identified and of updating the award system.
127. The proposals set out in the previous sections are designed to, first, move the NMW towards a level that is consistent with the objectives of the *Fair Work Act* and at which it could be fairly described as a Living Wage and, second, address the shortcomings in

the wage relativities within the award system. Both aspects are needed because all minimum wage rates, especially higher wage rates, have lagged median and average wages over the past 21 years. This has caused low paid workers and their families to fall into, or closer to, poverty and disadvantage. The alleviation of poverty and disadvantage is, in our submission, the principal priority in the reform process. The second priority is the assessment of the current award relativities which have been compressed over the past 21 years. If, as we expect, they are found to be inadequate, they should be adjusted over time.

128. We return to the passage in the June 2018 decision (at paragraph 105) that the NMW should not be increased relative to higher paid award classifications because it would be unfair to higher paid workers. We submit that this approach is inconsistent with the egalitarian traditions of this country that have supported battlers and the well-established public policies based on providing preference and priority for those most in need. We add that there is no basis to believe, as might be suggested, that higher paid workers would oppose lower paid workers receiving an increase that would alleviate their poverty even though those increases would not apply to those higher paid workers.
129. The process we have proposed would address the adequacy of the NMW as a base upon which award classification rates would be set having regard to the skills and responsibilities covered by those classifications. The review and adjustment of award relativities would meet the FWC's concern in the June 2018 decision (quoted above) that the awarding of greater wage increases in the NMW than those determined for award rates would be unfair to higher paid workers. If the relativities between wage rates are to be given such importance that they would operate against the setting of a fair NMW, the appropriate course must be to review those relativities.
130. Finally, we repeat the point made earlier that the adjustment of the NMW and the consequential changes to award rates less than the C10 rate should not be conditional upon the review of the adequacy of the current wage relativities to reflect the skills and responsibilities of the C10 and higher paid classifications. The first stage could proceed without the second stage.

2.E. Legal issues raised

131. There are two legal issues that we raise in regard to the operation of the *Fair Work Act* and the decisions made by the FWC.

The construction of section 284(1)

132. The first legal issue concerns the construction of section 284(1). This matter, which we return to in Chapter 6, was raised in the Annual Wage Review 2017-18 and dismissed by the FWC. There are two aspects of this matter, which we term the primary and subsidiary construction issues. We contend that the June 2018 decision in regard to each of these aspects was relevantly inconsistent with the judgment of the Full Court of the Federal Court of Australia in *Shop, Distributive and Allied Employees Association v The Australian Industry Group* [2017] FCAFC 161, which was the judicial review of the FWC's decision in the Penalty Rates Case, *4 yearly review of modern awards – Penalty Rates decision* [2017] FWCFB 1001.
133. We also contend that the *Preliminary decision*, which we referred to earlier, is also inconsistent with the Full Court's decision and should be reconsidered. This is a matter of major importance to the operation of the minimum wage provisions in the *Fair Work Act* and the capacity, and obligation, of the FWC to alleviate poverty and disadvantage among low paid workers and their families. The reasoning in the *Preliminary decision*, and the reasoning in past Annual Wage Reviews, has negatively impacted on the ability of low paid workers to receive a wage that provides a decent standard of living.

Award relativities

134. The second legal issue concerns the FWC's practice and policy since 2011 to award a uniform percentage wage increase to the NMW and award wage rates. This also has two aspects. First, the policy has failed to recognise the greater needs of low paid workers and the obligation to take proper account of the nature and purpose of the safety of fair minimum wages that it is commanded to establish and maintain. It has failed to give relatively more to those who are in or at the risk of poverty and disadvantage. The issue has been raised and dismissed by the FWC in the past, but part of the basis for its dismissal was the construction of the legislation that we contend is contrary to the Full Court judgment.
135. The second aspect of this issue concerns the failure to set the NMW independently of the award system, as is intended by the legislation. The NMW is a general entitlement, independent of the award system and a base on which the award system is intended to provide further remuneration to reflect the higher value of award work classifications. This matter is raised again in response to the FWC's statement in paragraph 105 of the June 2018 decision (to which we have already referred) that one of the reasons for not

increasing the NMW was that to do so would not be "fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative 'work value.'" This was, we submit, an impermissible consideration as it compromises the proper setting of the NMW, which is to be done independently of such award considerations. The submissions regarding the relativities issues are also set out in Chapter 6.

CHAPTER 3

Measuring falling living standards and rising poverty levels

3.A. Introduction

3.B. Measuring relative living standards

3.C. Measuring relative poverty lines

3.D. Raising, cutting and freezing the social safety net

3.E. Cuts in relative wage levels

3.F. Directions in wages policies, 1997 to 2018

3.A. Introduction

136. The purposes of this chapter are to explain the basis upon which living standards are measured and to demonstrate:

- the living standards of low income minimum wage-dependent households relative to contemporary Australian living standards and, in particular, relative to the living standards of Australians on the age pension safety net;
- the very substantial cuts over the past two decades in the relative living standards of low income minimum wage-dependent workers and their families;
- the consequential increases in inequality, poverty and disadvantage among low income minimum wage-dependent workers and their families;
- the impact that changes in the social safety net have had on the living standards of working families; and
- the failure of the minimum wage system to maintain the relative living standards of workers and working families as a result of minimum wage decisions over the past two decades.

3.B. Measuring relative living standards

137. The submissions and decisions in Annual Wage Reviews regarding living standards and poverty have usually been made by reference to measures of living standards developed by the Australian Bureau of Statistics (ABS) and their adaption by the FWC to measure the living standards of various kinds of minimum wage-dependent households. 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. 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)

138. The basic calculation for these measurements of living standards is the "median equivalised disposable household income" for a single person household, which is derived from household income surveys conducted by the ABS every two years. This figure is calculated using standard equivalence scales that calculate the incomes needed in various kinds of households to produce the same standard of living; for example, a family of two adults and two children requires a disposable income that is 2.1 times the disposable income of a single person in order for both households to have the same standard of living. It also means that the family of four requires 2.1 times the median equivalised disposable household income in order to be at the median Australia-wide standard of living. The disposable incomes of individuals and families take into account the tax payable on earned income and government transfers such as family payments.
139. Although data on relative living standards has been available since 1994-95, changes in the collection and recording of data limit the utility of the early years of this research. In Tables A1 to A8 of Appendix A we have provided calculations from January 2001, but, having regard to the changes made in the surveys, we have restricted most of the commentary to changes in living standards since January 2004.
140. The most recent estimate of the national median was published in September 2017; *Household Income and Wealth, Australia, 2015-16*, cat. no. 6523.0. The median equivalised disposable household income for a single person in that year was \$853.00 per week. We have used that figure for January 2016.

141. Because of the inevitable delays in publishing the results of surveys, the FWC updates the survey figures by reference to the Melbourne Institute's calculations of national per capita "Household Disposable Income" which are published quarterly in its *Poverty Lines* newsletter. Table A1 uses those calculations for the years between surveys and for the period since the latest published results. The estimates of changes in median disposable incomes since 2015-16 will have to be amended after the publication of the ABS survey results for the year 2017-18, which is expected in late 2019.
142. The FWC's *Statistical Report* series uses these financial year calculations for estimating living standards at December of each year. The relevant tables in Appendix A are at January of each year, using the figure for the previous month. There is no difference between the calculations for each December and the following January because minimum wage rates and relevant transfer payments do not change during these months.
143. These calculations enable us to compare the standards of living of various kinds of households and to compare their standards of living with the Australia-wide median. The calculations also provide the basis for measuring the degree of inequality within the community. For example, at January 2019 the NMW-dependent single adult was 73.6% of the median (for a single person) and the NMW-dependent family of four (couple parents with two children) was at 54.9% of the median calculation for a household of this size. At the same time the C10-dependent single adult (receiving the minimum wage rate for a trade qualified, or equivalent, classification) was at 82.6%, while the family of four dependent on the C10 rate was at 59.4% of the median. But for the substantial payments received by families, the gap between them and single adults would be much greater.

Comparing the wages and pensions safety nets

144. 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 living standards of those who rely on pensions should be a relevant matter in taking into account "relative living standards", as the FWC is required to do when setting minimum wage rates. In 2017-18 there were approximately 2.5 million Age Pension recipients, with 61% receiving a full-rate pension and 39% receiving a part-rate pension as a result of the incomes and assets tests; Department of Human Services, *Annual Report 2017-18*, page 46.

145. In 2009 new arrangements were introduced for age and disability pensions following the Commonwealth Government's *Secure and Sustainable Pension Reform*. The changes were based on 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.
146. Table 2 compares the living standards of pensioners and three safety net-dependent families in January 2019 by the use of the equivalence scales used by the ABS. Three wage rates are used: the NMW, the C12 and the C10 minimum wage rates. It is not concerned with identifying poverty lines or lines of income adequacy, but with comparing the outcomes for working families and for pensioners who rely totally on government transfers by reference to median equivalised disposable household income (MEDHI). It compares relative living standards and relates each of the households to the community-wide measure.

Table 2
Relative living standards of pension and safety net-dependent families
January 2019

Household	Disposable income \$ per week	Equivalence scale	Equivalised income \$ per week	Disposable income as percentage of MEDHI
NMW-dependent family, second parent not seeking employment, 2 children	1,011.65	2.1	481.74	54.9%
C12-dependent family, second parent not seeking employment, 2 children	1,045.53	2.1	497.87	56.8%
C10-dependent family, second parent not seeking employment, 2 children	1,093.22	2.1	520.58	59.4%
Couple on age pension	757.31	1.5	504.87	57.6%
Single person on age pension	527.88	1	524.23	59.8%

The median equivalised disposable household income (MEDHI) at January 2019 is estimated to be \$877.00 per week. The disposable incomes of the NMW, C12 and C10-dependent families are taken from Tables A6, A7 and A8 of Appendix A. The working family incomes and the pension rates include maximum rental assistance. All transfer payments and annual payments have been adjusted on the basis of the year comprises 52.18 weeks.

147. Table 2 shows that the pension safety net for a couple, \$757.31 per week, produces a

standard of living that is 2.7 percentage points higher than that of NMW-dependent family of two adults and two children with a disposable income of \$1,011.65 per week. The family would need \$1,060.82 per week, an extra an extra \$49.17 per week, to have the same recorded standard of living as that estimated for the pensioner couple.

148. 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. Furthermore, we need to take into account the fact that pensioners are entitled to the pensioner concession card with its wide range of benefits, including health care.
149. The equivalence scales do not take into account the costs of or absence of costs of work across households. The FWC has published data on the costs of work. The *Statistical Report* of 20 March 2015 (at Table 14.1) contained data on the costs of working, other than child care. A note to the table read “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 figure has not been updated or qualified in subsequent releases, but it is clear that the average costs of working are substantial.
150. Taking into account the costs of work and the value of the pensioner concession card, we can conclude that the pensioner couple has a higher standard of living than the C10-dependent family. The contrast between the living standards of this working family and single pensioners is even starker. The C10 family is below the single pensioner’s standard of living: 59.4% compared to 59.8% of median disposable household income. The fact that the minimum rate for a skilled worker provides a standard of living below that provided to pensioners is a sign that there is something very wrong with the minimum wages system.
151. We noted in Chapter 2.D. that the FWC has held that “a comparison with pensioners for the purpose of assessing the relative standards of the low paid is of very limited relevance” (May 2016 decision, paragraph 354) and refused ACCER’s application in the following year for it to depart from that view (June 2017 decision, paragraph 368). We emphasise that we are not making comparisons between working families and a small segment of the population. In Chapter 1.B. we used data in the 2016 Census to identify approximately 1,270,000 Australians living in disadvantaged low income

wage-dependent families, which is about half of the approximately 2.5 million Australians living on Government age pensions.

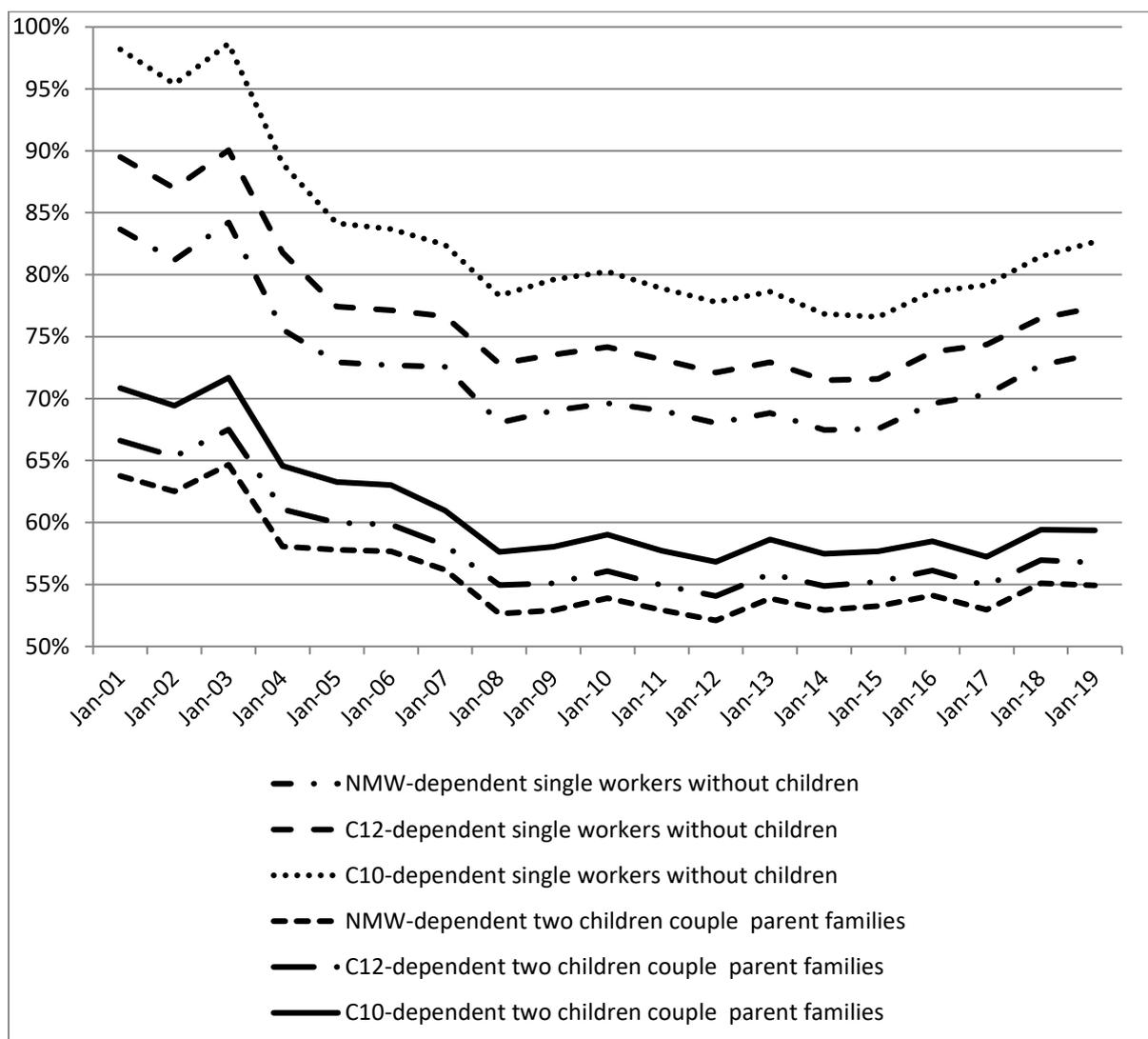
152. Having regard to the obligation for the FWC to take into account relative living standards when setting a safety net of fair minimum wages, why, we ask, should the breadwinners in these working families have to work overtime and/or take an extra job, or the primary carers have to seek employment, in order for them to achieve the higher standard of living provided to approximately 2.5 million on the age pension?

Changes in standards of living over time

153. These median-based calculations are also useful because they demonstrate the extent to which relative living standards have changed over a period of time, both in general and in particular households. Minimum wage-dependent households have experienced growing inequality and their living standards have fallen relative to the community as a whole.
154. Tables A2, A3 and A4 of Appendix A show changes in the relative living standards of minimum wage-dependent workers and their families. For example, the NMW-dependent family of a couple and two children (in rented housing and in receipt of rental assistance) fell from 58.1% of the median in January 2004 to 54.9% in January 2019. This is a substantial cut in relative income over those 15 years, equal to \$58.38 per week. The single NMW-dependent worker without children fell from 75.6% of the median to 73.6% over the same 15 year period, equal to a cut of \$17.42 per week. A comparison of these losses has the family suffering a greater cut than the single worker. The greater cut suffered by the family shows that, relative to wages, family support payments have been cut over this 15 year period. On current and prospective policies, this trend will continue, with implications for relative living standards and the wages safety net.
155. A greater number of families depend on a wage at about the C10 level than the number who depend on the NMW. In the case of a C10-dependent family of a couple and two children (in rented housing and in receipt of rental assistance), the living standard fell from 64.6% to 59.4% of the median over the 15 years, which amounts to a loss of \$96.52 per week. The C10-dependent single worker without children fell from 89.0% to 82.6% of the median over the same period.
156. Similar calculations to these can be made in respect of sole parent families with two children; see Tables A5, A6 (NMW), A7 (C12) and A8 (C10).

157. Figure 1 illustrates the positions of couple parent families with two children and single workers relative to median equivalised disposable household income at each of the three wage levels used in Tables A6 to A8. Notwithstanding the improvement for single workers over the past few years, these are dramatic cuts in the living standards of the most marginal workers and working families in Australia. We note, however, that the apparent increase in living standards in recent years, by reference to calculations of household disposable incomes, is not consistent with data on increases in median and average wages over the same period. We will return to this in the following discussion of the FWC's *Statistical Report* of 8 March 2019.

Figure 1
Relative living standards of safety net-dependent workers and couple parent families
January 2001 to January 2019



158. Figure 1 also illustrates the increasing inequality affecting the most marginal workers by plotting their disposable incomes against median equivalised disposable household income. Inequality has a cost. The consequences of increasing inequality and the loss of opportunities for children are particularly important. It cannot be said that this is a social problem that must be fixed by the Government when, as we explain in more detail in Chapter 3.E., the root cause of this social dislocation has been decisions of successive wage setting tribunals.

A longer term measure from the Melbourne Institute

159. Although there are limitations in using the ABS median calculations prior to 2003-04, there is a longer term perspective in the series compiled by the Melbourne Institute recording changes in per capita household disposable income since 1973, which is used to update its Poverty Lines based on the Henderson Poverty Line of 1973. Because poverty within a society essentially reflects the economic position that a person has relative to the rest of society, changes in per capita household disposable income are appropriate measures by which to adjust poverty lines based on earlier research into the financial needs of low income groups. While the adjustment mechanism is sound, the fact that the empirical research on which the poverty lines are based was undertaken more than 45 years ago means that these Henderson Poverty Lines (as measures of poverty) have limited utility in current public debate.

160. This data on changes in household disposable income from the Melbourne Institute in Tables A11 and A12 of Appendix A confirms the substantial cuts in relative living standards since 2004 and, importantly, shows that the trend had commenced some time before then.

161. Table A11 compares the disposable incomes of wage-dependent couple parent families with two children in receipt of the NMW, C12 and C10 wage rates with the per capita household disposable income as calculated by the Melbourne Institute. In January 2001 the families had margins of 133.9%, 139.9% and 148.8%, respectively, over average household disposable income. By January 2019, the margins had fallen considerably: to 120.6%, 124.7% and 130.4%, respectively. This drop in living standards represents, for the NMW-dependent family a disposable income loss of \$111.11 per week relative to average standard of living across Australia.

162. Table A12 shows the same kind of trend in the position of NMW and C10-dependent single workers without family responsibilities, dating from 1997. The disposable

incomes had fallen from 86.2% and 103.7%, respectively, of per capita household disposable income to 77.0% and 86.4%, respectively. For the single adult worker on the NMW, this represents a net wage loss of \$77.21 per week from 1997 to 2019. For the C10-dependent worker, the loss in disposable income over the same time is \$145.58 per week.

163. It should be emphasised that these changes have occurred as a result of decisions by successive tribunals. Substantial cuts in the relative value of minimum wage rates occurred during the years in which the Australian Industrial Relations Commission (AIRC) set minimum wage rates. Table A12 shows that from 1997 until 2006 (before the new *Work Choices* amendments to wage setting were implemented) the single NMW-dependent worker had fallen from 86.2% of average household disposable income in 1997 to 77.8% at the start of 2006. The first decision under *Work Choices* took effect at the end of 2006 and by January 2010, before the first decision was made under the *Fair Work Act*, the NMW-dependent worker had fallen to 73.1% of household disposable income.
164. Although there are good reasons for criticising the wages outcomes under *Work Choices*, we must recognise the impact that the AIRC decisions had on low paid workers. Like the Australian Fair Pay Commission (AFPC), which set wage rates under the *Work Choices* system while the AIRC continued with its other functions, the AIRC had more than sufficient evidence that its wage decisions were impacting on the relative living standards of minimum wage-dependent workers and causing increasing inequality between those workers and society at large. We return to this in Chapter 3.E. where we reproduce a table published by the AIRC in the Safety Net Review case of 2005, its last arbitration of minimum wages, tracing the decline in the relative level of minimum wage rates from 1983.

3.C. Measuring relative poverty lines

165. The development of measures of relative living standards over the past two decades has provided the basis for the use of relative poverty lines, where a particular percentage of the median equivalised disposable household income is regarded as the level below which households will be in poverty.
166. In discussing the nature and uses of relative poverty lines, we need to keep in mind the nature of poverty. The following is a common approach to the description of poverty:

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 Australian society generally, with the result that they are likely to be excluded and marginalised from participating in activities that are considered the norm for other people in society.

167. In common usage, a "decent standard of living" is a standard of living in excess of poverty as it is described in this passage.
168. There is no unambiguous arithmetic measurement of poverty and the margin above poverty that is needed in order to secure what would be regarded as a "decent standard of living". The quantification of both depends on conclusions drawn from relevant evidence and empirical research.
169. The FWC has repeatedly said in past annual wage reviews that "those in full-time employment can reasonably expect a standard of living that exceeds poverty levels"; see, for example paragraphs 104, 329 and 333 of the June 2018 decision. This higher standard of living might be called a decent standard of living. The FWC has used that term in its repeated view in past decisions 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, for example, the June 2018 decision at paragraphs 32 and 329.
170. As a result of the work of the ABS in developing the income measures based on international standards which are discussed in the previous section, relative poverty lines are now the conventional measure poverty, with relative poverty lines being used at 50% or 60% of median equivalised disposable household income. The 60% poverty line can also be called the risk of poverty line, as it is frequently called in Europe where it is widely used in public policy discussion as a measure of income sufficiency. The question of which of these percentages, or which of the percentages between them, is the most appropriate measure of poverty needs to be informed by empirical research. In the following paragraphs we will refer to the 60% of median relative poverty line as the 60% poverty line, with the implicit qualification that it is not a measure of poverty as such.
171. Since 2008, when relative poverty line calculations were introduced by the AFPC, the 60% poverty line has been used in national minimum wage reviews. Since 2008 the AFPC and, later, the FWC have published calculations of the ratio between the

disposable household incomes of various wage-dependent families and their respective 60% poverty lines. Included in the calculations are figures for the same kind of households when receiving different minimum wage rates. These figures and the figures regarding relative living standards discussed in the previous section are different expressions of the one basic calculation, i.e. of median equivalised disposable household income. The positions of the selected households relative to the 60% poverty line can be converted to positions relative to the median; for example, 90% of, or 10% below, the 60% median poverty line is 54% of the median.

172. The FWC, like the AFPC, has not treated the 60% poverty line as an operational benchmark measure of poverty. However, the FWC has treated the 60% poverty line as a measure of the standard of living in excess of poverty that those in full time employment can reasonably expect:

"[333] The [Minimum Wage] Panel [of the FWC] has generally relied on poverty lines that are based on median income, using a 60 per cent threshold on the basis that those in full-time employment can reasonably expect some margin above a harsher measure of poverty." (Footnote: [2017] FWCFB 3500 at [463])

Recent comparisons of living standards: Table 8.6 in Statistical Report, 8 March 2019

173. Table 8.6 in the FWC's *Statistical Report* of 8 March 2019 presents calculations at December 2013, December 2017 and September 2018 of the living standards of 14 kinds of households at four wage levels by reference to their 60% of median poverty lines. Table A13 in Appendix A is extracted from Table 8.6, with the measures regarding NMW and C10-dependent households at September 2018.
174. The 60% poverty lines are based on ABS surveys in 2013-14 and 2015-16. The figure for December 2013 in Table 8.6 is taken from the ABS survey in 2013-14, which estimated median equivalised household disposable income at \$844.00 per week, with the 60% of median poverty line for the single adult being \$506.40 per week. The use of this figure for December 2013 is consistent with the FWC's use of other financial year estimates. We have used the same figure for January 2014. Nothing turns on this difference in months because no relevant change occurs in wage, tax or transfer arrangements during these months. In the following ABS survey, for 2015-16, median equivalised household disposable income had risen to \$853.00 per week, an increase of only 1.1%. The ABS survey for 2017-18 will not be released until late 2019.
175. The estimates for December 2017 and September 2018 in Table 8.6 of the March 2019 report are based on changes in household disposable income calculated by the

Melbourne Institute in *Poverty Lines, Australia, September Quarter 2018*. We have used the September quarter 2018 figures for our January 2019 estimates. By April 2019 the next quarterly newsletter will be published, enabling estimates for December 2018 and revised estimates for January 2019. We note that there is a very minor discrepancy between the FWC's and our calculations of the poverty lines following the latest issue of the Melbourne Institute's publication. The 60% relative poverty line for the single adult, for example, is calculated at \$526.34 per week in the FWC's calculations, whereas we calculate it to be \$526.20 per week (see Table A5 in Appendix A). Nothing turns on this and both figures will be revised following the publication of the next quarterly issue.

176. Table 8.6 shows only a very small increase in median equivalised disposable household income over the period December 2013 to September 2018, with the result that the relative poverty line has increased by only 3.9%, well below the increases in the CPI (7.8%) and minimum wage rates (12.2%).
177. The increase in median equivalised disposable household income over this period was well below the increases in median wages (15.3% from August 2013 to August 2018; Appendix A, Table A9) and Average Weekly Ordinary Time Earnings (11.7% over the period November 2013 to November 2018; Appendix A, Table A10). By way of illustration, the NMW-dependent single adult with no family responsibilities is recorded as increasing his or her margin over the 60% relative poverty line from 13% to 23%. By contrast, the NMW-dependent sole parent with two children working 19 hours per week is recorded as having increased from 82% to 85% of the poverty line, or from 18% to 15% below the poverty line, with the relatively lower increase reflecting the substantial cuts to family payments during this period.

The figures require a degree of caution

178. The low increase in estimated household disposable income does not reflect the changes in gross wage levels as recorded by the ABS. The cause or causes of the discrepancies in the recorded changes in gross and disposable household incomes are uncertain, but it has happened before. For example, the *Statistical Report* of 8 May 2014 estimated that the single adult's 60% relative poverty line was \$496.05 per week, whereas the figure derived from the 2013-14 survey, and used in the latest *Statistical Report*, is \$506.40 per week. This meant the single adult was 13% above the poverty line, not 15% as initially estimated.

179. It might also be noted that in the *Statistical Report* of May 2018 the single adult worker had improved his or her position from 17% to 20% above the poverty line over the period December 2012 to December 2017, somewhat lower than the subsequently recorded increase from 16% to 23% over the period December 2013 to September 2018. On the face of it, both estimates cannot be correct.
180. The conclusion that we draw from these matters is that Table 8.6 underestimates to some extent the increases in relative poverty lines over the period December 2013 to September 2018, with the consequence that it overstates the increases in living standards relative to poverty lines and median disposable incomes. Although the Melbourne Institute's figures provide the best guide to the adjustment to the ABS for the years between the ABS surveys and for the periods following the survey years, they are published on the explicit basis that they may be amended in subsequent reports.

Changes in family assistance

181. Table 8.6 reflects the impact that the cuts in family assistance since 2013. This is illustrated by the calculations of changes in disposable incomes that underlie (but are not explicit in) the estimated changes of NMW-dependent households relative to their poverty lines. Over the period December 2013 to September 2018, the single adult had an increase of 12.6% in his or her disposable income; the sole parent and two children family had an increase of 7.6% in their disposable income; and the couple parent family with two children had an increase of 9.6% in their disposable incomes.

Couple parent families

182. Table 8.6 also has the NMW-dependent single breadwinner couple parent family of four at 8% below the poverty level. Even a job at the C10 wage rate would not lift the family above the poverty line: it would still be 1% below. As we have emphasised before, there is something fundamentally wrong with a minimum wages system that provides a wage rate for a skilled workers that leaves an average family in or at risk of poverty and without a decent standard of living.
183. Table 8.6 also shows that if the second parent in the NMW-dependent household sought employment and qualified for the Newstart allowance while being unemployed, the family would move to 2% above the poverty line. Because of the means-testing provisions of the Newstart allowance, the C10-dependent breadwinner family would only move an extra 1% above the poverty line, to 3% above the poverty line, despite the C10 wage rate being \$118.20 per week more than the NMW. In order for the family to

escape poverty or the risk of poverty, the second parent has to commit to taking employment, with the consequences that this may have for the care of the children.

Sole parents working part time

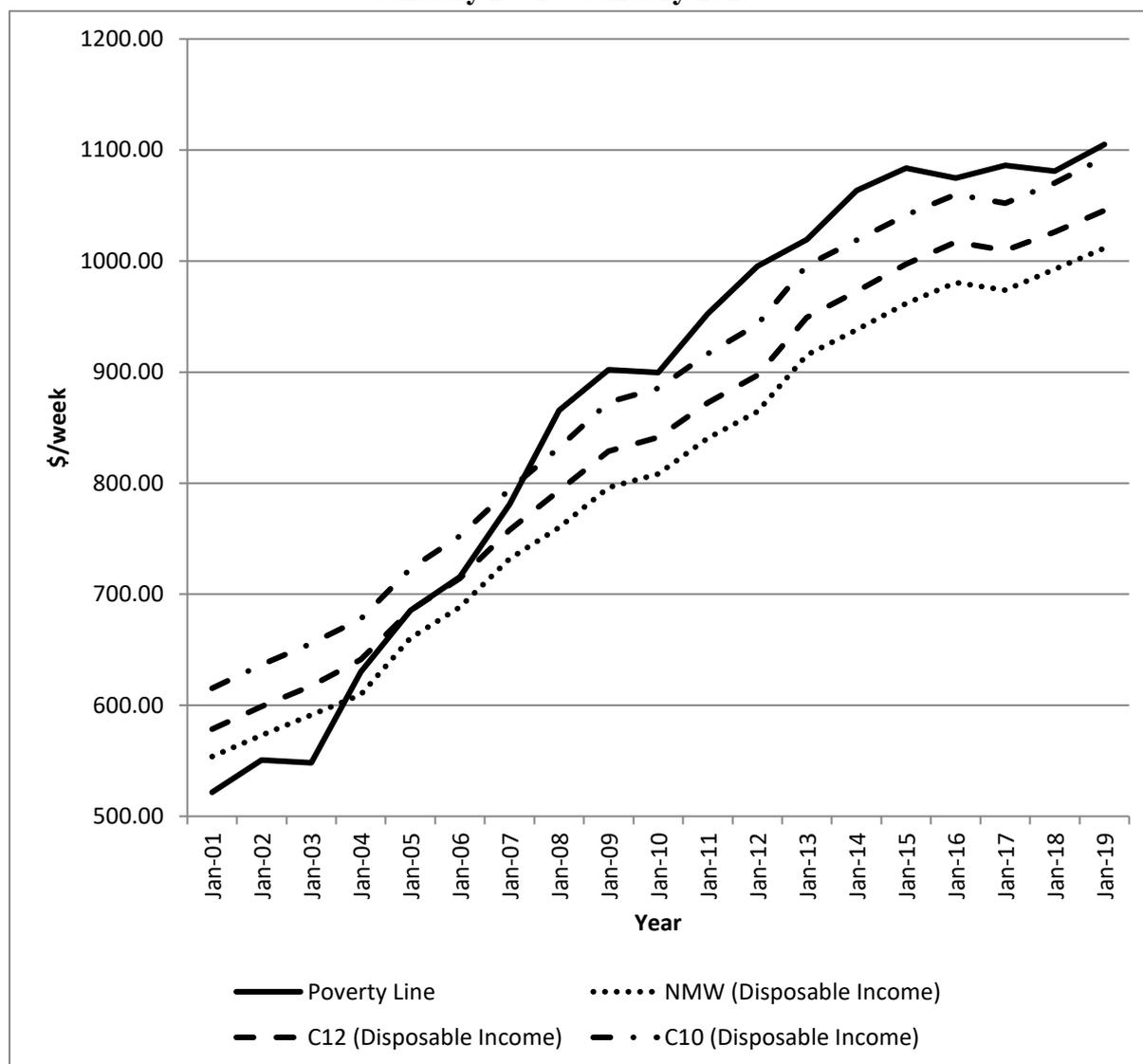
184. Table 8.6 has, at September 2018, NMW-dependent sole parents working 19 hours per week at 11% below the poverty line (with one child) and 15% below the poverty line (with two children). In both cases even a job paying the C10 wage, trade qualified or equivalent rate, would not lift them above the poverty line (with deficits of 3% and 8%, respectively).
185. The 2016 Census data in Appendix B shows that 30.8% of low income sole parents are employed part time, and that they comprise 75.3% of all employed sole parents. Many part time workers are employed as casuals, and paid a casual loading, but their casual loading is set on the basis that it is compensation for the loss of the cash benefits of continuing employment and the irregularity of the hours of work. The plight of the many who do not have full time employment, which is often defined to be 35 or more hours per week, raises a broader question as to whether wages should be set on the basis of full time of 38 hours per week and consistent employment. We do not propose this kind of debate at this time because we would rather see the NMW based on a 38 hour week being set as a genuine Living Wage, with benefits flowing to part time workers.
186. The difficulties of part time employees are the product of two factors: the failure of minimum wage rates to keep pace with rising community-wide wage increases over the past two decades and more; and the effective adoption of the single person criterion for the setting of minimum wages. The NMW is now at a level that the FWC regards as reasonable for a single person working full time. For many sole parents who are working part time this test means a life of poverty and disadvantage for themselves and their children.

Increasing poverty: the poverty gap widens

187. Figure 2 converts data on relative living standards into a graph that compares disposable incomes with the 60% poverty line. The data for this graph are in Appendix A at Tables A5 to A8. For the reasons indicated above, the poverty line can be seen as a risk of poverty line or (subject to relevant research, which we discuss later in regard to recent budget standards research) as a line representing a decent standard of living. The poverty gap, i.e. the difference between household income and the poverty line, can be

viewed as a measure of disadvantage: i.e. it measures the extent, in money terms, to which the family is deprived of a decent standard of living.

Figure 2
Disposable Incomes of Safety Net-dependent Families Relative to 60% Poverty Line
(Couple and two children)
January 2001 – January 2019



188. The data in Tables A5 to A8 of Appendix A for the first few years after 2001 need to be treated with some caution because estimates of household disposable income in those years have not been adjusted to reflect subsequent changes in data collation. The same caveat applies in relation to the comparisons in Figure 2. This aspect is also referred to in Chart 8.5 of the *Statistical Report* of 8 March 2019, where changes in the Gini coefficient of equivalised household income are shown over the years since 1994-95. Nevertheless, the figures for the earlier years have some utility. Mindful of the caveat

in relation to the changes to the data collection in the earlier years, our calculations generally refer to changes since January 2004.

189. The tables in Appendix A show that the NMW-dependent family of a couple and two children fell further into poverty over these 15 years: from 3.2% below the 60% relative poverty line, with a poverty gap of \$20.37 per week, to 8.4% below it, with a poverty gap in January 2019 of \$93.97 per week. Similar changes have impacted on C12-dependent workers and their families. At January 2019 the C12 family had a poverty gap of \$59.49 per week, yet in January 2004 it was 1.8% above the poverty line, with a margin above the poverty line of \$11.18 per week.
190. We draw attention to the position of the C10-dependent family of a couple and two children. The tables demonstrate that even the acquisition of skills and responsibilities that come with a trade, or trade equivalent, occupation, the C10 (or equivalent) wage rate is still insufficient to lift the family above the 60% relative poverty line and provide it with a decent standard of living. In January 2004 it was 7.1% above the poverty line, but in January 2019 it was 1.1% below the poverty line.
191. In January 2004 the C10-dependent single worker without family responsibilities was 48.3% above the 60% relative poverty line, but by January 2019 had fallen to 37.7% above the poverty line. This represents a large cut in relative living standards, although less than the cuts suffered by workers with family responsibilities.
192. Many low income wage-dependent families are living in poverty and deprived of a decent standard of living. This deleterious trend has been hidden within the national statistics recording, for most of this period, the very substantial increases in Australian average incomes, wealth and living standards. The principal cause of this has been the failure of safety net wages to reflect rising community incomes over the past 20 years and more.

Budget standards research

193. The utility of the 60% of median measure as a guide to the income needed to avoid poverty is a matter that depends on empirical research, of which there is very little in Australia. The Henderson Poverty Lines, which were often at the centre of public and policy discussion about poverty during the 1970s and 1980s, are little used now because the empirical research underpinning them is outdated.
194. The best evidence of the financial needs of low income Australians is now found in research by the Social Policy Research Centre (SPRC) at the University of New South

Wales. The research was undertaken by Professor Peter Saunders and Megan Bedford, who are the authors of the research report, *New Minimum Income for Healthy Living Budget Standards for Low-Paid and Unemployed Australians*, published in August 2017. As the name suggests, the research was not concerned with finding poverty lines, but with calculating the disposable income that would be needed for various kinds of households in order to achieve a healthy living standard. It has a margin above poverty. The Minimum Income for Healthy Living (MIHL) budget standards established by this research for the low income working households were all in excess of the 60% poverty line.

195. In Table 3 we compare the MIHL budget for each of the five households covered by the research with the estimated median equivalised disposable household incomes for these households.

Table 3
Budget standards compared with 60% of median poverty lines in
selected households
June 2016
(\$ per week)

	Budget Standard	60% of median	Budget Standard margin over 60% of median
Single adult	597.31	516.92	80.39
Couple, no children	833.24	775.38	57.86
Couple, 1 child	969.90	930.46	39.44
Couple, 2 children	1173.38	1085.53	87.85
Sole parent, 1 child	827.70	672.00	155.70

Notes: At December 2015 the median equivalised disposable household income was \$853.00 per week, with the 60% relative poverty line being \$511.80; see *Household Income and Wealth, Australia, 2015-16*, cat. no. 6523.0. This figure needs to be adjusted in order to calculate the 60% of median poverty line at the same date as that used in the research. Using the FWC's adjustment method, based on changes in Household Disposable Income published in the *Poverty Lines: Australia* newsletter, this figure should be increased by 1.1%; see *Poverty Lines Australia September Quarter 2018*, at Table 3. The estimated figure for the single person's 60% relative poverty line, or 60% of the median, at June 2016 is \$516.92.

196. Table 3 demonstrates that, in all five households the minimum income needed for the healthy living budget standard was substantially in excess of the 60% of median line at June 2016. In the case of the couple and two children family, the budget standard was

8.1% above the 60% of median measure. To put this in another way, the budget standard, at \$1,173.38 per week, was 64.9% of median equivalised disposable household income.

197. The budget standards were calculated at June 2016. Having regard to the passage of time the standards and the 60% of median figures should be revised. There are two ways that this may be done: either by an increase in the budgets reflecting increases in the CPI or by an amount that reflects changes in household disposable income. The former reflects the cost of the budget and the latter reflects the setting of the budget in a social context. The Melbourne Institute prefers the latter in its adjustments to its poverty line calculations. Following the *Poverty Lines* calculations by the Melbourne Institute these calculations should be adjusted to reflect the increase in household disposable income, which has increased very marginally from June 2016 to the time of the last published figures, September 2018: from \$824.18 to \$838.51 per week, or 1.7%. Over the period June 2016 to December 2018 the CPI increased by 5.1%; see *Consumer Price Index, Australia December Quarter 2018* cat. no. 6401.0, Table 1. This is an issue of some importance in the ongoing use of the research in annual wage reviews, but one which, we submit, does not need to be resolved in the current review.
198. We return to the budget standards research in Chapter 4.D.(4) and (5), where we identify (at Chapter 4.D.(5)) a major error in the way in which the FWC has applied the budget standards research report.

Research on the level of poverty in Australia

199. In every Annual Wage Review the FWC has had data which have demonstrated high levels of poverty in Australia. The critical point about this evidence is that it has not been contradicted. There is 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, but that debate is peripheral to the substance of the evidence. Households with incomes below 60% of median should be regarded as disadvantaged, even if they might not be characterised as being in poverty
200. The evidence 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.*" (June 2013 decision, paragraph 408, footnote omitted and emphasis added)

201. The report *Poverty in Australia 2018* was published by the Australian Council of Social Services (ACOSS) in November 2018. The report was prepared by the SPRC at the University of New South Wales and based on research for the year 2015-16. It found that a large proportion of those living in poverty were in households where there was full time employment: 663,800 at the 50% measure and 1,112,400 at the 60% measure; and in homes where there was part time employment, there were 342,200 below the 50% poverty line and 564,400 below the 60% poverty line; page 27.
202. *Poverty in Australia 2018* also found that, among the total number living in poverty, there were 620,200 children under the age of 15 were living in poverty at the 50% of median level, with 912,300 in poverty at the 60% level; page 26.
203. The conclusion to be drawn from these statistics in *Poverty in Australia 2018* is that the FWC's decisions have the capacity to improve or reduce the living standards of more than 1.6 million Australians who are living in poverty and disadvantage. It demonstrates that a large proportion of child poverty is found in homes in which there is full time or part time employment.
204. While we know from these research projects how many children are living in poverty and how many Australians living in poverty are in households where there is a full time or part time employee, the reports do not estimate how many children are living in poverty despite a parent having a full time or a part time job.
205. In Appendix B we draw data from the 2016 Census on the number and working patterns of households with children which are below or near the 60% relative poverty line. In Chapter 1.B. we referred to some important aspects of this data, which demonstrated, again, that full employment is not a pathway out of poverty in families with children, even those with one or two children.
206. The ACOSS report also refers to the most recent data from the Organisation for Economic Co-operation and Development (OECD), which show that in 2014-15 the Australian Poverty rate at the 50% level was 12.8%, which was above the OECD average of 12.1%. Australia had the 14th highest rate among the 34 OECD countries. Part of the reason for this poor performance is, we submit, the failure of minimum wage rates to provide sufficient support for low wage working families.
207. ACCER has referred in past reviews to 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. 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)

208. 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)

209. There is more than sufficient information about the deleterious impact of poverty and disadvantage on society. We stress, as ACCER has done in past annual wage reviews, 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.

210. The well-being of these working families is a direct responsibility of the FWC and if it is not prepared to give some emphasis to the alleviation of poverty among working families, then those hundreds of thousands will continue to suffer unnecessary disadvantage and deprivation.

3.D. Raising, cutting and freezing the social safety net

211. Over the past four decades two major and related trends have impacted on the incomes and living standards of low income working families.

212. First, starting from the late 1970s there has been a major increase in cash transfers for families. In part, this targeted delivery of public moneys to improve the social safety net was designed to enable wage increases to be constrained without unfairly impacting on the living standards of workers without family responsibilities.

213. Second, minimum wage rates have been reduced relative to median and mean average wage levels. In part, this has been in response to the limited transfer of family support from the wage packet to the public purse. However, the cuts in the relative level of minimum wage rates have been greater than those justified by the increases in family support.

214. The changes in the relative living standards of minimum wage-dependent working families over the past four decades is evident in Table 4, which draws on data from the Melbourne Institute regarding changes in household disposable income since 1973.

215. From Table 4, and the sources it refers to, we see that in August 1973 a single worker on an average of the lowest award rates across the country (the approximation of a national minimum wage) of \$60.00 per week, had a disposable income of \$54.00 per week, while a couple with two dependent children had a disposable income of \$58.50 per week. The difference of \$4.50 per week meant that only 7.7% of the family's disposable income came from the public purse.

216. The balance between the contributions of the wage packet and the public purse changed dramatically from the late 1970s, when substantial changes were first made to family payments, through to the late 1990s. By January 2001 the single worker's disposable income had increased to \$346.38 per week, while the disposable income of the family had increased to \$553.80 per week. The family's disposable income had increased 8.6 times compared to 6.4 times for the single worker and 7.7 times the increase in average household disposable income. Family support through the tax and transfer system had

risen from \$4.50 per week to \$207.42 per week; from 7.7% to 37.5% of total disposable income in January 2001, but by January 2019 it had dropped back to 36.2%.

Table 4
Disposable incomes of safety net workers and families relative to Australian
Household Disposable Income per head
1973- 2019
(\$ 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	53.43
January 2001	346.38	553.80	413.62
January 2019	645.59	1,011.65	838.53
Ratio 2001-1973	6.41:1	8.60:1	7.74:1
Ratio 2019-1973	12.0:1	17.3:1	15.7:1
Ratio 2019-2001	1.86:1	1.82:1	2.03:1

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 2018 in *Poverty Lines Australia, September Quarter 2019*. That figure has been used for January 2019. The disposable income figures for January 2001 and January 2019 are taken from Table A6 of Appendix A. Rental assistance, which was available in 2001 and 2019, was not paid in 1973.

217. The change in the level of family payments in the 1970s and 1980s came from two factors: first, the policy proposals of the Commonwealth Commission of Inquiry into Poverty in the early 1970s, a major consideration of which was poverty in wage-dependent families; and, second, the wages policy adopted by the AIRC during the 1980s, at the behest of the Commonwealth Government and the trade union movement, under which wage claims and wage increases were modified in return for improvements in the social safety net, including improvements in family payments. There was an economic case underpinning the wages/transfers policy; and substantial public discussion about it.

218. It is important to stress that the increase in family transfers was not based on the Commonwealth assuming responsibility for the support of the dependants of workers. Although the increases were substantial, the wage packet still needed to be set taking into account family responsibilities. Unless and until transfers are sufficient to provide for the fair and full support of dependants it will continue to be the case. This is why we are so concerned about the fact that the FWC has found that the NMW is at a rate that is reasonable for the single worker without dependants.
219. Table 4 also presents the stark contrast between the late 20th century and the early 21st century. The proportion of the family's income through the public purse has been reduced. Disposable income for family was 59.9% above the single person's disposable income in January 2001, but by January 2019 the margin had been cut to 56.7%. Over the 18 years to January 2019, the single person's disposable income increased by 86.4%, compared to 82.7% for the family. The 2019:2001 ratios show that the position of families has suffered relative to the position of single workers without family responsibilities.
220. During the last 18 years the Schoolkids Bonus was introduced by one Government in 2012 and withdrawn by another Government at the end of 2016. In its last year of operation it was worth \$430.00 per year for primary students and \$856.00 per year for secondary students. On the basis that the NMW-dependent couple had a child in each level of education (and receiving a total of \$24.65 per week), in 2016 the proportion of disposable income from the family purse reached 39.5% in January 2016. Table A6 in Appendix 6 shows that over the course of the year to January 2017 the disposable income of the NMW-dependent family fell from \$980.78 to \$973.71 per week. Despite a 2.4% annual wage increase in July 2016, these families were about \$7.07 per week worse off after taking into account the tax payable on the wage increase and the loss of the Schoolkids Bonus.
221. Family payments in the form of Family Tax Benefits, Part A and Part B (which are usually called "fortnightly payments" because they can be paid fortnightly) and the Annual Supplements paid in respect of each of have been frozen. The supplements have been frozen since 2011 at the rate introduced in July 2010. For a low income single breadwinner family with two children, these payments total \$34.63 per week. The loss from the freezing of these payments increases each year. The fortnightly Family Tax Benefits have since been frozen for two years at the July 2017 rate. For a

low income single breadwinner family with two children, these payments total \$242.48 per week. The freezing of these payments, which total \$277.11 per week, represents a loss of over \$5.54 per week at a CPI increase of 2.0%. This is a significant amount when compared with, for example, the net increase of \$21.81 per week from the NMW increase awarded in June 2018.

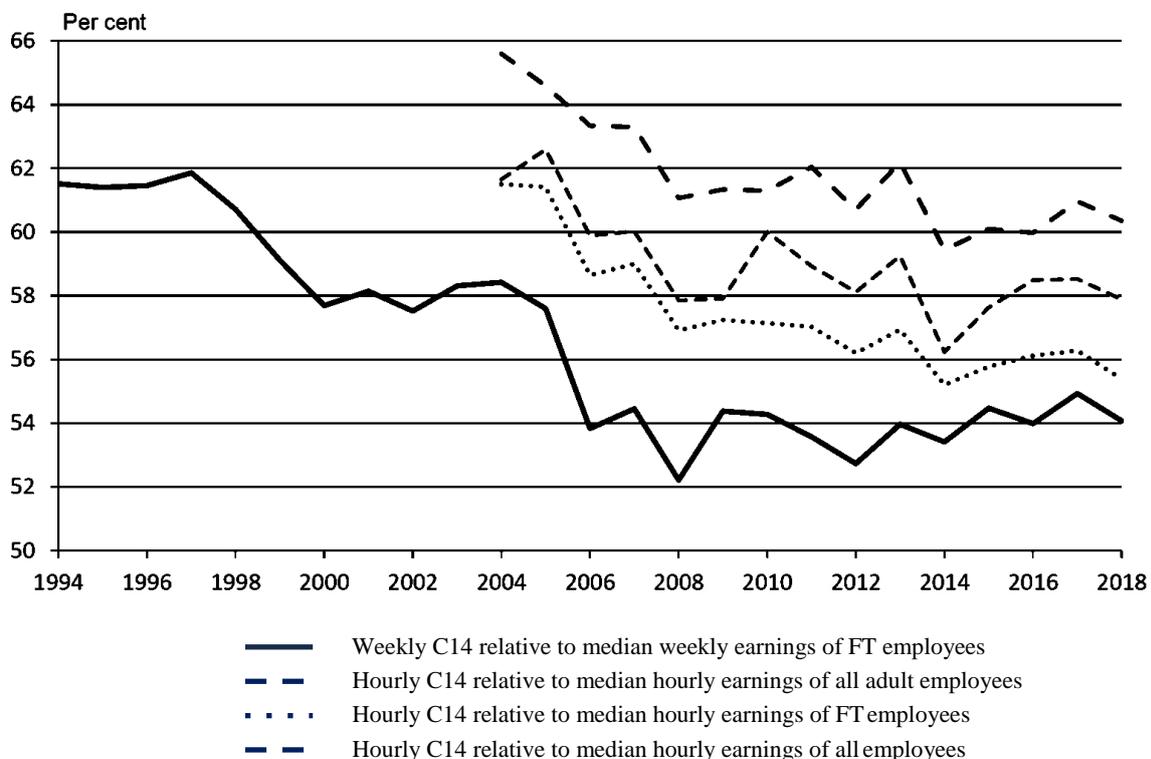
222. These changes in family payments over the last five or so years demonstrate that family transfers are likely to fall as a percentage of the total disposable income of low income working families. There is no reason to believe that the Federal Budget, under either of the alternative Governments will provide the resources to lift working families out of poverty.

3.E. Cuts in relative wage levels

223. Figure 3, which is copied from Chart 8.3 of the FWC’s *Statistical Report* of 8 March 2019, illustrates the cuts in the relative value of the NMW and its predecessors over the past 25 years. Also reproduced are the notes to the chart.

Figure 3

**The C14 rate relative to median weekly earnings of employees in main job
1994 - 2018**



Note: Median earnings are measured in August of each year. Following the amendments to the Workplace Relations Act 1996 (Cth) taking effect in 2006, the Federal Minimum Wage (FMW) was set at \$12.75 per hour, equivalent to \$484.50 per week.

Earnings are for employees including owner managers of incorporated enterprises. Median earnings from 2004 onwards are taken from the COE survey. The median earnings data reflect revised estimates as a result of rebenchmarking estimates.

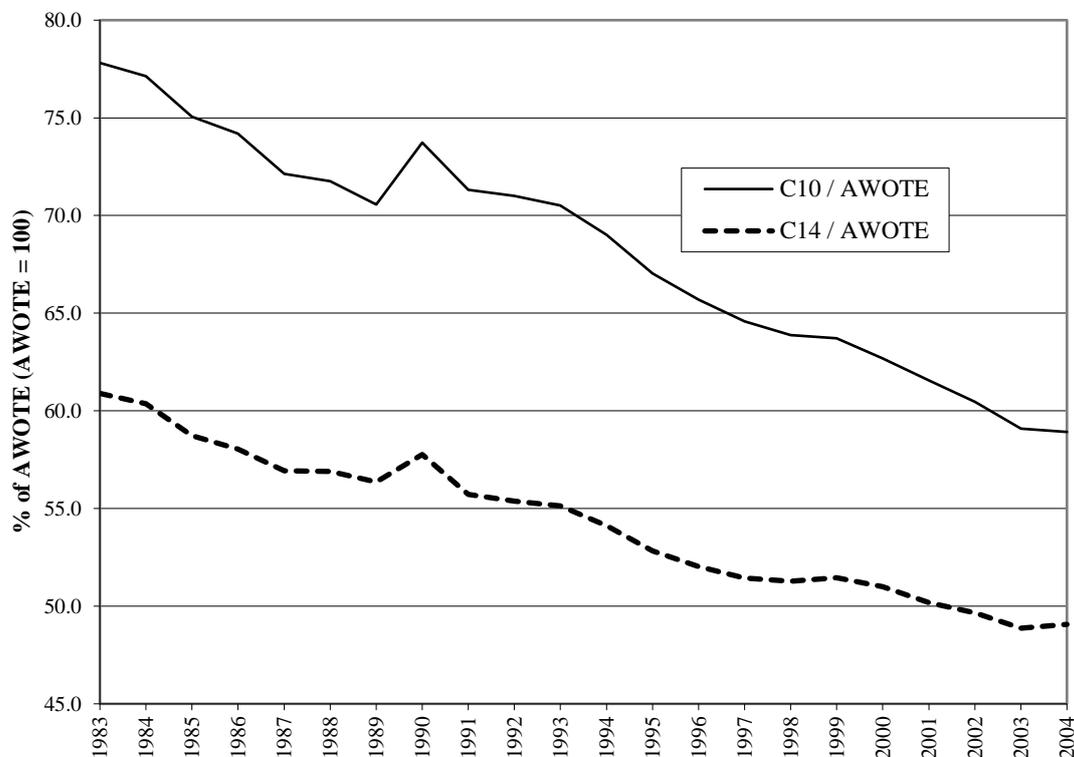
Source: ABS, *Characteristics of Employment, Australia*, various, Catalogue No. 6333.0; ABS, *Employee Earnings, Benefits and Trade Union Membership, Australia*, various, Catalogue No. 6310.0; ABS, *Weekly Earnings of Employees (Distribution), Australia*, various, Catalogue No. 6310.0; *Metal, Engineering and Associated Industries Award 1998*; *Manufacturing and Associated Industries and Occupations Award 2010*.

224. Figure 3 shows that in 1997 the FMW was close to 62% of median earnings. The year by year changes are in since 1997 are in Table A9 of Appendix A. In 1997 the FMW was 61.9% of median wages. In August 2018 the NMW was 54.1% of median wages, down from 54.9% in August 2017. These cuts were imposed by the AIRC from 1994 until 2005 and then by the AFPC from 2006 to 2009.
225. Table 1 in Chapter 2 provides the essential details of the cuts in the relative values of minimum wage rates over the past 21 years. Since 1997 median wages have increased by 128.9% and average ordinary time wages have increased by 125.4%, compared to increases of 96.7% in the NMW, 92.7% in the C12 rate and 85.6% in the C10 rate and 68.4% in the C4 rate. These cuts have reduced the relative living standards of those who rely on them and have had an indirect effect on many others whose actual wages are influenced by the level at which minimum wages rates are set. The cuts have increased inequality and poverty levels.
226. A longer term perspective was given in the ACTU's submission of 10 October 2016 in the Annual Wage Review 2016-17. The submission showed that until 1992 the NMW was never less than 7.0% above 60% of the median, i.e. never less than 64% of the median.
227. Table A9 of Appendix A also records the changes in the position of the C12 and C10 wage rates relative to median earnings over the period 1997 to 2018. The C12 rate has fallen from 68.6% to 57.8% of median earnings, while the C10 rate has fallen from 77.7% to 63.0%. These are alarming figures.
228. Table A10 in Appendix A tracks changes in the relationship between Average Weekly Ordinary Time Earnings (AWOTE) and three minimum wage rates over the period November 1997 to November 2018. Each of the three has suffered a significant loss of relativity compared to the increase in this measure of average weekly wages. The C12 wage rate, for example, has fallen from 56.0% of AWOTE in 1997 to 47.9% in 2018. It is instructive to compare the first five years with the last five years of these 21 years. In

the five years 1997 to 2001 the NMW was, on average, 50.2% of AWOTE, but in the five years 2014 to 2018 it was down to 44.1% of AWOTE. The decline in the relativity of the C10 wage rate was even greater when comparing the same five year periods: from 62.2% to 51.3%.

229. Figure 4 is copied from Chart 18 in the AIRC's Safety Net Review Case 2005 decision, the last decision by the AIRC before the *Work Choices* legislation came into operation.. It had been tendered as Exhibit ACTU 3.1.

Figure 4
C14 and C10 wage rates as a Proportion of Average Weekly Ordinary Full-Time Adult Earnings 1983-2004



230. In referring to this chart, the AIRC commented:

"[406] Chart 18 shows the relationship between the minimum wage (C14) and the tradesperson's rate (C10) and ordinary full-time adult earnings. The chart was tendered by the ACTU and not challenged. It shows a continuing decline in both rates over the past 20 years. Since 1996, the relative reduction we have already noted in the minimum wage has been even more pronounced in the tradesperson's [C10] rate."

231. This chart represents the legacy that the AIRC left to the AFPC, a body which operated under what was seen as a less protective of the living standards of low paid workers;

see, for example, the Statement of the Australian Catholic Bishops Conference of 25 November 2005 in Appendix C, hereto.

232. It cannot be doubted that the successive industrial tribunals have been well aware of these changes in the relative levels of minimum wage rates. The increase in family payments in the two decades from the late 1970s and the limiting of wage increases because of the wages/transfers trade-off agreements during the 1980s provide part of the reason for increases in minimum wage rates falling behind increases in average and median wages over that period. By contrast, the cuts in minimum wage rates relative to average and median wage increases for more than the past two decades cannot be justified by any improvements in the social safety net.

3.F. Aspects of wages policies, 1997 to 2018

233. In this section we outline aspects of national minimum wage setting since the decision of the AIRC in 1997 to adopt the C14 wage rate as the new FMW, below which no award rate would fall. The FMW, which became the NMW in 2010 under the *Fair Work Act 2009*, was set by the AIRC in the *Safety Net Review Case, April 1997*, (1997) 71 IR 1 (the 1997 Wage Case).
234. Although there had already been large increases in the social safety net designed to help low income workers, the evidence in the 1997 Wage Case demonstrated that the minimum wage system, supplemented by the improved social safety net, was inadequate to protect working families against poverty. It is clear now (from Figure 4), as it would have been then, that there had been a dramatic cut in the relative value of minimum wage rates and that the earlier cuts in minimum wage rates relative to median and average wages had been too severe.
235. A central question in the 1997 Wage Case was whether, as had been proposed, the C14 wage rate in the *Metal Industry Award 1984-Part 1* (a predecessor of the current *Manufacturing and Associated Industries and Occupations Award*) should be adopted as the FMW.
236. The legislation in operation in 1997 (the *Workplace Relations Act 1996*, at section 88B) required the AIRC to take into account, among other matters, "the needs of the low paid" when adjusting minimum wage rates. The AIRC was divided on the terms of the legislation. The majority held that "needs" should be "construed simply as an adjunct to low paid without any further attempt to specify or quantify them" and was not a reference to the living costs of low paid workers, which meant that it did not require

the consideration of the material and financial needs of the low paid (see pages 51-3). This was an unsustainable view of the legislation and was abandoned in the following year.

237. The lone dissident in 1997, Vice President Ross, as he then was, concluded that the tribunal was required to consider the material and financial needs and, in doing so, placed substantial emphasis on the evidence that wage-dependent families were living in poverty. The Vice President's decision included the following conclusions:

- "... 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)
- "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)
- "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)

238. These conclusions, based on the evidence before the AIRC, were not contradicted by the decision of the majority. We can, and should, accept them as a fair summary of the position of low paid working families in 1997 when the FMW was introduced.

239. Importantly, this was not the starting point of a serious and sustained program to address the personal and social corrosiveness of poverty, and child poverty in particular, but the level from which the NMW has fallen in the past 21 years. Despite the general prosperity of this country, the level of poverty and inequality suffered by low wage-dependent working families has worsened. The FMW was based on inadequate foundations, which are still having an impact on the NMW.

240. Unfortunately for the low paid, the Vice President's fears have been realised and the position has worsened 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.

241. Figure 4 demonstrates that, while the AIRC did accept from 1998 that the needs of the low paid had to be considered under the then current legislation, it not only failed to address the problems of poverty and disadvantage highlighted in 1997, but made them worse by cutting the relative value of minimum wage rates. By August 2005, the last year in which the AIRC set minimum wage rates through a national review, the FMW had fallen to 57.5% of median wages, down from 61.9% in 1997 (Table A9), while the FMW as a proportion of AWOTE had fallen from 50.5% to 47.7% over the same years (Table A10). On both comparisons, the positions of higher paid, but still low paid workers, was worse. These represented substantial increases in inequality for minimum wage-dependent workers, with consequential increases in poverty and disadvantage.
242. The transition to the AFPC in 2006 continued this trend, which was compounded by the decision of the AFPC in 2009 to refuse wage increases and freeze wage minimum wage rates, even though the evidence, including information in the May 2009 Budget papers, was that average and median wages would increase over the following year. That turned out to be the case; for example, in the year from May 2009 to May 2010 AWOTE increased by 5.6%; see *Average Weekly Earnings, May 2010*, cat. no. 6302.0. The wage freeze of 2009 imposed a burden on safety net workers that was not imposed on any other workers. There was good reason for the low paid to support and welcome the *Fair Work* reforms.

The Fair Work Act 2009

243. The *Fair Work Act* came into operation in 2010 against this background, with the FWC (then named Fair Work Australia) having a legacy that needed to be addressed. The legacy burden left to the AFPC by the AIRC had grown. Over the years August 2005 to August 2009 the FMW had fallen from 57.5% to 54.4% of the median and over the years November 2005 to November 2009 it had fallen from 47.7% to 44.4% of the AWOTE measure of average weekly earnings.
244. The new legislation provided an opportunity to address the adequacy of the NMW. ACOSS and ACCER pressed for an inquiry into the needs of the low paid. Despite efforts by both bodies successive applications had been unsuccessful. ACOSS had first pressed the matter in the 1998 wage review. The AIRC responded:

"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)

245. Despite this comment, and repeated calls by ACOSS and ACCER (since 2003) for a review of the appropriateness of this wage rate through an inquiry into the needs of the low paid, the FWM and the NMW have not been reviewed by the tribunals for the purpose of assessing their adequacy.
246. The prospects of a substantial adjustment in the level of the NMW have been closed off since 2011 by decisions of the FWC to maintain the relativities between the NMW and higher award rates, the effect of which has been to prevent the NMW from increasing by any more than the increases in the minimum wage rates for higher paid employees. This policy has constrained the capacity of the NMW to alleviate poverty and provide a better standard of living for low paid workers and their families. The apparent preparedness of the AIRC in 1998 to consider whether the FMW should be constrained by the pre-existing C14 award rate has come to nothing. We return to this aspect in Chapter 6.C., where we argue that the FWC's wages relativities policy is contrary to the terms of the legislation.

The FWC adopts then abandons the single person criterion

247. 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.
248. 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.
249. 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 was acting on the basis of a policy decision to adopt that criterion.

250. The single person criterion decision was not based on any apparent reasoning that the minimum wages system was unable for economic reasons to provide a NMW in excess of the wage appropriate for the single person.
251. 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, the May 2014 Budget, handed down before the FWC's decision in June 2014, proposed very large cuts in family payments.
252. 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"; ACCER submission, March 2015, Chapter 2.D.
253. ACCER's submissions on the single person criterion were successful. However, they were 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"; June 2015 decision, paragraphs 140 to 143. It seemed that this effectively disposed of the single person household criterion that was articulated in the June 2014 decision. It seemed that the FWC had 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.
254. 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"; 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".
255. The FWC's statement in the June 2015 decision that it "is bound to take into account relative living standards and the needs of the low paid without limitation" carried the

implication that we would find in its subsequent decisions significant steps to improve the lives of low income working families through relatively greater award wage increases being applied to low paid workers and through an adjustment of the NMW relative to award wage rates. However, those changes were frustrated by the FWC's policy of maintaining award relativities and the relativities between the NMW and award wage rates. Under this policy the NMW would not be able to increase at a greater rate than the uniform percentage increases in award wage rates.

256. This policy was reinforced in the June 2018 decision by the view that providing relatively greater increases in the NMW would create the risk of disemployment impacting on those in or seeking low paid employment. We return to this issue in Chapter 4.E.
257. Another factor operating against the interests of low paid minimum wage-dependent workers and the prospects of a return to earlier relative wage levels has been the FWC's construction of the wage setting provisions of the *Fair Work Act*. We have described this view of the legislation in Chapter 2.E. and respond to it in Chapter 6.B. In substance, the FWC has taken the view that the restoration of living standards and the targeting of poverty and disadvantage (even when caused by the cuts described above) would be contrary to the terms of the legislation.
258. From this mix of reasons there stands out one matter of overriding importance to low income working families: the cuts made by successive tribunals have resulted in a minimum wage that provided inadequate support for families in 1997 becoming, by 2018, a wage that provides reasonable support for workers without family responsibilities.

CHAPTER 4

The failure of decisions to target and alleviate poverty

4.A. Introduction

4.B. Targeting poverty

4.C. The lack of concern about poverty in minimum wage decisions

4.D. The June 2017 and June 2018 decisions: Poverty recognised, but ignored

4.D.(1) The June 2017 decision

4.D.(2) ACCER responds in March 2018

4.D.(3) The June 2018 decision

4.D.(4) The FWC accepts budget standards research

4.D.(5) Errors in the application of the budget standards research

4.D.(6) The FWC's conclusions on poverty

4.E. The costs of introducing a Living Wage

4.A. Introduction

259. In the preceding chapter we have established the following matters:

- many children are living in poverty and disadvantage in wage-dependent families, even when there is a full-time worker in the family;
- low wages are a major reason for that poverty and disadvantage;
- wage increases targeted at the lowest paid workers, by relatively greater increases for low paid work, would improve the lives of these children; and
- no such targeted action had been taken by in the past six decisions to address this state of affairs,

260. The seriousness of the position of low income working families was illustrated in the June 2018 decision, which established that the NMW was at a level that provided a reasonable standard of living for the single worker without dependants. We will explain this conclusion in our analysis of the decision and the FWC's use of the 60% relative poverty line and the budget standards research by the Social Policy Research Centre.

261. As we have seen from Chapter 3, the NMW and its predecessor, the FMW, had been cut in relative terms over the previous two decades, and more. When the FMW was introduced in 1997 it was inadequate to support the average family, but by 2018 it had become a single worker's wage.

262. We have also seen from Chapter 3 that the cuts to the relative living standards of minimum wage-dependent workers and their families were caused by the failures of the AIRC and the AFPC to increase minimum wage rates in line with community-wide wage levels. In the 13 years from 1997, which were among the most prosperous in Australian history, despite the Global Financial Crisis, median wages had increased by 80.7% (August 1997 to August 2010) and average weekly ordinary time earnings had increased by 78.9% (November 1997 to November 2010). By contrast, the NMW and its FMW predecessor had increased by 58.6% (July 2010 to July 2010). Over the same time the C10 wage rate increased by 47.1%. Wage increases above this rate for trade-qualified, or equivalent, workers were even lower.
263. The expectation that the new minimum wage system under the *Fair Work Act 2009* would address and redress this development has not been realised. Since 2010, when the legislation came into operation, annual wage review decisions have generally followed increases in median and average wages and have not addressed the earlier cuts.
264. Since 2011 the FWC has only awarded uniform percentage increases in minimum wage rates, rejecting applications by the ACTU and ACCER for relatively greater increases for low paid workers. Not one extra dollar per week has been awarded to low paid workers in order to alleviate their poverty and disadvantage.
265. Tables A9 and A10 in Appendix A show that over the eight years 2010 to 2018, the NMW and award rates increased by 26.2% (July 2010 to July 2018), median wages increased by 26.7% (August 2010 to August 2018) and average weekly ordinary time earnings increased by 26.0% (November 2010 to November 2018). The cuts in living standards are greater for working families because family payments have been cut. In the eight years from January 2011 to January 2019, family payments paid to low income minimum wage-dependent families increased by 14.9%, much less than the increases in wage incomes; see, for example, Table A6 of Appendix A.
266. These figures demonstrate that the FWC has not addressed its legacy; nor the expectations of those who urged and supported a new minimum wages system before the *Fair Work Act 2009* was enacted. We contend that the current situation is inconsistent with the objectives of the legislation as well as those expectations.

The four reasons for the FWC's failure to alleviate poverty

267. A review of the FWC's decisions since 2011 shows four reasons in explanation of the its refusal to address poverty and disadvantage among low income working families.

The wages relativities policy

268. First, the FWC has rejected relatively greater increases for the low paid because it would compress the relativities between the minimum rates set for the NMW and award classifications and compress relativities within award classifications. This wages relativities policy has been applied in every decision since June 2011. It has been the basis for rejecting ACTU and ACCER claims for a percentage increase for higher paid workers, with the percentage being converted to a money amount at the C10 wage rate and applied to lower paid rates, thereby providing relatively greater increases to lower paid workers. It has also been the basis for rejecting ACCER's claims for further increases in the NMW so that, over time, the NMW becomes an appropriate base, a Living Wage, upon which the award system would operate, as intended.

269. For so long as uniform percentage increases are awarded, based on a global assessment across the whole range of minimum wage rates, there can be no priority given to the alleviation of the poverty and disadvantage suffered by low income working families.

270. The June 2018 decision confirmed the FWC's commitment to the wage relativities policy, with the FWC stating that it would not "be fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative 'work value.'" (paragraph 105). We return to this reason in Chapter 6.C., where we argue that this is an impermissible consideration in the setting of the NMW. The legislation requires that the NMW be set independently of, and unconstrained by, award considerations.

The FWC's construction of section 284(1)

271. Second, the FWC has held that giving priority to the needs of the low paid would be contrary to the terms of section 284(1), even if it is done in order to alleviate poverty and disadvantage. This view has been used to support the wages relativities policy. It has been articulated in successive decisions, but was most particularly applied in the *Preliminary decision* of 7 April 2017. The *Preliminary decision* concerned an application by United Voice, supported by the ACTU, for the FWC to set a target for the NMW at 60% of median wages. It was proposed as a flexible target, to be achieved having regard to economic circumstances, but a target nevertheless. The purpose of the

application was to return the NMW to an earlier relativity that it had with median wage levels in order to restore and protect the living standards of low paid workers. If granted, it would have alleviated poverty and disadvantage. The critical parts of the decision are in the following passages:

“[64] Those supporting a medium-term target for the NMW do so principally for the reason that they believe a target would increase the weight given to the requirements for the Panel to set rates that ‘establish and maintain a safety net of fair, relevant and enforceable minimum wages’; and to consider the relative living standards and the needs of the low paid’ as the Panel considers the full range of matters that it is required to take into account. Those who oppose a medium-term target share this view, that such a target would give greater weight to these criteria, and oppose it on those grounds (among others).”

“[66] As we have mentioned, 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)). The adoption of the proposed target would, in our view, have the effect of elevating one statutory consideration (‘relative living standards and the needs of the low paid’) above all others on an ongoing basis, rather than requiring consideration of that matter in the social and economic context of each review and weighting it accordingly relative to the other considerations. As we have mentioned while the relevant statutory considerations must be taken into account it is important to bear in mind that they inform the modern awards objective and the minimum wages objective, but they do not themselves constitute the relevant statutory objectives.”

272. This position is consistent with earlier decisions which stated that no primacy attached to any one of the specific considerations set out in the paragraphs in section 284(1). It has been reaffirmed in the June 2017 and June 2018 decisions. We respond to this position in Chapter 6.B., where we contend that the wage safety net that the FWC is commanded to establish and maintain is, of its nature, the means of protecting workers and their families against poverty and disadvantage and that the construction adopted by the FWC wrongly treats the protection against poverty and disadvantage as a component of “the needs of the low paid” (in paragraph (c) of the subsection), having no primacy or priority.

The single person criterion for wage setting

273. The third reason found in the FWC’s reasons for refusing to provide relatively more to low paid workers in order to alleviate poverty and disadvantage is the FWC’s manifest preference for setting the NMW and award rates on the basis of the needs and living standards of the single adult worker without family responsibilities. We referred to this in Chapter 3.F. In its June 2014 decision the FWC decided that the “appropriate

reference household for the purposes of setting minimum wages is the single person household" (at paragraphs 38, 365 and 373). This position was adopted as a matter of policy, with the necessary implication that it is the function of Governments to protect wage-dependent families against poverty and disadvantage. The policy was adopted even though there was no prospect of any Federal Government undertaking this task.

274. Following a legal challenge by ACCER in 2015, the FWC appeared to abandon this position, but the single person criterion is implicit in the subsequent decisions. It appeared to ACCER in 2018 that the FWC had maintained the view that it stated in 2014. What is clear is that the apparent abandonment of the single person criterion in 2015 has not led the FWC to respond to the unacceptable levels of poverty and disadvantage in working families.

The risks of disemployment in alleviating poverty and disadvantage

275. Over the years 2011 to 2017, when the ACTU and ACCER claimed relatively greater increases for low paid workers and ACCER claimed relatively greater increases in the NMW, the FWC's rejections of those particular kinds of claims were based on the application of the wages relativities policy and not on their economic costs and potential impact on employment. While the overall economic impact of the general wage claims were considered, the economic implications of a combination of money and percentage increases and of a further increase in the NMW were not.
276. The June 2018 decision added another reason for the retention of the wages relativities policy in regard to the NMW: "There is no justification to increase the NMW by a higher rate than modern award minimum wages (as proposed by ACCER). To do so would create a significant risk of disemployment effects—thus putting low-paid workers at risk of unemployment and poverty" (paragraph 105). This had not been an explicit or implicit factor in past decisions. We return to this aspect in Chapter 4.E.

We are at an impasse

277. We have reached an impasse on tackling poverty and disadvantage. The FWC will not commit to the *objective* of setting the NMW at a level where it can provide the average family (whether couple parent or sole parent) with a decent standard of living that is above poverty.
278. The current crisis in minimum wage setting has occurred because successive national wage setting decisions have, by design or effect, sought to move the responsibility for family support and the alleviation of poverty and among children in working families, to

the Commonwealth Government, while successive Governments have been unwilling to commit to that responsibility. There is no prospect that Government policy in this regard will change, whether under a Coalition or a Labor Government.

279. We have a standoff between the FWC and Government in which the interests of the most marginal working families, and their children in particular, are being ignored. The level of poverty in working families is scandalous.

4.B. Targeting poverty

280. Section 284(1) of the *Fair Work Act* requires the FWC to set a safety net of fair minimum wages taking into account the matters specified in the relevant paragraphs of section 284(1). The subsection 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; ..."

281. The principal objective of ACCER's submissions over the years has to improve the living standards of low income working families. In each year since 2011 it has claimed relatively greater increases for low paid award classifications and further increases in the NMW. Its claims, like the current claim, have been targeted at, and given priority to, alleviating poverty and disadvantage.

282. It is apparent from ACCER's claims and from the claims that we now make that the increases must be introduced over time by taking due account of the statutory provisions covering the setting of safety net wages, including relevant economic circumstances.

283. Accordingly, ACCER accepted, as we now do, the following passage in the June 2015 decision: "Our function under the Act is not directed simply to targeting poverty among those in employment." (paragraph 384). It is not *simply* a matter of targeting poverty because there will be relevant constraints on the extent to which poverty can be alleviated in any one year. This is why ACCER always sought progressive adjustments that take into account economic circumstances and balance them against the social objectives and purpose of the Act.

284. In the May 2016 decision the FWC referred again to the targeting of poverty:

"[430] The Act does not direct us to target poverty among those in employment, but it does direct us to consider the needs of the low paid, balanced against the other considerations we are required to take into account."

285. It is correct to say that the Act does not expressly direct the FWC to target poverty or direct it to simply target poverty. However, of its nature a minimum wage system is intended to protect the living standards of workers and prevent them from falling into poverty. The *Fair Work Act* does this through the setting of a *safety net* of *fair* minimum wages to protect workers against poverty. Inherent in the term safety net is the objective of protecting workers and providing them with a standard of living in excess of poverty. The wage required to do this may be described as a Living Wage. This is the objective of the NMW, to be pursued with due consideration being given to the matters specified in the legislation, including economic matters that might constrain this objective.
286. The *Fair Work Act* does not identify the class of workers to be protected but it must, we contend, include workers with families. It would include single workers and sole parent and couple parent families of up to two children, with two being the average number of children in contemporary Australia. This coverage meets the reasonable and proportionate test that applies when giving effect to generally expressed rights; and is consistent with the beneficial nature of the legislation. Therefore, in giving effect to the objective of the NMW, it is not necessary that it be set to cover unusual or exceptional circumstances, such as families with nine children. Setting the NMW at the level that provides a reasonable standard of living for the single worker without dependants is inconsistent with that objective.

Does the legislation prevent the targeting of poverty?

287. The wages relativities policy adopted by the FWC has been underpinned by a claim that it cannot target poverty by giving priority to the low paid and low paid rates because this would give undue prominence to just one of the factors (the needs of the low paid) that it is required to take into account when setting minimum wages.
288. This raises an issue concerning the role that the needs of the low paid, including the alleviation of poverty and disadvantage among the low paid, in minimum wage decision making under section 284(1) of the *Fair Work Act*. We deal with this issue in Chapter 6.B., but summarise it here in order to respond to the FWC's view about claims that seek to give priority to the alleviation of poverty and disadvantage through relatively greater increases for the low paid.

289. The kind of text in section 284(1) is sometimes found in legislation: a command to exercise a power, followed by an obligation to take into account a range of specified matters when doing so. In this case the critical aspect of the command is to establish a safety net. The adjective “fair” relates to the safety net. The determination of a fair safety net is to be made by taking into account the nature and purpose of a safety net, the objects of the Act, the social and economic factors in the paragraphs of the subsection and any other relevant provision of the Act.
290. The FWC has decided that it is required to balance the specified factors in the paragraphs of the subsection without giving primacy to any one matter, specifically "the needs of the low paid". The needs of the low paid are regarded by the FWC as including the need for a decent standard of living and the income necessary for it. The objective of a decent standard of living is embedded in the "needs of the low paid" under this approach.
291. We contend that this is an erroneous view of the legislation because it fails to take into account the basic obligation in the section to set a fair safety net for the protection of workers. Providing a decent standard of living is not just one consideration (within the “needs of the low paid), without any primacy, but the purpose of the NMW and that the “needs of the low paid” is intended to require the FWC to inform itself on the income that is needed to obtain the goods and services required to provide a decent standard of living.
292. The difference between these two approaches is fundamental, with profound consequences. Under the FWC's past decisions, the achievement of a decent standard of living is only one of a number of considerations in the wage setting process and one with no primacy. Under the section 284(1) of the Act, as we contend, the achievement of a decent standard of living is the objective of the NMW safety net, subject, of course, to a proper evaluation of economic circumstances that may constrain that objective.

4.C. The lack of concern about poverty in minimum wage decisions

293. We have already referred (at Chapter 3.F.) to evidence in the *Safety Net Review Case* of 1997 about poverty in wage-dependent families and the failure to set the FMW by reference to the financial needs of the low paid. Over the following two decades a number of requests were made by the Australian Council of Social Services (ACOSS) and ACCER for an inquiry into the needs of the low paid so that its findings could inform the setting of minimum wage rates. All were refused.

294. In the *Safety Net Review-2003*, for example, ACCER proposed an inquiry because “the present level of the Federal Minimum Wage is manifestly inadequate and that it must be reviewed as a matter of urgency” (ACCER submission, 25 February 2003, paragraph 23). ACOSS put a similar proposal. Both were rejected. We now know that, for example, the disposable income of a NMW-dependent family of a couple and two children (in rented housing and in receipt of rental assistance) fell from 58.1% to 54.9% of median equivalised disposable household income over the period January 2004 to 54.9% in January 2019; see Table A3 of Appendix A. This is a substantial cut in relative disposable income over those 15 years, equal to \$58.38 per week.

Poverty and the operational objective of the Fair Work Act

295. In the first decision made under the *Fair Work Act* in June 2010 all minimum wages were increased by \$26.00 per week. This flat money increase was awarded on the basis that relatively more should be provided to the lowest paid. The June 2010 decision was the last time that the lowest paid workers received relatively greater increases than higher paid workers. Since then the same percentage increase has been awarded to all minimum wage workers, from the NMW through to the highest award rates. The FWC has regarded the policy as falling within the scope of its discretion under the legislation. For the reasons given in Chapter 6.C., we submit the policy is contrary to the terms of the legislation.

296. In the June 2012 decision poverty was not even mentioned by the FWC, despite substantial submissions being made to it on the subject. However, the position changed in the June 2013 decision following further submissions. The decision linked poverty with the needs of the low paid:

"[30] The minimum wages objective and the modern awards objective 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. We turn first to relative living standards.

....

[33] An assessment of the needs of the low paid is more challenging. There is no single contemporary measure available to assess either the needs of the low paid or the extent to which those needs are being met. 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." (Emphasis added)

297. The highlighted passages have appeared in all annual wage review decisions, with some minor stylistic changes, since 2013; for example, in the June 2018 decision the FWC stated:

- "[T]hose in full-time employment can reasonably expect a standard of living that exceeds poverty levels." (Paragraph 104)
- "Consideration of the needs of the low paid involves an assessment of an employee's capacity to purchase the essentials for a 'decent standard of living' and to engage in community life, assessed in the context of contemporary norms." (Paragraph 329)

298. In its March 2017 submission, ACCER drew from these passages in the decisions from 2013 to 2016 what it termed the "the operational objective" of the provisions of the *Fair Work Act* regarding the NMW:

"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."

299. ACCER argued that the passages presented "the essential purpose of a minimum wage system" and that the operational objective was "an appropriate formulation of the NMW safety net" (March 2017 submission, paragraphs 28-30). This formulation was rejected by the FWC in its June 2017 decision.

"[150] ... 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'." (Footnote omitted, emphasis in original.)

"[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." (Emphasis in original)

300. The substance of the FWC's response shows that the prospect of a wage that will provide a standard of living in excess of poverty and sufficient to live in dignity is not being treated as a reasonable expectation of a safety net-based wages system because it will be treated as just one consideration among a range of considerations in which living standards, especially freedom from poverty, have no primacy, priority or special consideration. It is as if the words "safety net of fair" did not appear in section 284(1) and the FWC was only required to set minimum wage rates by taking into account only the matters identified in the paragraphs in the subsection.
301. The counterpoint to this is ACCER's operational objective, which was framed so as to express "the essential purpose of a minimum wage system" and that the operational objective was "an appropriate formulation of the NMW safety net" (ACCER submission, March 2018, paragraphs 29 and 30).
302. Contrary to the FWC's position, ACCER's submission was that the objective of the NMW is to provide a decent standard of living, which is a standard of living in excess of poverty, and that the considerations specified in the paragraphs of section 284(1) must be taken into account for that objective. The specified considerations inform (by, for example, the requirement to determine the needs, and the costs of those needs, of the low paid) and constrain (by, for example, the requirement to take into account economic matters that might adversely impact on employment) the realisation of the objective.
303. 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 and the wage which is necessary to meet the objective, the gap will have to be closed over time.
304. The reasonable expectation that workers have under the terms of the legislation is that the FWC will give effect to the objective of setting the NMW at a level that provides a decent standard of living in excess of poverty, unless it is constrained by a proper consideration and balancing of economic factors.
305. It is reasonable to ask "which workers in full time employment have a reasonable expectation of a standard of living that exceeds poverty levels?" It is apparent from the June 2017 and June 2018 decisions, which we will refer to in the next section, that under the current approach to wage setting, single workers, and not workers with family responsibilities, have that expectation.

4.D. The June 2017 and June 2018 decisions: poverty recognised, but ignored

4.D.(1) The June 2017 decision

306. We start this section with a reference to the June 2017 decision in order to explain the FWC's position in its June 2018 decision and the issues for determination in the current Annual Wage Review.

307. In its March 2017 submission ACCER showed how the change in the June 2013 decision (which discussed poverty after it was ignored in the June 2012 decision) had failed to have any practical effect and traced the inaction over those years to provide relatively greater increases to those most in need. Once again in 2017, ACCER and ACOSS relied on data concerning poverty in low income wage-dependent families. The ACOSS submission included the following:

“Research published by ACOSS and the Social Policy Research Centre found that in 2014, almost one third of people living in poverty were in households where wages were the main source of income:

- Using the OECD-preferred 50% of median disposable income poverty line, a total of 959,800 people in households for which wages were the main source of income lived in poverty in 2014. This comprises 32% of all people in poverty.
- Using the European Union-preferred poverty line of 60% of median disposable, a total of 1,048,900 people in households for which wages were the main source of income lived in poverty. This comprises 34% of all people in poverty.
- Households living below these poverty lines mainly comprised families with children (53% of households living below the 50% poverty line and 50% of those below the 60% poverty line).” (ACOSS submission, March 2017, page 7, footnotes to report *Poverty in Australia 2016* omitted)

308. The FWC acknowledged the seriousness of these matters in its June 2017 decision:

"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." (Paragraph 66 and 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.)

309. 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.” (June 2017 decision, paragraph 468, footnote omitted)

310. Despite these views about poverty, and particularly child poverty, being at disturbing levels and being a serious matter for society, with a large proportion of those in poverty being in households for which wages were the main source of income, the June 2017 decision, like earlier decisions, failed to provide relatively more to the low paid so that poverty could be alleviated. Even though it expressed deep concern about poverty in working families, the FWC awarded a uniform 3.3% increase across all minimum wage rates.

4.D.(2) ACCER responds in March 2018

311. Having seen the expressed concern about poverty in the June 2017 decision and the failure to take any further action to alleviate poverty among low paid working families, ACCER made the following observations in the Annual Wage Review 2017-18, which remain relevant to the current review:

"6. For the reasons set out in this submission, ACCER is asking that the FWC award relatively greater increases to low paid workers in recognition of the greater unmet needs of those workers and their families. It asks that the FWC abandon its policy of the last eight years of awarding a uniform percentage increase to all minimum wage rates. It also asks that the FWC starts a process of providing greater increases in the NMW so that, over a period of time, it can be said to be a living wage providing a decent standard of living consistent with recognised human rights and the intention and purpose of the NMW. The cuts in relative living standards over the past two decades should be reversed.

7. ACCER submits that these changes are needed if poverty in working families, and child poverty in particular, are to be alleviated. In previous decisions the FWC has recognised widespread poverty in wage-dependent families, but has not accepted the responsibility for alleviation of that poverty.

10. It is as if the FWC has decided that poverty in working families 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 to reflect rising community-wide incomes. Furthermore, the FWC knew, from the evidence before it, 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.

11. This standoff is unacceptable because the FWC's statutory obligation to set fair safety net wages does not allow it to constrain its decisions on the basis that the Parliament should provide for the support of workers with family responsibilities. If the FWC is not prepared to take poverty seriously through its wage setting decisions, no Government will feel impelled to address the matter through its budgetary policies. There is an economic case for increased family payments and their trade-off against wage increases. In the 1980s it was the basis of the strengthening of the social safety net in exchange for limited wage increases. (ACCER submission, March 2018)

312. ACCER went on to make the claim that the level and depth of child poverty in Australian working families is scandalous, and that the level of poverty was, to a substantial degree, the result of wage decisions of national wage setting tribunals over the past two decades which had cut the relative wages of minimum wage-dependent workers. It added that it is no answer to this concern that this deleterious trend had been largely contained over recent years. As the successor to the tribunals that presided over these cuts, the FWC has an obligation to address this legacy.

313. We affirm these views and submit that, in the current wage review, the FWC should make it clear that the current level of poverty and disadvantage in working families, particularly as it affects children, is unacceptable. Consistent with that, we submit that the FWC should start a process to give appropriate priority to the alleviation of poverty and disadvantage in low income working families.

4.D.(3) The June 2018 decision

314. In the following paragraphs we deal with the FWC's decision in June 2018 regarding poverty and disadvantage among working families.

The FWC's conclusions on the claims

315. The following paragraphs appear near the end of Chapter 1 of the decision, which includes an overview of the issues and the conclusion reached.

"[104] We accept that if the low paid are forced to live in poverty then their needs are not being met and that those in full-time employment can reasonably expect a standard of living that exceeds poverty levels. The increases we propose to award will not lift all NMW and award-reliant employees out of poverty (measured by household disposable income below a 60 per cent median income poverty line). *But to grant an increase to the NMW and modern award minimum wages the size necessary to immediately lift all full-time workers out of poverty, or an increase of the size proposed by ACCER and the ACTU, is likely to run a substantial risk of adverse employment effects.* Such adverse effects will impact 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. *An increase of the magnitude proposed by ACCER and the ACTU would also carry a substantial risk of reducing the employment opportunities for low-skilled workers, including many young persons, who are looking for work.*

[105] Workers at the lower end of the wage distribution (such as those paid the NMW), including those on modern awards who tend to have less skill than other workers, are more vulnerable to disemployment. There is no justification to increase the NMW by a higher rate than modern award minimum wages (as proposed by ACCER). To do so would create a significant risk of disemployment effects—thus putting low-paid workers at risk of unemployment and poverty. Nor would it be fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative ‘work value.’

316. Paragraph 104 identifies two matters that would jeopardise employment prospects. The first is an increase that would be necessary to lift all full time workers out of poverty, as measured by the 60% median poverty line. The second is the magnitude of the increases sought by ACCER and the ACTU. It is implicit that the reference to the ACCER claim is to the claim for an increase of \$32.00 per week for rates up to the C10 rate and 3.9% above that rate and not the further claim in respect of the NMW. ACCER's claim for a further increase of \$8.10 per week in the NMW is covered in paragraph 105. ACCER's claim for \$32.00 per week amounted to 4.6% at the NMW level. The extra \$8.10 per week took the total increase claimed for the NMW to 5.8%. The ACTU's claim was for 7.2% across all minimum rates, a departure from the tiered claims of previous years.
317. Contrary to the suggestion in paragraph 104, no party suggested to the FWC that it should award an increase in the NMW that would "immediately lift all full-time workers out of poverty", i.e. lift them to the 60% relative poverty line. The extra increase that ACCER sought for the NMW was only \$8.10 per week. ACCER had argued that this standard of living should be sought over time, paying due regard to potential economic impacts.
318. The second matter in paragraph 104 represents a judgment about the overall impact that wage claims might have, or would be likely to have, on employment prospects if the claims were granted. This must be part of the decision making process and be the product of a broad judgment. That is a different judgment to that required in response to a particular proposal of limited impact, such as ACCER's claim for tiered increases in award rates.

319. Paragraph 105 deals with ACCER's claim for a further increase in the NMW, which appears following the reference to the 60% relative poverty line. It is rejected because increasing the NMW by a higher rate than award minimum wages "would create a significant risk of disemployment effects—thus putting low-paid workers at risk of unemployment and poverty". This does not address the claim by ACCER for an extra \$8.10 per week. ACCER did not claim any more than this and made it clear that further increases in the NMW, which it foreshadowed claiming, would need to be made having proper regard to economic factors.
320. ACCER's claim required the determination of whether it should be increased by a further \$8.10 per week. Having regard to the decision to increase the NMW to \$719.20 per week, as a result of a uniform percentage being applied to all minimum wage rates, the issues are whether there would have been risks of disemployment if the NMW had moved to \$727.30 per week (a further \$8.10 per week), and, if so, the weight that should be given to them. These issues should have been addressed, but were not. They could not be addressed in the broad assessments and judgments regarding the overall impacts of the general claims made by the parties. We return to the risks of disemployment effects in section 4.E. of this chapter.
321. The second reason for rejecting ACCER's claim for a further increase in the NMW was that it would not "be fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative 'work value.'" This is the substance of the justification for the wages relativities policy. We return to this aspect in Chapter 6.C., where we argue that this consideration is impermissible because the NMW has to be set independently of award rates.
322. Although the relativities consideration is mentioned in the context of the rejection of ACCER's claim in respect of the NMW, it also appears to apply, consistent with past decisions, to ACCER's claim for relatively greater increases for low paid award classifications through the claim for an increase of \$32.00 per week up to the C10 wage rate, with a percentage increase to apply to higher paid classifications. The FWC once again awarded a uniform percentage increase, this time 3.5% across all minimum wage rates.
323. The FWC reviewed the impact of changes in the tax-transfer system on household disposable income in paragraphs 280 to 301 of the June 2018 decision. The withdrawal of the Schoolkids Bonus from families with children was a significant reason for the

conclusion that "While there has been a real increase in minimum wages over the past five years, changes to the tax-transfer system have negatively affected disposable incomes for some household types". (paragraph 295). The section concluded with a response to that change:

"[301] We accept that changes to the tax-transfer system are relevant to our consideration of the needs of the low paid and their relative living standards. The identified changes to the tax-transfer system and their adverse effects on low-paid employees have been taken into account pursuant to s.134(1)(a) and s.284(1)(c). Consistent with the approach taken in the 2016–17 Review decision, we do not accept that a mechanistic or formulaic approach can be taken in regard to our consideration on this matter. However, the above evidence does emphasise, once changes to the tax-transfer system which have occurred are taken into account, the importance of increases to the NMW and modern award minimum wages in maintaining the real disposable income of many low-income households." (Footnote omitted)

324. It will be readily seen that the adverse impact of these changes on the low paid has not translated into any particular benefit for the low paid. To the extent that it was taken into account, it was spread across all income groups under the wages relativities policy. Higher paid workers benefited from the burdens that were most felt by low paid workers. Because the FWC does not indicate the weight that it gives to various factors, we are left to speculate on the quantum involved. However, given that the economic circumstances were largely the same in June 2018 as they were in June 2017, the 3.3% increase in 2017 and the 3.5% increase in 2018 suggests it might have counted for little. However, the pertinent factor in this is that the increase that was awarded, for whatever combination of reasons, still resulted in a NMW that provides a reasonable standard of living for a single person.

Poverty and poverty lines considered

325. The June 2018 decision's consideration of poverty starts at paragraph 329 under the heading "Poverty and Poverty Lines" and continues to paragraph 340. The opening paragraphs read:

"[329] Consideration of the needs of the low paid involves an assessment of an employee's capacity to purchase the essentials for a 'decent standard of living' and to engage in community life, assessed in the context of contemporary norms. In this regard, the Panel assesses measures, or the risk, of poverty for NMW-reliant and award-reliant employees and their ability to meet basic needs. [Footnote: [2017] FWCFB 3500 at [460]-[461] As we have previously stated:

'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.'[Footnote: [2017] FWCFB 3500 at [461])

[330] Because families differ in their size, composition and extent of employment, it is not feasible that minimum wages on their own could ensure that all families with a full-time minimum wage worker have incomes that exceed poverty levels. Larger families may need help from the welfare system."

326. It can be accepted that the FWC's generally expressed duty to set a safety net of fair wages does not require wages to be set so that they provide incomes that exceed poverty levels (and something more) for "larger" families. It can also be accepted that some families will need help from the welfare system, depending on their incomes and subject to income and wealth qualifications.
327. The FWC does not explain what it means by "larger" families, but given that the average number of children in Australian couple parent and sole parent families is two in contemporary Australia, we can regard larger families as those with more than two children. This is consistent with the general rule in regard to the application of generally expressed rights: legislation giving effect to those rights and decisions applying those rights are required to be reasonable and proportionate application. Couple and sole parent families with two children are within the scope of the right, as are single workers and families with one child.
328. The following paragraphs of the June 2018 decision then refer to Table 3.5 of the decision, which compares the disposable incomes of various kinds of minimum wage-dependent households and their 60% relative poverty lines at December 2016 and December 2017. Three minimum wage levels are included, along with households in receipt of Average Weekly Ordinary Time Earnings. The figures in Table 3.5 of the June 2018 decision have since been updated to September 2018 by Table 8.6 of the FWC's *Statistical Report* of 8 March 2019, which we discussed in Chapter 3.C.
329. In the course of these paragraphs the FWC refers to its use of the 60% poverty line:
- "[333] The Panel has generally relied on poverty lines that are based on median income, using a 60 per cent threshold on the basis that those in full-time employment can reasonably expect some margin above a harsher measure of poverty.
- [334] We remain aware, however, that the margin between the selected poverty line and the equivalised disposable income of award-reliant households provides, at best, a broad indicator of the extent to which the needs of the low paid are met. " (Footnote omitted)
330. Paragraph 333 is consistent with ACCER's earlier arguments that, given that working families should have a margin over poverty, the 60% relative poverty line is the most

appropriate measure for understanding needs and the setting of wage levels in the absence of research suggesting another percentage or range of percentages.

331. The budget standards evidence to which we refer in the next section shows that the 60% relative poverty line, as a broad measure, underestimates the income level needed to achieve a decent standard of living.
332. In regard to the view in paragraph 334 the this data about the households covered in Table 3.5 “provides, at best, a broad indicator of the extent to which the needs of the low paid are met”, we can accept that, in the absence of appropriate empirical research, the margin between the 60% relative poverty and disposable income is a broad indicator of the extent to which the decent standard of living has been met.
333. The qualification “at best” in paragraph 334 may also be used in recognition of some shortcomings in the data. In particular, the equivalence scales that underpin the poverty lines may fail to reflect the ability of some households to purchase the essentials for a decent standard of living and engage in community life. This is particularly relevant in regard to the costs of work, which we illustrated in Chapter 3.B. in making comparisons between working families and single and couple pensioners. The equivalence scales underpinning the FWC's calculation of relative living standards do not take into account the varying costs of work across the households. The data used in the FWC's calculations and the calculations in Appendix A hereto are based on the children being aged 8 to 12 years.
334. A major shortcoming of the comparisons in Table 3.5 and in similar tables over the years since they were introduced by the Australian Fair Pay Commission in 2008 has been their failure to take into account the costs of child care for sole parents. As a result, it appears from these tables that NMW-dependent sole parents and their children have a similar margin, or better, over their poverty lines as single workers on the same wage rate have over their own poverty line.
335. In Table 8.6 of the *Statistical Report* of 8 March 2019 there are figures for three NMW-dependent workers: the single worker at 23% over the poverty line, substantially behind the sole parent with one child at 33% and only slightly ahead of the sole parent with two children at 20%. These are also found in Table A13 in Appendix A, which has been extracted from Table 8.6. These comparisons of relative living standards are misleading, a point that ACCER has made since these kinds of comparisons were made by the AFPC.

336. An important innovation in the recording of minimum wage-dependent household came in 2018 with the inclusion of calculations for sole parent households with one and two children where the parent is engaged in part time employment of 19 hours per week. We can assume that child care fees for school age children would be limited, but that they would rise substantially over the school holidays. The calculations in Table 8.6 of the *Statistical Report* in respect of sole parents working part time, without any adjustment to take into account child care costs, has the sole parent and one child family at 11% below the poverty line and the sole parent and two children family at 15% under the poverty line. As we saw in Chapter 1.B. in data from the 2016 Census, 75.3% of working sole parents are engaged in part time employment. If a parent moves from this level of employment towards full time employment the costs of child care will increase and offset to some extent the gains from further employment. The figures in Table 6 in respect of sole parents employed part time are a better guide to the living standards of sole parent families than the figures in respect of sole parents employed full time.

4.D.(4) The FWC accepts budget standards research

337. The FWC's consideration in the June 2018 decision of the utility relative poverty lines was complemented by budget standards research published in August 2017 by the Social Policy Research Centre (SPRC) and authored by Peter Saunders and Megan Bedford. The report was entitled *New Minimum Income for Healthy Living Budget Standards for Low-Paid and Unemployed Australians*. We have already referred to this research in Chapter 3.C. in which Table 3 shows that the budget standard is substantially more than the 60% poverty line for all households covered.

338. There are two important aspects of the June 2018 decision in respect of the budget standards research: its utility as a guide to the needs of the low paid and an error in the conclusions that were drawn from it. We deal with the second matter in the next section.

339. The FWC referred to the assistance that might be derived from the budget standards material in paragraphs 341 to 352. It summarised the research:

“[344] The new budget estimates are based on the MIHL [Minimum Income for Healthy Living] standard which encompasses the ‘ingredients of a healthy life in all of its dimensions, including diet, clothing, personal hygiene, health promotion, exercise and other forms of social engagement and activity.’ They state that they are intended to provide ‘a set of contemporary budget standards that reflect the needs of low-income working and unemployed individuals and families that can be used to assess income adequacy and guide decision-making.’ They therefore

differ from the earlier budget standards calculated for Australia that focussed on income adequacy to avoid poverty.” (Footnotes omitted)

340. The research covered five households, with each divided into low-paid employed and unemployed households. The following is extracted from page 32 of the Report:

“Within the low-paid couple families, it is assumed that one of the two adults (for convenience, the male) is assumed to be employed full-time (working 38 hours a week) and receiving the minimum wage, while the female is assumed to be either unemployed or not in the labour force (NILF) depending on whether or not there are children in the family. The male in each of the unemployed families is assumed to not be employed at all (even part-time) but is eligible for, and receives the maximum rate of NSA, while the female is also unemployed. The sole parent is assumed to be either working part-time (for 20 hours a week, at 4 hours a day over five days) and receiving the minimum wage, or unemployed and receiving the relevant social security payment.”

341. After reciting the issues raised by the parties in the wage review, the FWC made the following conclusions about the importance of the research, albeit with qualification:

“[351] The new budget standards research is the first time that a serious effort has been made, using contemporary scholarship in this field, to estimate the needs of low-paid employee households. We judge it to be useful and relevant, while recognising its limitations and the Panel has taken it into account along with all of the relevant material we have before us. We note the comment from the authors that ‘[b]udget standards are not a panacea but they provide important information that can inform and assist decisions taken about adequacy... .’

[352] *We agree with ACCER’s submission that the research is the ‘best evidence available in regard to the needs of the low paid Australian workers and their families,’ but also with ACCI’s submission that the ‘budget standards cannot of themselves be determinative of the NMW or any uprating of minimum award rates.’*” (Footnotes omitted, emphasis added.)

342. Later, in its conclusions on the needs of the low paid the FWC referred to the utility of the research in respect of identifying a reasonable standard of living for a NMW-dependent single worker:

“We consider the MIHL budget standards to be useful and relevant insofar as they provide direct, if imperfect, evidence that a full time job at the NMW rate is sufficient to provide a single adult with a reasonable standard of living. This concurs with the assessment based on the 60 per cent relative poverty line.” (Paragraph 369. The same passage appears in paragraph 90 of the decision, which is in the section providing an overview of the decision.)

343. The 60% of median assessment to which this passage refers is at an earlier paragraph in regard to the 60% poverty line:

“[336] We give particular weight to the capacity of the NMW and modern award minimum wages to provide an adequate standard of living to a single adult. This worker receives no assistance from the welfare system and is entirely reliant on his or

her earnings. The table shows that a single adult on the NMW had a disposable income that exceeded the 60 per cent poverty line by 20 per cent in 2017, a little higher than in 2016.”

344. It is clear from these paragraphs that, in the FWC’s view, the NMW provides a reasonable standard of living for a single adult. However, as we see in the next section, the FWC had concluded that the single adult had a substantial margin over the budget standard for the single adult when, in fact, he or she did not. The issue is whether error prevented the conclusion that “the NMW rate is sufficient to provide a single adult with a reasonable standard of living”. We return to this in the following section.

345. The FWC’s view about the level of the NMW for a single adult worker also appears in the context of a discussion of the risks of disemployment arising from wage increases that would raise the living standards of families towards the 60% poverty line:

“[340] The size of the adjustment required to reach such a level [the 60% of median poverty line] would also, in our judgement, run a substantial risk of causing job losses and reduced employment opportunities for low-skilled workers, including many youth. *We are reassured that the NMW and modern award minimum wages that we have set are at least sufficient to enable a single adult who works full time to have an income that is significantly above the 60 per cent poverty line.* This will contribute to providing an adequate income to other household types, but those with dependents also need assistance from the tax-transfer system.” (Paragraph 340, emphasis added.)

346. We return to this passage in Chapter 4.E. when dealing with the risks of disemployment.

4.D.(5) Errors in the application of the budget standards research

347. The second important aspect of the FWC’s consideration of the budget standards research is that some of the FWC’s fundamental conclusions were erroneous.

348. The following paragraphs summarise the conclusions that the FWC drew from the research:

“[345] Saunders and Bedford (2017) provided the MIHL *budget estimates for five different family types and compared these to their disposable income if one member was earning the NMW as at June 2016.* Their analysis showed that the disposable incomes of families comprising single adults, sole parents with one child and couple households with one child (with the female partner not in the labour force) earning the NMW were above the corresponding MIHL budget standard (ranging from \$8.84 to \$61.91 per week above). However, the disposable income of the remaining two family types, couple household with no children (with the female partner unemployed) and couple household with two children (with the female partner not in the labour force), fell below the estimated budget standard (by \$39.03 and \$88.74 per week, respectively).

[346] These findings differ somewhat from findings of adequacy that are based on the application of the 60 per cent of median income poverty line. *Specifically,*

they find that, in 2015–16, several NMW-reliant family types with children had disposable incomes that exceeded the MIHL. Two family types that were evaluated had incomes below the standard. Both indicators concluded that a full-time job at the NMW was sufficient to provide a single adult with a reasonable standard of living.” (Footnote omitted, emphasis added)

349. The claim in paragraph 346 that "several" families with children were above the budget standards was based on Table 5.17 of the report, which was referred to in the opening sentence of paragraph 345 of the decision.
350. Table 5.17 of the report includes a comparison between budget standards for the five households compared to the “Safety Net Income” received by those households at June 2016. Safety net income is the household disposable income from wage income and transfer payments. The budget standards for these households are the product of the research, but the safety net income, the composition of which is not included in the report, was supplied by the Department of Social Services. This is acknowledged with an important disclaimer:
- “The safety net calculations have benefited from advice received from staff in the Department of Social Services (DSS) but it is important to emphasise that neither the individuals involved nor DSS as a whole bears any responsibility for any errors in the calculations, for the use to which the estimates have been put or to the interpretation placed on them in the following discussion.” (Page 103)
351. Table 5.17 contains significant errors in relation to the calculation of safety net income.
352. First, the single adult is said to have a safety net income of \$659.22 per week, which is calculated to be \$61.91 per week in excess of the budget standard of \$597.31 per week for a single adult. In fact, the net wage of a NMW-dependent worker at this time was \$594.01 per week; see the FWC’s *Statistical Report* of 27 April 2016, at Table 8.2. Table 8.2 is dated December 2015, but the same figure applied until June 2016.
353. Therefore, rather than the NMW providing a substantial margin over the budget standard, the single adult’s income was a few dollars below it. A few dollars is not critical, so we may conclude that the disposable income was closely aligned to the budget standard for the single adult in June 2016.
354. In July 2016 minimum wage rates increased by 2.4% and the after-tax NMW rose to \$606.49 per week; see *Statistical Report* 17 May 2017, at Table 8.4. Even after this increase, the error was \$57.73 per week. We return to the implications of this at the end of this section.

355. Further errors are found in the calculations of safety net income for the other four households, all of which include a mix of wage income from NMW-dependent employment and transfer payments.
356. These calculations are inconsistent with data in Table 8.2 of the *Statistical Report of 27 April 2016* regarding disposable incomes from wages and transfers at December 2015. For the families with children, the only adjustment to the relevant transfer payments over the period December 2015 to June 2016 would have been the increase in the maximum rental assistance payment of 63 cents per week in March 2016. In the case of the couple without children, with one employed and the other unemployed and eligible for Newstart, the only increase between December 2015 and June 2016 was the Newstart partnered rate increase of \$1.90 per week in March 2016. It is unclear whether the error in the calculation of the net wage for the single person has carried over and affected in some way the calculations for any of these four households.

Errors in calculations of incomes of couple households with children

357. It is clear, however, that the comparison between the budget standards for the three couple households (no children, one child and two children) and their disposable incomes in Table 5.17 includes the Newstart allowance for the person who is not employed. This is inconsistent with the design of the research regarding the two couple parent households with children, which was based on the second parent being out of the workforce to care for the child or for the two children. These distinctions in the research are made clear in the extract from page 32 of the report and in the paragraph 345 of the June 2018 decision, both of which are reproduced above. A parent who stays at home to care for the children is not eligible for the Newstart allowance. However, the inclusion of the Newstart allowance is consistent with the basis of the budget for the couple without children household where the second partner was treated as unemployed and, therefore, entitled to the Newstart allowance.
358. The *Statistical Report of 27 April 2016* contains information from which we can conclude that, in December 2015, the Newstart allowance payable to a parent who is seeking employment (and not out of the labour force to care for children) and a partner who was paid the NMW, was \$124.72 per week (if one child) or \$123.42 (if two children). These amounts appear to comprise the main reason for the errors in calculating safety net incomes. It is apparent that the FWC did not realise that the

calculations of safety net income in the report included income that should not have been included.

359. Once we disregard the Newstart payment and rely on the FWC's own calculations in its *Statistical Report* of the disposable incomes of the two couple parent households with children, it is clear that their actual disposable incomes were well below their budget standards. The shortfalls were considerable:

- In couple parent families with two children, the budget standard of \$1,173.38 compared to a disposable income of \$972.50 per week (not \$1,084.64 in Table 5.17), which was a shortfall of \$200.88 cents per week; and not \$88.74 per week that the FWC concluded at paragraph 346.
- In couple parent families with one child, the budget standard of \$969.90 compared to a disposable income of \$858.67 per week (not \$978.74 in Table 5.17), which was a shortfall of \$111.23 per week; and not an excess over the budget standard that the FWC stated at paragraph 346.

Errors in the calculation of sole parent households

360. In the case of the single parent with one child, the budget standard was calculated to be \$827.70 per week, with a safety net income, estimated in Table 5.17, of \$872.56 per week, resulting in an apparent margin over the budget standard of \$44.86 per week.

361. This calculation is erroneous because it compares the budget standard for a sole parent working part time (at 20 hours per week in the research) with the disposable income of a sole parent working full time at 38 hours per week.

362. The claimed safety net income for the sole parent working 20 hours per week is patently wrong, as we can see from the FWC's calculations in Table 8.2 of the *Statistical Report* of 27 April 2016. This has the disposable income of a sole parent with one child working *full time* at \$858.04 in December 2015. (This figure is the same as the couple with one child because transfer payments are the same for couple parent and sole parent families.) Adding the small increase in rental assistance in March 2016, the disposable income for the full time sole parent rose to \$858.67 at June 2016.

363. A guide to the disposable income in June 2016 of a sole parent with one child and working part time at the NMW rate is provided in Table 8.6 of the *Statistical Report* of 27 April 2018. At December 2015 the disposable income of this family, at 19 hours employment per week, was .87 of the 60% poverty line of \$673.32. This equates to a disposable income of \$589.79 per week. With the small increase of 63 cents per week

in rental assistance in early 2016, the disposable income in June 2016 would have been \$590.42 per week. Taking into account the extra hour worked by the household covered in the research (say an extra \$17.30 net), the disposable income would have been \$607.72 per week, which we can round to \$608.00 per week. At \$608.00 per week the family would have been \$219.70 below the budget standard of \$827.70 per week; and not a margin in excess of the budget standard as the FWC noted in paragraph 345 of the decision.

364. The budget standard developed for the sole parent working 20 hours per week cannot be applied to a sole parent working full time. The budget was calculated with limited child care expenses, which are explained at pages 49-50 of the report. As we have seen from the 2016 Census, with 75.3% of low income sole parents working part time, the budget standards research into the sole parent working part time is a more realistic study than one focussed on full time employment.
365. We do not have the budget standard for a sole parent with one child working full time and, therefore, do not know how, in June 2016, it would have related to the disposable income of the family if the parent was working full time on the NMW. However, if the extra child care costs and the other extra costs of work for a parent in full time employment compared to a parent working 20 hours per week are more than \$31.12 per week, averaged across the whole year, the sole parent will be below the budget standard. That is certain. We referred earlier to the costs of work in Table 14.1 of *Statistical Report* of 20 March 2015, which contained data on the costs of working, other than child care. A note to the table read “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.” It must be concluded, we submit, that, had the budget standards research covered sole parents working full time, the disposable income of the NMW-dependent sole parent with one child would have fallen well below the standard identified in the research.
366. The FWC’s conclusions in paragraphs 345 and 346 were reinforced in the concluding summary of the evidence at paragraph 369:

“Application of the budget standards concluded that, in 2016, the disposable incomes of families comprising a NMW earner who were single adults, sole parents with one child and couple households with one child (with a partner not in the labour force) were above the corresponding MIHL budget standard. The remaining two family types that were evaluated had incomes below the standard.”

367. The conclusions in respect of the three families with children were that two had disposable incomes above the applicable budget standard (the sole parent with one child and the couple with one child where the partner was not in the labour force) and one was below the applicable budget standard (the couple parent family with two children where the partner was not in the labour force).
368. However, the conclusions in respect of all three families with children were erroneous. All were under the budget standard by a very large margin; to such an extent that anyone reading the decision (including policy makers and commentators) would have a very misleading description of the living standards of low paid working families.
369. We should note that ACCER's March 2018 submissions in regard to the budget standards report included commentary and a table (Table 2) on the difference between the budget standards and disposable incomes. This material did not contain the errors subsequently found in the June 2018 decision. The source used for the comparison was Table 8.4 of the FWC's *Statistical Report* of 8 March 2018, which included the disposable income for a sole parent working 19 hours per week. Rather than calculate the June 2016 figure as we have done here, ACCER used the data to establish disposable incomes in July 2016, the month after the budget standards were set and after the next wage increases commenced. The figures at that point for families with children showed weekly shortfalls of \$95.99 (couple with one child), \$184.10 (couple with two children) and \$231.61 (sole parent with one child and working 19 hours per week). ACCER submitted, as we do now, that this data "demonstrates that the NMW is a manifestly inadequate safety net wage in contemporary Australia" (paragraph 115).
370. It may be that one of the reasons for the FWC expressing less concern for poverty in low income families in its June 2018 decision than it had in the previous year was its reliance on the erroneous data in Table 5.17 of the budget standards report, which gave a very misleading summary of the living standards of low income families with children.

Errors in the calculations of family living standards

371. The reality was very different. In June 2016 all three families with children fell below the budget standards which the FWC has accepted are the best available in regard to the needs of the low paid Australian workers and their families (June 2018 decision, paragraph 352). They fell below that standard by very large margins:

- The single breadwinner couple with one child was \$111.23 per week below the budget standard.
- The single breadwinner couple with two children was \$200.88 per week below the budget standard.
- The sole parent working 20 hours per week was \$219.70 per week below the budget standard.

Errors in the calculation of the single adult's living standard.

372. We return to the FWC's reasoning leading to the finding that a "full time job at the NMW rate is sufficient to provide a single adult with a reasonable standard of living" (paragraph 369) and the implications for that finding arising from the error in the calculation of the single adult's safety net income.
373. The first point to be made is that the conclusion was made in June 2018 about a budget standard and net income two years earlier, in June 2016. Implicit in the decision was some recognition that costs of living and wage incomes had increased over that period. We made reference to the updating of budget standards measures in Chapter 3.C., which might involve price-based adjustments or adjustments based on changes in average disposable incomes.
374. The FWC relied on the budget standards research to conclude that the NMW was sufficient to provide the single adult with a reasonable standard of living. ACCER had argued that it was the best evidence available in regard to the needs of low paid Australian workers and their families. The FWC agreed with that view, but accepted that they could not of themselves be determinative of the NMW or award rates (paragraph 352) and recognised that they would "provide direct, if imperfect evidence" (paragraph 369) on the level of the NMW.
375. The weight that should be given to the budget standards research was in dispute. The ACTU had argued in its March 2018 submission that "the budget standards research should be given no special status in the array of material for evaluating relative living standards and the needs of the low paid" (paragraph 286) because, in its view, the research was "far too modest to in fact reflect the needs of a person or a household" (paragraph 287) and had "failed to enumerate or address the many costs of working that are not immediately apparent" (paragraph 290). ACOSS also claimed shortcomings in the research, pointing out that the authors had noted that the budgets "are extremely tight and leave no room for even the most modest of 'special treats'" (Report, page 41).

and that "the new budgets would support only a very frugal living standard, arguably below that which the National Minimum Wage should support." (ACOSS submission page 28)

376. For many years ACCER argued for an inquiry into the needs of the low paid so that relevant data could be obtained on the needs and the living costs of the low paid in order to inform the setting of the NMW. In more recent years it has advised the FWC of the progress in the budget standards research, which was partly funded and undertaken so that it could be used in annual wage reviews. Catholic Social Services Australia was one of three partner organisations (along with ACOSS and United Voice) in this research funded by the Australian Research Council under a Linkage Project. At page 1 of the research report Professor Saunders writes:

"The idea grew out of several discussions with the then Executive Director of Catholic Social Services, Australia (CSSA) Frank Quinlan, who first raised the idea of the project with me. He and others at CSSA – notably his successors Paul O’Callaghan and Marcelle Mogg, Policy Officer Don Arthur and Director of Strategic Policy and Engagement, Joe Zabar were supportive throughout, supplementing CSSA’s substantial cash support."

377. We are committed to an evidence-based minimum wage system that pays due regard to the needs and living costs of low income families. Although imperfect, the budget standards research is the best evidence that we have about those needs and living costs and has great utility in the setting of the NMW.

378. The FWC has used the research to come to the conclusion that "full time job at the NMW rate is sufficient to provide a single adult with a reasonable standard of living". As we indicated earlier, at the date used for the calculations of the budgets and the incomes of the households an error was made in the calculation of the disposable income of the NMW-dependent single adult. The correct disposable income for the single adult on the NMW was \$3.36 per week below the budget standard, but the data used by the FWC had the disposable income at \$61.91 per week in excess of the standard. Since June 2016 wage increases have been greater than CPI increases and the growth in disposable incomes have been modest. Assessing the impact of these changes is not a precise arithmetical exercise.

379. On the evidence, it is reasonable to conclude, consistent with the FWC's assessment in the June 2018 decision, that, in early 2019, a full time job at the NMW rate is sufficient to provide a single adult with a reasonable standard of living. It may be that further evidence (perhaps including a refinement of the estimation of relevant changes since

June 2016) will show that it is not sufficient; but at the present time, the evidence supports that conclusion.

380. This conclusion highlights our concern about the inadequacy of the NMW; after taking into account family payments, families cannot have a decent standard of living if they have to rely on the NMW or a low paid award wage rate. The corrected figures for the families set out above demonstrate the severity of the problem.

4.D.(6) The FWC's conclusions on poverty

381. We now return to the FWC's consideration of poverty and its response to it in the June 2018 decision.
382. Paragraphs 334 to 338 of the June 2018 decision focus on Table 3.5, which contains the same kind of data as that subsequently included in Table 8.6 of the *Statistical Report of 8 March 2019*, which we discussed in Chapter 3.C. and Chapter 4.D.(4). Some of the data in Table 8.6 is reproduced in Table A13 in Appendix A.
383. It is unnecessary to dwell on the contents of Table 3.5 because of our commentary on Table 8.6 of the *Statistical Report*. There are, however, several responses that should be made to the contents of Table 3.5 and the FWC's references to it.
384. The calculations in Table 3.5 for December 2016 and December 2017 show a 1.2% increase in the poverty line (and the underlying median equivalised disposable household income), an increase in the single adult's relative living standard (from 18% to 20% above the poverty line) and the relative living standards of families with children remaining at the same level or, in most cases, falling. The different results for families and single workers reflected the withdrawal of the Schoolkids Bonus during the 12 months covered by the table. The sole parent working part time (19 hours per week) with two children fell from 14% to 16% below the poverty line. Single breadwinner couple parent families with two children fell from 9% to 10% below the poverty line.
385. These kinds of calculations present the reality of the lives of various low paid workers, but Table 3.5 and the associated commentary do not attempt to provide a guide to the frequency with which they are found among low income wage-dependent households.
386. The commentary around Table 3.5 does not link the data for different kinds of households to the reality of the lives of the most marginal families and the failure of the minimum wage system to sufficiently protect working families, as is evident from the data in the ACOSS poverty report, *Poverty in Australia 2016*, and ACCER's 2016

Census data. The Census data showed that about 1,270,000 workers, parents and children were living in disadvantaged low income working families.

387. There is no evident appreciation of the position of the many sole parent families who depend on part time work. We know from the 2016 Census data that the 75.3% of working sole parents who work part time are likely to be well below the 60% of median measure. From the 2016 Census we estimate that about 220,000 children and 120,000 adults are living in sole parent families that are below the 60% poverty line, with many of them in deep poverty; see Chapter 1.B.
388. The interests of these sole parent families are not served by a wage rate that provides a reasonable standard of living for workers without family responsibilities; and the continued application of that standard will entrench poverty and disadvantage. Their interests are best served by moving the NMW towards the Living Wage standard.
389. Table 3.5 also has the NMW-dependent single breadwinner couple parent family of four at 10% below the poverty level in December 2017. Even a job at the C10 wage rate would not have lifted the family above the poverty line: it would have been 3.0% below. There is something fundamentally wrong with a minimum wages system that leaves an average family receiving the minimum wage for a skilled worker rate in or at risk of poverty and without a decent standard of living. In order for minimum wage-dependent low income families to escape poverty or the risk of poverty, the breadwinner has to work overtime or get an extra job and/or the second parent has to commit to taking employment, with the consequences that this may have for the care of the children.
390. The FWC's commentary on the state of poverty in working families makes no reference to the substantial changes in relative living standards over past years, mostly caused by the cut in the relative wage levels. Successive editions of the *Statistical Report* have included data on the relationship between the NMW and median wages over the previous 10 years and tables such as Table 8.6 of the *Statistical Report* of 8 March 2019 have been limited to the previous five years. Changes in relative wage rates and relative living standards over earlier years have been written out of the narrative of wage setting over the past two decades.
391. In the light of this evidence about poverty and disadvantage, we should be able to find signs of deep concern by the FWC about the living standards of the most marginal working families, including the impact that poverty is having on children in those families. We should also be able to find indications that that the FWC was looking for

ways in which that poverty could be alleviated and, in doing so, closely scrutinising potential barriers to that objective. In our view, both of these are absent from the June 2018 decision.

The single worker

392. In contrast to a search for the alleviation of poverty, the rest of the section on poverty and poverty lines in the June 2018 decision appears to endorse a minimum wage regime that focusses on the living standards of single workers. Paragraph 336 commences with the following passage:

"We give particular weight to the capacity of the NMW and modern award minimum wages to provide an adequate standard of living to a single adult. This worker receives no assistance from the welfare system and is entirely reliant on his or her earnings."

393. The paragraph concludes with the observation that the cuts in the Schoolkids Bonus over the previous year had "led to low-income families being more reliant on wage increases". It can be useful to consider the position of single adults as a starting point for analysis, but that does not require the conclusion that wages may be set by reference to the needs of the single adult and that the extra support needed for working families is the responsibility of Government.

The FWC responds to ACCER's use of poverty lines

394. Paragraph 338 refers to ACCER's position in 2018 and previously:

"[338] ACCER argued, as it has previously, that the minimum wage should be sufficient to support sole parents and single-earner couples with one or two children, [Footnote: ACCER submission, 13 March 2018 at para. 41.] with the implication that the Panel should set a NMW for these families at a margin above the 60 per cent relative poverty line.[Footnote: ACCER submission, 13 March 2018 at paras 82–84.] ACCER referred the Panel to the Panel's earlier comments that a full-time employee should reasonably expect a standard of living exceeding the poverty line and questioned why the single breadwinner family falls below this standard.[Footnote: ACCER submission, 13 March 2018 at para. 189.]"

395. The first part of this paragraph is based on ACCER's submission about the practical application of generally expressed rights: in giving effect to generally expressed rights, legislative instruments and decisions should meet the reasonable and proportionate test and, in regard to minimum wage decisions, the protection should extend to cover the ordinary and expected circumstances in which workers live.

396. However, ACCER has made it abundantly clear that this objective has to be pursued over time, as evidenced by its modest proposal for the further increase in NMW. Furthermore, ACCER's proposal to move the NMW to the C12/cleaner's rate over time

would still not bring the living standards of the families within the ambit of protection up to the 60% relative poverty line. If, however, the FWC were to return the C12 rate to the relative value that it had to median wages in or before 2004, that objective might be achieved through general increases in minimum wage rates.

397. The second footnote in the paragraph refers to ACCER's repeated position on the utility of the 60% of median poverty line. For example:

“Given that working families should have a margin over poverty, the 60% of median relative poverty line is the most appropriate measure for understanding needs and the setting of wage levels in the absence of research suggesting another percentage or range of percentages.” (ACCER submission, March 2018, paragraph 84)

398. The budget standards research has shown that the income needed for these families to live a decent life is considerably in excess of the 60% poverty line.

399. The third sentence in paragraph 338 refers to paragraph 189 in ACCER's March 2018 submissions. The matters raised in that paragraph and the associated paragraphs should be repeated in this submission:

187. The clear intention in these paragraphs and elsewhere in the June 2017 decision is to exclude the single breadwinner couple with children from the ambit of protection of the NMW and, in particular, the expectation of a standard of living at or above the 60% of median level. These families are excluded from the expectation of a decent standard of living in excess of poverty.

188. The FWC does not indicate directly what standard of living the single breadwinner family is entitled to expect, but it knew at the time of writing the June 2017 decision that the family was 10% below the 60% of median living standard (see Table 5.9 of the 2017 decision). That can be fairly described as living in poverty and at a standard of living that is well short of the standard that the FWC has accepted as providing an appropriate standard of living.

189. Having presented the "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" (at paragraph 463), the question is "why is the single breadwinner family not entitled to, or have a reasonable expectation of, the basic standard of living identified by the FWC?".

190. The answer to this question is that the FWC has adopted a policy to exclude the single breadwinner family from the protection and benefit of the NMW and has done so contrary to its obligations under the *Fair Work Act*.

191. In both 2016 and 2017 ACCER asked 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?

192. That question has not been answered explicitly, but it has been answered implicitly. In effect the FWC is saying that if a single breadwinner couple parent family wishes to have a decent standard of living in excess of poverty, then the breadwinner should work overtime or find another job and/or the primary carer of the children should seek employment. Children living in these families will live in poverty, or be at the risk of poverty unless one or more of these courses are pursued.

193. The claimed justification for this position is in the social changes over past decades."

400. In going to paragraph 189 of ACCER's submission, the FWC would have been well aware of ACCER's conclusion from earlier decisions, which was that, in effect, the FWC was stating that if a low wage single breadwinner couple parent family wishes to have a decent standard of living in excess of poverty, then the breadwinner should work overtime or find another job and/or the primary carer of the children should seek employment. In that context, the absence of a disavowal of that opinion by the FWC reinforces ACCER's conclusion. If the FWC believes this is an incorrect conclusion, we respectfully ask it to respond to the issue.

The FWC's response to poverty in working families

401. Paragraphs 339 and 340 present a summary of the ground on which the FWC was not prepared to provide extra increases in the NMW and low paid award wage rates (by way of a money increase) so as to alleviate the poverty and disadvantage among low income couple and sole parent families with dependent children.
402. A number of matters are covered in paragraph 339. In order to respond to the matters raised we have re-formatted the paragraph, with numbers inserted, so that the matters can be more clearly identified:

"[1] On this matter, we note that we have one instrument available, namely the level of minimum wages, and a number of statutory considerations that we have to take into account.

[2] We are required to set the NMW and modern award minimum wages that are fair to both employees and to employers.

[3] It is not possible, with this one instrument, to accommodate the normal variation in the composition of families and in the levels of household labour supply.

[4] The level of the NMW and modern award minimum wages that would be sufficient alone to exceed 60 per cent of median equivalised household disposable income for a single breadwinner family with several children would be more than sufficient for a single adult or dual-income couple without children.

[5] In this context, we note the data provided by the Australian Government that 77.5 per cent of low-paid workers have no children (between 0–17 years).

[6] We also note that 40 per cent of all the hours worked by employees paid at or below the C12 level (i.e. close to or a little above the NMW) were worked by youth aged 15–19 years and a further 24 per cent of such hours were worked by adults aged 20–24 years.

[7] We may reasonably presume that most of these young people do not have dependent children, yet they would, under the ACCER proposal, be the main beneficiaries of a large rise in the NMW and nearby modern award minimum wages." (footnotes omitted)

403. The first two sentences refer to the terms of the legislation, and the basis upon which decisions are made. In Chapter 6.B. we make submissions about the proper construction of section 284(1) and the obligation to set a safety net of fair minimum wages taking into account, but not being limited to, the specific matters set out in the paragraphs to that subsection. The command is to set safety net wages for the benefit of employees; and fairness has to take into account the basic right of workers to a decent standard of living. The subsidiary question in the construction issue is whether the FWC is required to set wages that are fair to employers and employees, as the FWC claims in the second sentence. We argue that the perspectives of employers can be taken into account, but the essential function conferred on the FWC is broader one than that stated by it in the second sentence. In regard to both matters we rely on the judgment of the Full Court of the Federal Court of Australia in *Shop, Distributive and Allied Employees Association v The Australian Industry Group* [2017] FCAFC 161, the judicial review of the FWC's decision to cut penalty rates in the retail and hospitality awards.
404. The third and fourth sentences state reality: given the diversity of family and household circumstances it is not possible to produce the same outcome in terms of living standards with a uniform wage rate; nor is it possible to lift all workers and families out of poverty and provide them with a decent standard of living.
405. Of its nature, a minimum wage based on an assessment of the needs for a decent standard of living, such as that recognised in the *International Covenant on Economic, Social and Cultural Rights*, will over-compensate a segment of the workforce while leaving another segment of the labour force (larger wage-dependent families) with limited support. The level at which the minimum wage safety net is set should, we contend, provide a reasonable and proportionate application of the recognised human right and the benefit and protection intended by the *Fair Work Act*. The protection

intended by the Act should extend to families with two children, being the average number of children, whether they are couple parent or sole parent families, as well as covering families with one child and single workers without family responsibilities.

406. The 60% of median measure, whether called a poverty line or given some other description, provides a measure below which families suffer poverty and disadvantage. Indeed, the budget standards evidence shows that it is insufficient to provide a standard of living that can be fairly described as a decent standard of living in contemporary Australia.
407. The fifth and sixth sentences lead into the conclusion in the seventh and final sentence of paragraph 339: the FWC’s claim that it “may reasonably presume that most of these young people do not have dependent children, yet they would, under the ACCER proposal, be the main beneficiaries of a large rise in the NMW and nearby modern award minimum wages.”
408. The fifth sentence refers to the Australian Government submission (which draws on the HILDA research released in 2017), that 70.7% of low paid workers had no children of 17 years or younger living with them and that a further 6.8% had children of 18 years or more living with them. In the absence of further data and the large number of tertiary students dependent upon their parents, we can assume that about 25% of low paid workers have dependent children; i.e. there appears to be three times as many low paid workers without children as there are with children. We can also assume that the most of the workers without family responsibilities are younger and that a high proportion of these younger workers are students who are working part time. In this regard, HILDA research (also included in the Government’s submission) shows that 55.0% of low paid workers are part time.
409. The data referred to in the sixth sentence estimates that 64% of the hours worked at or below the C12 level were worked by workers aged 15 to 24. The footnote to the paragraph refers to Table 7.5 of the *Statistical Report*. This table also shows that when the distribution of hours across wage groups is extended to the hours worked at or below the C10 level (including at or below the C12 rate), the proportion of total hours worked by those aged 15 to 24 falls to 47.4%. No further calculation is given in respect of a higher wage level that might be regarded as the upper limit of the low paid work.
410. Save for the notes to Table, there was no elaboration of this data. Included in the notes to the table are “Source: ABS, *Labour Force, Australia, Detailed – Electronic Delivery*,

Apr 2018, Catalogue No. 6291.0.55.001; ABS, *Microdata: Employee Earnings and Hours, Australia, May 2016*, Catalogue No. 6306.0.55.001”. However, these reports do not appear to support the kind of calculations in Table 7.5. It appears that substantially more information was added without explanation or attribution. Table 7.5 was included in the statistical reports issued in 2018. It had not been produced before and it has not been reproduced or adapted in the 8 March 2019 *Statistical Report*.

411. Table 7.5 was included in the June 2018 decision on the basis that it showed the extent to which low paid work is performed by young workers who are unlikely to have children. There are unanswered questions. The notes to the table indicate that casual loadings have been discounted, but no adjustment has been made in respect of those in receipt of a wage rate on account of being a junior, paid an apprentice/trainee rate or covered by a disability rate. This is significant because the percentages identified, especially in the 15 to 19 year old range, would include workers who are paid a rate referable to a rate in excess of the C12 adult wage rate. Because all adult rates in the retail industry are in excess of the C12 rate, retail industry workers within the group identified by the FWC should be excluded, along with others who are paid a proportion of an adult rate that exceeds the C12 rate. Similarly, those paid the C12 adult rate, or a percentage of it, should be excluded in considering the potential effect of moving the NMW to the C12 rate, as proposed by ACCER. Overall, these matters mean that the statistics mentioned by the FWC in respect the C12 and below category are unreliable; and if anything is to be drawn from them the figures in relation to wages at or lower than the C10 wage rate is to be preferred to the wages at or lower than the C12 rate. Given that the Table 7.5, or something similar, has not been included in the current *Statistical Report*, we presume that it will not be relied on in the current review.

412. The data referred to by the Australian Government from the HILDA research presented a simple headcount of workers, without proper regard to the number of hours worked. For example, if the average number of hours worked by workers with family responsibilities (25% of the total) was 30, compared to 10 hours for the rest, the benefit of an hourly increase in minimum wage rates would not be mainly for the benefit of those workers without family responsibilities. Furthermore, we have to take into account the benefit that a wage increase would have for the dependants of workers with family responsibilities. This would include children, averaging about two per family in couple and sole parent families, as well as dependent partners in couple parent families..

413. Adding these two factors (the adjustment for hours worked and the number of dependants supported by workers with family responsibilities) it could not be said with any confidence, if at all, that the “the main beneficiaries of a large rise in the NMW and nearby modern award minimum wages” are young people without family responsibilities. Nor should it be assumed that the young people without family responsibilities are not in need and would be unfairly advantaged by an adjustment to minimum wage rates in order to alleviate poverty in families. Many of them are part time workers who struggle on irregular and casual employment to cover their substantial educational expenses.
414. More importantly, the setting of minimum wages is not an arithmetic process as the FWC’s reasoning suggests. There is a human value which cannot be reduced to an arithmetical measure in protecting workers, families and children from poverty and disadvantage. The recognition of this is essential for the flourishing of individuals and the good of society as a whole.
415. The setting of the NMW, in particular, should focus on the protection of the living standards of workers and their families, taking into proper account factors that would constrain that protection, but keeping in mind that it is not an arithmetical process.
416. The neglect of this human dimension is, we submit, contrary to fairness as it is commonly understood and contrary to the obligation to set a *fair* safety net wage. It is also contrary to the fundamental universal right of workers to fair wages and a decent standard of living for themselves and their families which is recognised in Article 7(a) of the *International Covenant on Economic, Social and Cultural Rights*, an international convention that binds Australia and which, by section 3(a) of the *Fair Work Act*, is to be taken into account, among other matters, when setting the NMW.
417. Even if it could be reasonably concluded that low paid workers without family responsibilities were living at a decent standard of living, at or in excess of the 60% relative poverty line, as a matter of principle this conclusion should not be used to effectively put a ceiling on minimum wage rates and deny the capacity of the minimum wages system to protect working families against poverty and disadvantage.

4.E. The costs of moving towards a Living Wage

The FWC’s conclusion in paragraph 340

418. The FWC’s conclusion on these matters appears in paragraph 340:

“[340] The size of the adjustment required to reach such a level would also, in our judgement, run a substantial risk of causing job losses and reduced employment opportunities for low-skilled workers, including many youth. We are reassured that the NMW and modern award minimum wages that we have set are at least sufficient to enable a single adult who works full time to have an income that is significantly above the 60 per cent poverty line. This will contribute to providing an adequate income to other household types, but those with dependents also need assistance from the tax-transfer system.”

419. ACCER did not make a claim for a wage increase to the level required to reach the 60% of median level. It was seeking a money increase for low paid award-covered workers which, at the 3.5% increase granted in 2018, would have equated to a very modest \$4.00 per week more than was granted at the NMW level (and progressively less at other wage rates between the NMW and the C10 rate). ACCER was also seeking a further increase in the NMW of \$8.10 per week.
420. ACCER had foreshadowed further claims in future wage reviews that would seek to lift the NMW to the C12 wage rate; but the C12 wage rate was well short of the wage rate required to deliver a standard of living at the 60% level.
421. The FWC had evidence from ACCER that, at January 2018, the NMW-dependent family couple parent family was \$88.47 per week below 60% of the median and that the same family dependent upon the C12 wage rate was \$54.77 below 60% of the median (ACCER submission, March 2018, paragraphs 88-9). Tables A5 and A7 of Appendix A show that at January 2018 the C12-dependent family was at 93.8% of the poverty line, or 56.8% of the median. This is a long way short of the 60% poverty line against which ACCER's modest claim in 2018 was being judged.
422. ACCER's objective of moving the NMW to the C12 rate over time, and subject to proper account being given to economic factors, was modest. Neither the claim for an extra \$8.10 per week for the NMW or the foreshadowed claim was addressed in the June 2018 decision.
423. ACCER was quite clear, however, in its view that, subject to research, the 60% of median measure provided an appropriate measure for wage setting and one to be achieved over time. In the light of the budget standards research, a decent standard of living requires something more than that level. However, in recognition of the need to take into account economic uncertainties, ACCER did not make the kind of wage claim described by the FWC. Its first objective take steps to raise the NMW to the C12 level, which is currently well below the 60% of median living standard.

424. Paragraph 340 includes the view that “the NMW and modern award minimum wages that we have set are at least sufficient to enable a single adult who works full time to have an income that is significantly above the 60 per cent poverty line”. It concludes that this will be of some help to “other household types” i.e. those with family responsibilities, but, otherwise, it means that those with dependants will have to look to the Government.
425. This is, in our view, of no comfort to struggling working families who have already seen the removal of the Schoolkids Bonus and the freezing of Family Tax Benefits on top of the longer term cuts in the relative value of their minimum wage rates. These words in paragraph 340 confirm that we are at an impasse in regard to the support of low income families: the FWC has refused to take responsibility for the extent of poverty and disadvantage in low income working families and successive Australian Governments (Coalition or Labor) have demonstrated that they are not prepared to take on that responsibility.
426. This is not a case where the FWC has closely considered the evidence in the hope that a wage increase could be awarded to the neediest without having any, or any unacceptable, adverse impact on employment prospects.

Paragraphs 104-5 of the June 2018 decision

427. We have already referred to paragraphs 104-5 of the FWC’s conclusions in the June 2018 decision, which refer to the cost impacts of the ACTU’s and ACCER’s claims. For convenience we quote them again:

[104] We accept that if the low paid are forced to live in poverty then their needs are not being met and that those in full-time employment can reasonably expect a standard of living that exceeds poverty levels. *The increases we propose to award will not lift all NMW and award-reliant employees out of poverty (measured by household disposable income below a 60 per cent median income poverty line). But to grant an increase to the NMW and modern award minimum wages the size necessary to immediately lift all full-time workers out of poverty, or an increase of the size proposed by ACCER and the ACTU, is likely to run a substantial risk of adverse employment effects.* Such adverse effects will impact 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. An increase of the magnitude proposed by ACCER and the ACTU would also carry a substantial risk of reducing the employment opportunities for low-skilled workers, including many young persons, who are looking for work.

[105] *Workers at the lower end of the wage distribution (such as those paid the NMW), including those on modern awards who tend to have less skill than other workers, are more vulnerable to disemployment. There is no justification to*

increase the NMW by a higher rate than modern award minimum wages (as proposed by ACCER). To do so would create a significant risk of disemployment effects—thus putting low-paid workers at risk of unemployment and poverty. Nor would it be fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative ‘work value.’ “ (Footnote omitted, emphasis added)

428. The two paragraphs make a distinction between award wage claims and by the ACTU and ACCER and the claim made by ACCER in respect of the NMW. The ACTU sought a 7.2% increase all wage rates, which equated to \$50.00 per week at the NMW level. ACCER claimed \$32.00 per week up the C10 level and a 3.9% in wage rates above the C10 level, which together would have taken the average increase a little over 4.0%. ACCER sought a further increase of \$8.10 per week in the NMW. The view that the claim(s) “is likely to run a substantial risk of adverse employment effect” appears to relate to the award claims.
429. The conclusion in paragraph 105 relates to the NMW, as does the first part of paragraph 104. These matters also appear at the end of the FWC’s discussion of poverty and poverty lines in the June 2018 decision, in paragraph 340, to which we have just referred. It will be readily seen that the comments about ACCER’s further claim in respect of the NMW were not made about the \$8.10 per week claim, but something else.
430. Until the June 2017 decision, the basis upon which ACCER’s claims for relatively more for the low paid were rejected was the wages relativities policy: the FWC was not prepared to provide relatively greater increases to the lowest paid, even though it would alleviate the poverty of low income working families. In paragraph 105 we see, for the first time, an explicit economic criticism of ACCER’s proposal for further increases in the NMW.
431. The first part of paragraph 104 implies that a claim had been made of such an amount that it “*immediately lift all full-time workers out of poverty*”, as measured by the 60% relative poverty line.
432. No such claim was made. ACCER referred to this poverty line, supplemented by the budget standards research, as providing a decent standard of living by contemporary standards. It did not propose this objective for *all* workers: the coverage was limited to the reasonable and proportionate test, which ACCER argued should cover couple and sole parent families with two children, two being the average number of children in Australian families.

433. ACCER made it clear that the progress towards a Living Wage, i.e. the wage that would deliver this objective, could be constrained by economic factors, a matter acknowledged elsewhere in the June 2018 decision, at paragraph 20.

The economic costs of the further increase in the NMW: negligible and not contested

434. ACCER explained that the extra increase in the NMW would have a limited impact and claimed that the economic costs of its claim for a further \$8.10 would be negligible:

“297. ACCER proposes that award transitional rates, and any other rates in this \$20.00 per week range, be absorbed by successive adjustments to the NMW, so that the transitional classifications with rates that only apply below the C13 wage rate become redundant and the minimum rate of any award within this range be lifted to the C13 rate. This would mean, for example, that the three month transitional rate in the *Restaurant Industry Award 2010* would be abolished, but the three month transitional rate in the *Miscellaneous Award 2010* (where the next rate is the C12 rate) would continue to operate, but with a higher minimum during the first three months of employment.

....

299. In this proposed transition towards a NMW that gives full and proper effect to the statutory objective, the proposed increase for 2018 would have an immediate benefit for the lowest paid workers in Australia. In the Annual Wage Review 2016-17 the number of employees on the NMW rate was estimated to be 66,100, with a further unknown number covered by the *Miscellaneous Award*; see June 2017 decision at paragraphs 160-1. The economic costs of ACCER's claim would be negligible, but would provide a significant in the lives of the lowest paid Australian workers.”

435. ACCER's claim that the economic costs were negligible was not contested. There was no evidence upon which it could be reasonably concluded that there would be disemployment effect from an increase of the amount claimed and, even if there were, that they would outweigh the benefit to the lowest paid Australian workers.

436. The extracted paragraphs from ACCER's March 2018 submission make it very clear that ACCER was not making the claims that are suggested in paragraphs 104, 105 and 340 of the June 2018 decision.

The relationship between wage increases and employment levels

437. The June 2017 decision, at paragraphs 497 to 590, contained an extensive review of the impact that increases in wages might have on employment levels (by adding to the costs of labour) and the overall impact on economic activity (by stimulating consumer demand and providing further incentive to join the labour force or work more hours), among other matters. The June 2018 decision refers to the essential conclusions of that review:

"[259] We remain of the view that modest and regular minimum wage increases do not result in disemployment effects or inhibit workforce participation. The strongest new evidence in support of this view is that provided for Australia in the 2018 paper by Bishop. Recent research in the UK, including that commissioned by the UK Low Pay Commission, continues to support this conclusion. The position is more contested in the US where studies, including those of the very large minimum wage increases in Seattle, have rendered mixed and conflicting results. The recent US studies are, in our view, of limited relevance given that the minimum wages increases involved were as high as 37 per cent, and implemented in a short space of time from a low base (that is, they did not, in any view, involve 'modest and regular' increases).

[260] We expressed the view in the 2016–17 Review that the international research, particularly that from the UK, suggested that the Panel's past assessment of what constitutes a 'modest' increase may have been overly cautious in terms of its assessed disemployment effects. This influenced our decision to increase the NMW and modern award minimum wages in modern awards by 3.3 per cent. We also stated '[t]he 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.'

[261] A number of parties submitted that the increase of 3.3 per cent we awarded in the 2016–17 Review was too high in the prevailing circumstances. However, no party was able to identify any economic indicator which demonstrated any discernible detriment arising from the 2016–17 Review decision. Employment continued to grow strongly in the economy generally, and it also grew in three of the four most award-reliant industries. The employment to population ratio, a key indicator, rose to record high levels during 2017. The increase did not lead to inflationary pressure. Nor did it have a discernible effect upon general wages growth.

[262] We accept it is possible that the 2016–17 Review increase may have longer-term effects which are not yet discernible in the available economic information. Furthermore, the compounding effect of increases over time may have a cumulative economic effect which is not apparent in the short term. We will continue to closely monitor this in future Reviews. However the information available to us at the present time tends to affirm the view we expressed in the 2016–17 Review that our previous assessments as to what constituted a 'modest' increases without disemployment effects may have been too conservative." (Footnotes omitted)

438. The last part of this quote touches on what may be an underlying reason for the longer term decline in the relative value of minimum wage rates: if the tendency in decision making is to provide "cautious", "modest" and "conservative" decisions and increases (these words being used in these paragraphs), it is likely that, over time and without the tribunals necessarily intending it, the relative value of minimum wage rates will be cut.

Whether they have intended it or not, the successive wage setting tribunals have been well aware of the cuts in relative wages.

439. The June 2018 decision, like earlier decisions, contains a broad assessment of economic conditions in regard to the potential economic impact of wage increases. The reasoning linking these factors and a general increase awarded to minimum wage rates may not be capable of detailed explanation because of the broad nature of the judgment required.
440. However, when there is a claim for other than a uniform percentage increase in minimum wage rates, as there has been since 2011 in claims for money increases for low paid workers and percentage increases for higher paid workers, and in claims by ACCER for further increases in the NMW, transparency in decision making requires, we submit, that the basis for the rejection of those claims be explained. This is not just a matter of fairness, but an aspect of the FWC's obligation under section 577 of the *Fair Work Act*, which provides that the "FWC must perform its functions and exercise its powers in a manner that: (a) is fair and just; and (c) is open and transparent ...".
441. The June 2018 decision contained no economic justification for refusing the further increase in the NMW sought by ACCER in its 2018 claim. Even if it did, it would still be necessary to balance any *risks* of adverse employment effects against the *certain* social benefits of alleviating poverty and disadvantage in low income families.
442. The commentary in paragraph 105 takes no account of the potential for a decent standard of living to be achieved over a period of time, as ACCER had proposed. This aspect needs to be considered given the FWC's conclusion (quoted above) that "modest and regular minimum wage increases do not result in disemployment effects or inhibit workforce participation".

Beneficial legislation

443. One of the issues that has arisen in annual wage reviews over recent years has concerned the way in which the *Fair Work Act* should be construed. Following references in the 2017 decision regarding the characterisation of the legislation as beneficial or remedial, the FWC summarised the position in its June 2018 decision in the following terms:

"We accept that it is appropriate to characterise the statutory provisions relating to the Review and to NMW orders as remedial, or beneficial, provisions. They are intended to benefit national system employees by creating regulatory instruments which intervene in the market, setting minimum wages to lift the floor of such wages. While these statutory provisions 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.”
(Paragraph 16)

444. Striking a balance between competing interests or considerations does not require neutrality as between those interests, but it does mean that where the principal purpose is accompanied by contrary considerations, those contrary considerations need to be given recognition and appropriate weight.
445. Beneficial legislation should be *interpreted* in a way that enhances its objectives, subject to clear terms that constrain those objectives. Beneficial legislation should also be *applied* in decision-making processes and procedures in a way that enhances its objectives. This is an important consideration regarding the way in which the FWC should set minimum wage rates
446. The minimum wage provisions have the objective of providing a safety net that will provide a decent standard of living, but the capacity of the FWC to realise that objective is *constrained* by the need to take into account economic factors. This is not a balancing of social objectives and economic considerations as if the legislation is neutral as between the two.
447. In practice, this means that an economic case should be made out in order to constrain the setting of a safety net wage. The burden will be a light one if, for example, a claim was made for 15% increase in one year. However, where the FWC has evidence that workers within the intended protection of the legislation (i.e. those who are covered under the reasonable and proportionate application of the benefits of the legislation) are living in poverty and disadvantage and do not have a decent standard of living, the economic constraint should be positively established and, if not, the minimum wage rates should be adjusted in a "fair, large and liberal" manner.
448. Accordingly, once it is established that those within the intended protection of the legislation are suffering poverty and disadvantage the onus should pass to those who seek to establish that economic factors should constrain the increase sought.
449. For these reasons, and further to the other matters raised, the FWC's failure in the June 2018 decision to identify economic factors that might constrain the further increase in the NMW of \$8.10 per week claimed by ACCER was, we submit, contrary to the beneficial nature of the legislation requiring the FWC to establish and maintain the NMW as a fair safety net wage.

Miscellaneous Award

450. The reference in paragraph 299 of ACCER's March 2018 submission (quoted above) to the numbers of workers who are not covered by an award and the coverage of the *Miscellaneous Award* needs to be revised in the light of the decision of a Full Bench of the FWC in *United Voice v Gold Coast Kennels Discretionary Trust t/a AAA Pet Resort* [2018] FWCFB 128 (*Gold Coast Kennels*). We referred to this decision in Chapter 2.C.
451. This decision, which was delivered on January 2018 was unknown to ACCER and, we presume, at least some of other parties. An online search of the case name will show that it was barely reported, and commented upon during 2018. Yet it is an important decision in regard to the operation of the NMW and the Australian award system. It means that all low paid workers in unskilled jobs who are not otherwise covered by an award are covered by the *Miscellaneous Award*. It also means that these workers should progress to the C12 wage rate after 3 months employment. Instead of having a large cohort of workers relying on the NMW indefinitely, we have a cohort of workers who, after 3 months employment, are entitled to a substantial wage increase of \$49.10 per week; and a wage rate in excess of a range of other low paid unskilled workers covered by other awards.
452. The FWC referred to the operation of the *Miscellaneous Award* in its June 2017 decision. The Federal Government had estimated that there were "66,100 adults identified as 'national minimum wage employees' [who] comprise 5 per cent of all low-paid workers and 33 per cent of all adult workers who are paid at the same rate as the NMW, or lower". The 66,100 were regarded as being covered by, and paid, the NMW, but were award-free. The FWC responded:
- "[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." (Footnote omitted)
453. Given the lack of understanding of the operation of the award, many will be underpaid because they are not paid the higher amount after 3 months. Furthermore, many of

these workers will not be receiving the other benefits of the award, such as various kinds of allowances, ordinary hours of work, meal breaks, overtime and penalty rates, shift work, annual leave and family and domestic violence leave. Because the *Miscellaneous Award* extends through to an employee who "has advanced trade qualifications and is carrying out duties requiring such qualifications or is a sub-professional employee", the number of employees who are wrongly regarded as being award free will be much greater than the number revealed in the May 2016 figures.

454. There was no reference to the *Gold Coast Kennels* or the operation of the *Miscellaneous Award* in the FWC's June 2018 decision. However, the FWC referred to the overall number of workers paid at the NMW rate:

"[3] The number of employees who have their pay set by an award is estimated to be 2.3 million or 22.7 per cent of all employees. The proportion of employees that are paid at the adult NMW rate is estimated to be 1.9 per cent. Further, a significant number of employees are paid at junior or apprentice/trainee rates based on the NMW rate and modern award minimum wages. The Panel's decision will also affect employees paid close to the NMW and modern award minimum wages and those whose pay is set by a collective agreement which is linked to the outcomes of the Review." (Footnote omitted)

455. The estimate of 1.9% is close to 200,000 adult workers, plus the number of juniors employed at a percentage of that rate. This estimate was drawn from Chart 2.1 of the Australian Government's submission of March 2018, drawing on data at May 2016. NMW workers were those workers who were paid the then NMW rate of \$17.29 per hour or another amount up to \$17.50 per hour. (The extra 21 cents per hour was used as an error band; see note (e) to the chart.) This means that the chart only covers a proportion of low paid workers. The chart showed 92,800 award reliant employees (which, we expect, would not include any or many who were thought to be covered by the *Miscellaneous Award*), 66,100 covered by the NMW and an individual agreement and 37,400 covered by an enterprise agreement. There would have been many more paid above the cut-off point of \$17.50 per hour who were covered by the *Miscellaneous Award*.
456. It appears that, adding in juniors, over 200,000 Australian workers are employed on the NMW rate, with over half of them covered by the *Miscellaneous Award*.
457. *Gold Coast Kennels* highlights the inconsistency across minimum wage rates (the NMW and in awards) for unskilled work. There should be a clear and unambiguous national rate for unskilled work, which would assist the enforcement of award rights for

the most marginal workers. Furthermore, an introductory rate for unskilled work is contrary to the widely recognised principle that workers should receive the same wage rate for work of comparable value. The need for new workers to be introduced to the workplace does not justify a lower rate, especially where the introductory rate operates for three months. An introductory rate for work that does not involve substantial and structured training is an incentive for some employers to turn over their workforce, thereby adding to the insecurity of work for many low paid workers.

CHAPTER 5

Social change and enduring principles

5.A. Introduction

5.B. Human rights and the Living Wage

5.C. The rights of workers with family responsibilities

5.D. Social changes since Harvester

5.E. Conclusion

5.A. Introduction

458. In the course of the June 2017 decision the FWC made some observations about social changes in Australia and their relevance to the setting of the NMW. In drawing comparisons with the past, the FWC referred to the expected role of women and the structure of families in contemporary Australia:

"[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] ... [W]e 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."

459. The conclusion ACCER drew from such passages was that the views expressed in them were reasons for the FWC's lack of action to alleviate poverty and improve the lives of low income working families, in particular the living standards of single breadwinner couple families with children. It could be implied from the views expressed by the FWC that both parents in low income sole breadwinner families that are in or near

poverty should work and/or look to Governments to provide further support. In any event, the passage implied that providing a sufficient income for wage-dependent families was not a function of the FWC or, at the least, it was not an objective with some priority for the FWC. It is the kind of approach that may lead some to think that low income single breadwinner families are the architects of their own poverty and disadvantage.

460. ACCER provided a comprehensive response to the FWC's views on the social changes in Chapter 6 of its March 2018 submission, entitled *Social change and enduring principles*. The June 2018 decision made no further reference to these issues or to ACCER's response. However, it is important that we address the issues raised by ACCER in 2018 in case they re-emerge again and state what we believe to be fundamental principles in the setting minimum wage rates, in particular the NMW, which may be regarded as the most basic right of Australian workers.
461. There are three broad responses to the FWC's commentary on changes over the past century: first, the commentary fails to consider the changes in our understanding of human rights and the application of those rights; second, the position adopted by the FWC discriminates against families, and women in particular; and, third, the changes in the structures of families over the past century do not justify a limitation on the rights of workers to a wage that supports themselves and their families.

5.B. Human rights and the Living Wage

462. Our understanding and acceptance of human rights and the rights of workers have changed over that time. The right of workers to a fair wage that will support them and their families at a decent standard of living was a right that was hard fought for in the late nineteenth and early twentieth centuries when the prevailing political and economic policies had workers being left with wages determined by market forces. The *Harvester* case in 1907 was the product of a movement for reform that started in the late nineteenth century and was rightly seen as articulating the Living Wage that had been campaigned for during those years. It had global significance. The success of the living wage movement in and beyond Australia is evidenced by one of the basic rights 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)).

463. The Declaration did not impose specific obligations on members of the United Nations. The instrument that gives effect to the wages provisions 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 (International Covenant)*, which was adopted in 1966 and subsequently adopted by Australia. The *International 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)).

464. The International Labour Organisation's *Minimum Wage Fixing Convention, 1970 (ILO Convention)*, which Australia has ratified, brings together a range of factors that need to be considered in setting wages that provide a decent standard of living for workers and their families:

"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."

465. The stated 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 ... take into account Australia's international labour obligations"; section 3. These obligations include those under the *International Covenant*. The terms of section 284(1) of the Act are consistent with the *International Covenant* and the *ILO Convention*.

466. This means, we submit, that the FWC should not be making decisions inconsistent with these international instruments. Setting a wage on the criterion of the single worker without family responsibilities is inconsistent with those instruments and its statutory

obligation. A minimum wage rate that is allowed to fall in value so that it becomes a wage for a single worker would also be inconsistent with those instruments.

The application of generally expressed rights

467. The implementation of Australia's human rights obligations and the protection of those rights against inconsistent domestic legislation are considered by the Australian Parliament under *Human Rights (Parliamentary Scrutiny) Act 2011*. The *Guide to Human Rights*, published by the Committee in May 2014, sets out the basis upon which the Committee exercises its functions. The Guide includes the following commentary:

"Civil and political rights

Australia is under an obligation to respect, protect and fulfil its obligations in relation to all civil and political rights. It is generally accepted that most civil and political rights are capable of immediate realisation.

Economic, social and cultural rights

Australia is also under an obligation to respect, protect and fulfil economic, social and cultural rights. However, there is some flexibility allowed in the implementation of these rights. This is the obligation of progressive realisation, which recognises that the full realisation of economic, social and cultural rights may be achieved progressively. Nevertheless, there are some obligations in relation to economic, social and cultural rights which have immediate effect. These include the obligation to ensure that people enjoy economic, social and cultural rights without discrimination.

Limiting a human right

It is a general principle of international human rights law that the rights protected by the human rights treaties are to be interpreted generously and limitations narrowly. Nevertheless, international human rights law recognises that reasonable limits may be placed on most rights and freedoms –there are very few absolute rights which can never be legitimately limited. For all other rights, rights may be limited as long as the limitation meets certain standards." (Pages 1-2, footnote omitted.)

468. In a report of the Committee concerning the question of whether the terms of the *Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017* impinged on the right of freedom of association, the Committee stated:

"The right to freedom of association includes the right to collectively bargain without unreasonable and disproportionate interference from the state. The right to just and favourable conditions of work includes the right to safe working conditions. These rights are protected by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)" (*Report 1 of 2018*, paragraph 1.208. The footnote to this paragraph includes a reference to article 7 of the International Covenant, which, as noted above, includes the right of workers to remuneration which provides a decent living for themselves and their families.)

"Measures limiting the right to freedom of association including the right to collectively bargain may be permissible providing certain criteria are satisfied. Generally, to be capable of justifying a limit on human rights, the measure must

address a legitimate objective, be rationally connected to that objective and be a proportionate way to achieve that objective." (*Ibid.* paragraph 1.211)

469. The Committee's assessment of Bills focuses on the question of whether any limitation on recognised human rights are reasonable and proportionate; see, for example, paragraphs 1.214 to 1.217 of *Report 1 of 2018* in respect of the *Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017*.
470. The principle to be applied is that any limitation on a generally expressed human right must be reasonable and proportionate. It follows from this that, when giving effect in legislation and in decision-making regarding generally expressed human rights, the legislation or decision must be reasonable and proportionate to the generally expressed right.
471. This approach of the Parliamentary Joint Committee on Human Rights to the application of legislation regarding internationally recognised human rights is similar to the approach taken by the High Court of Australia in its consideration of legislation that concerns the exercise of Australian constitutional rights. In *Brown v Tasmania*, [2017] HCA 43, the High Court found that the Tasmanian *Workplaces (Protection from Protesters) Act 2014* was invalid because it impermissibly burdened the implied constitutional freedom of political communication. It raised the issue of whether the law was reasonably appropriate and adapted to advance that legitimate object in a manner that was compatible with the maintenance of the constitutionally prescribed system of representative and responsible government. The reasonably appropriate test is a similar test to the reasonable and proportionate test. They are not, however, treated as interchangeable terms; see *Attorney General for South Australia v The Corporation of the City of Adelaide & Ors.* [2013] HCA 3.

5.C. The rights of workers with family responsibilities

472. A major feature of public policy and legislative changes over the past four decades has been the enhancement of the capacity of couple parents to balance their work and family responsibilities. A range of measures have been introduced to support parents with dependent children when both are employed and to support parents who are out of the labour force caring for their children. The changes have been designed to give parents an effective choice as to how they will exercise their family responsibilities. Sole parents have also been supported through family payments and child care support so that they can better manage their work and family responsibilities.

473. In the past ACCER has referred to the landmark major report of the Commonwealth Commission of Inquiry into Poverty (Poverty Commission). The Poverty Commission was established in 1972 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. Its work 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.)

474. The Poverty Commission was partly the result of widespread concern about the fact that families with a single full time breadwinner were living in poverty. This 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.

475. The Poverty Commission's work provided substantial stimulus for the reform of the family payments system, starting in the late 1970s with the Fraser Governments and continuing through the 1980s with the Hawke Governments under a broader program to

improve the social safety net in return for modified wage claims by the trade union movement.

476. The object of the reforms was to avoid poverty and provide a decent standard of living for workers through a combination of the minimum wages system and the social safety net. The social safety net was supplemental, with the minimum wages system still carrying responsibility for the outcomes in working families.
477. Entering into policy discussion was the increasing recognition of the need for families to have an effective choice as to how they could balance their work and family responsibilities. In particular, as noted in the extract from the Poverty Commission's report, increasing emphasis was given to providing women with an effective choice between caring for their children in or out of the workforce, or in a combination of the two.
478. This policy objective of giving families an effective choice as to how they manage their work and family responsibilities, and giving them an effective choice on whether one parent will stay out of the labour force in order to care for their children, was illustrated in, for example, the policies introduced by the Keating Government following the 1993 Federal election. Mr Keating later referred to one of those policies and the importance of women having an effective choice about work and family responsibilities in December 1993 in a speech to mark the launch of the International Year of the Family:

"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)

479. ACCER's March 2018 submission explained how this approach became a bi-partisan policy in the following years, evidenced by policies of the Howard Governments. The Home Care Child Care Allowance introduced by the Keating Government became Family Tax Benefit, Part B in the taxation changes that accompanied the introduction of the GST by the Howard Government in 2000.
480. We contend that the policy objective outlined by Prime Minister Keating in 1993 remains good policy and has retained bi-partisan support.
481. We also contend that the setting the NMW at a level that provides reasonable support for single workers and, necessarily, leaves low income single breadwinner families who rely on the NMW or on low paid award rates in poverty and disadvantage, has denied low paid workers and their families an effective choice as to how they will balance their work and family responsibilities and care for their children. The NMW at this level is inconsistent with, and undermines, established public policies on the balancing of work and family responsibilities. It is also unfair because it places a burden on low paid working families that is not suffered by higher income families who do have an effective choice about how they can best provide for their children. It has the effect of discriminating against low income workers and their families. It discriminates against women because it prejudices their right to make decisions on how they will meet their work and family responsibilities.
482. 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 much harder for lower income families as a result of low wages and limited government support. So much so, that, in the absence of a decent wage, a Living Wage, it requires many of them to live in or near poverty if they care for their children in the way they decide is in the best interests of the children..
483. We stress that this kind of social inequality is not inevitable. The principal cause of this inequality has been the policies and practices of national wage setting tribunals over more than the past two decades to cut wage increases to such a degree that it is now at a level that provides a reasonable standard of living for single adults in full time employment.

5.D. Social changes since *Harvester*

484. One of the matters raised by the FWC in the June 2017 decision was the change in family structures since *Harvester* was decided. It made the claim that the "sole breadwinner couple with several children is no longer the norm, although it remains one of a range of family types", in apparent justification for reducing the relevance of this consideration in wage setting.
485. No evidence was referred to in support of the view that the sole breadwinner family was no longer the "norm", either by reference to working families or by reference to the workforce as a whole. There was, however, evidence in the Annual Wage Review 2016-17 of the number and proportion of single breadwinner families at the time of the 2011 Census, but there was no reference to it. In 2018 ACCER presented similar evidence from the 2016 Census. That evidence, with minor amendments, is in now in Appendix B.
486. 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.
487. The age profiles of the Australian population at the time of the first national Census in 1911 and the most recent national Census in 2016 show that the percentage of children aged 14 years and younger has declined from 31.6% in 1911 to 18.7% in 2016. The proportion in the 15 to 19 years (inclusive) cohort has fallen from 10.1% to 6.1%. However, a dramatic change has occurred in relation in the education of children and, therefore, their dependency on their parents and the family's wage packet. In 1911 there were 448,536 aged 15 to 19, but only 39,401 were receiving education: this is only 8.8%. In this age group only 916, or 2.0%, attended university. Among 15 year olds there were 17,763 receiving education out of a total of 87,135 in this age group: only 20.4%. Among 14 year olds 36,199 were in education out of a total of 85,284: only 42%. (The data regarding the 1911 Census are taken from *Census of the Commonwealth of Australia 1911* at Volume II, Part V, *Schooling*, at Table 5, and Volume II, Part I, *Ages*, at Table 6. The data in respect of the 2016 Census is in *2016 Census QuickStats*, published by the ABS, at page 1.)
488. Table B22 in Appendix B provides a breakdown of the education status of 15 to 19 year olds in 2016. The total number in the age bracket was 1,421,597, of whom 248,336 were not in education. The relevant details of another 102,226 were not stated. The

table also includes the numbers of those in full time employment and in education, a total of 30,027. Taking them into account, the number in education (some of whom are in part time employment or seeking employment) was at least 73.2% of this cohort. It would be higher than this figure because the "not stated" category was 7.2% of the total number.

489. These figures demonstrate how the responsibilities of parents to support their children have extended for a longer period of time. In the past a small percentage of students reached the half way point of secondary education. Now secondary education, especially in the senior years is vital to the future prospects of children. It is one of the reasons why one of the parents in couple parent households stays at home, or wishes to do so.
490. The contemporary educational environment is also one of the reasons why sole parents find working full time would be not be in the best interests of their children. The difficulty in obtaining employment at times and places that are consistent with their family responsibilities and in finding good and convenient child care at an affordable cost are major reasons for sole parents working part time. Relevant information regarding the working patterns of sole parents is in Appendix B at Table B5.
491. Wage setting decisions should take into account the fact that in contemporary Australia many workers cannot work full time. The FWC's own research shows that a sole parent family in which the parent is working 19 hours per week on the NMW is living in poverty; see Table 8.6 of the *Statistical Report* of 8 March 2019. The FWC has not set wages by reference to the needs and living standards of workers who work less than 38 hours per week. To have the expectation of a standard of living that is in excess of poverty and which provides a decent standard of living, as described by the FWC, a worker must be full time.
492. More attention has to be given to the position of part time workers, and the emerging group of "full time" workers who do not work 38 hours per week. In particular, there is an important social policy question in respect of sole parents with dependent children: should we expect sole parents with dependent children to be employed for 38 hours per week? However, at this stage the only way in which the lives of these part time sole parents and their families will be improved significantly is by having the NMW set by reference to the proper principles and set without discrimination against single breadwinner couple families. The proper protection and support of single breadwinner

couple families will benefit sole parents working part time, and many others who are unable to obtain full time and regular employment. The proper setting of the NMW and consequential award rates would have a positive flow on effect for those who are not full time workers.

493. The statistics concerning the number and proportion of workers in single breadwinner couple families with children provide no justification for the effective removal of single breadwinner couple families with children from the intended protection of the NMW provisions of the *Fair Work Act*.
494. Data from the 2016 Census demonstrates that among low income families the single breadwinner family with a full time working parent and a "stay at home" parent is more common than other arrangements; see Tables B2 and B3 in Appendix B. It is the predominant group by a large margin. Single breadwinner families (where the parent is working full time or part time) are substantially more common than dual breadwinner family: 42.8% compared to 21.6%. Single breadwinner families are by far the major category in the labour force profile of low income couple parent families, despite the inevitable economic pressure on the parents for both of them to be in employment.

5.E. Conclusion

495. The June 2017 decision suggested that social changes over the past century provide reasons for departing from an essential feature of the *Harvester* decision of 1907, which was the recognition that the minimum wage rates must take into account the family responsibilities of workers. The importance of that suggestion by the FWC in the June 2017 decision is underlined by the fact that in its June 2014 decision the FWC adopted the single person criterion for setting the NMW, a position that was explicitly abandoned in the following year after a challenge by ACCER. Despite that reversal, there was no sign in the subsequent decisions that there would be any extra support given to low paid workers so as to alleviate the poverty and disadvantage suffered by low paid workers with family responsibilities. The uniform percentage increases across all minimum wages rates meant that not one extra dollar was provided to low paid workers. This occurred despite the repetition of passages in annual wage review decisions that those in full time work can reasonably expect a standard of living in excess of poverty.
496. The question posed in ACCER's March 2017 submission in regard to the repeated view that full time work can reasonably expect a standard of living in excess of poverty was:

"Why is the single breadwinner family not entitled to, or have a reasonable expectation of, the basic standard of living identified by the FWC?"

497. The question was not answered in the June 2017 decision. ACCER drew the conclusion in its March 2018 submission (at paragraph 190) that the FWC has adopted a policy to exclude the single breadwinner family from the protection and benefit of the NMW and has done so contrary to its obligations under the *Fair Work Act*.

498. In both 2016 and 2017 ACCER sought to elicit from the FWC its view on single breadwinner families by asking a question based on a key part of governmental policies on families over the past four decades: giving parents an effective choice as to how they balance work and family responsibilities. ACCER asked 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?"

499. The question has been drawn from the major report of the Poverty Commission, which made it clear that the question should be answered in the negative. Governmental policies since that time have been consistent with that answer. It is a reasonable question to ask given its relevance to the living standards of low paid working families and the FWC's obligation under section 577 of the *Fair Work Act* to "perform its functions and exercise its powers in a manner that: (c) is open and transparent".

500. The question has not been answered explicitly, but it has been answered implicitly. ACCER concluded that, by failing to provide extra support for low paid working families the FWC had been saying, in effect, that if a single breadwinner couple parent family wishes to have a decent standard of living in excess of poverty, then the breadwinner should work overtime or find another job and/or the primary carer of the children should seek employment. Children living in these families will live in poverty or be at the risk of poverty unless one or more of these courses are pursued.

501. As a result, ACCER argued in its March 2018 submission that the position adopted by the FWC in the June 2017 decision in regard to single breadwinner couple families with children, discriminated against women and working parents by failing to recognise their rights to make decisions as to how they will balance work and family responsibilities

and provide for their children. It argued that the position adopted by the FWC was unreasonable and disproportionate to the setting of the NMW as a fair safety net wage and contrary to the proper protection of workers with family responsibilities.

502. We contend that it would be inconsistent with the recognised rights of workers with family responsibilities for the FWC to adopt a policy or practice to set wages at a level at which a single breadwinner couple with the average number of children (two) cannot live free of poverty and have a decent standard of living. We also contend that it would be inconsistent with the recognised rights of workers with family responsibilities for the FWC to adopt a policy or practice that is intended to place, or has the likely effect of placing, economic pressure on the couple to obtain further employment income in order to achieve a standard of living in excess of poverty and a decent standard of living.

503. Given the importance of the question posed in earlier annual wage reviews, we submit that it should be explicitly addressed by the FWC in the current wage review. The question is:

In regard to the setting of the NMW, having regard to the fact that single breadwinner couple parent families with dependent children are living in poverty or are unable to achieve a decent standard of living, in the FWC's view, is the sole breadwinner in these families expected to work overtime and/or find a second job and/or is the primary carer of the children in these families expected to seek employment in order for the family to have an income that will enable it to escape poverty and to achieve a decent standard of living?"

504. Much of this chapter has been on the impact that minimum wage decisions have had on single breadwinner couple parent families. However, the importance of the issues raised about workers with family responsibilities and the protection and support of their children is not limited to these families. According to the 2016 Census 75.3% of working sole parents work part time. We know from the FWC's own calculations in the *Statistical Report* of 8 March 2019 that a NMW-dependent sole parent with one child and working 19 hours per week was 11% below the 60% relative poverty line in September 2018. At the same time, if the parent had two children the family would have been 15% below the 60% relative poverty line.

505. We estimated in Chapter 1.B. using data from the 2016 Census that about 460,000 children in couple parent working families were living in or near poverty and about 220,000 children in sole parent families were living in or near poverty.

506. As we explained in Chapter 4.D.(5), in correcting an error in the June 2018 decision, the June 2016 budget standards estimate for a sole parent and one child, where the parent works 20 hours per week, was \$219.70 per week in excess of what that parent would earn if employed on the NMW rate. At the same time the NMW provided the single person without family responsibilities an income that effectively met the budget standard for a single adult. It is clear that the position of low paid sole parents working part time, like single breadwinner couple parent families, is being severely prejudiced by the setting of the NMW at a level that is regarded as reasonable for a single person.

CHAPTER 6

Legal issues concerning minimum wage rates

6.A. Introduction

6.B. The proper construction of the section 284(1) of the Fair Work Act 2009

6.C. The FWC's wages relativities policy and the National Minimum Wage

6.D. Contentions of Law

6.A Introduction

507. There are two legal issues that we raise in regard to the operation of the *Fair Work Act* and the decisions made by the FWC. Both have been raised in previous years, but, we contend, that they have not been resolved in accordance with law.

The construction of section 284(1)

508. The first legal issue concerns the construction of section 284(1). This matter was raised in the Annual Wage Review 2017-18 and dismissed by the FWC. We contend that the June 2018 decision is relevantly inconsistent with the judgment of the Full Court of the Federal Court of Australia in *Shop, Distributive and Allied Employees Association v The Australian Industry Group* [2017] FCAFC 161 (*Penalty Rates Review Decision*). This judicial review of the FWC's 4 yearly review of modern awards – *Penalty Rates decision* [2017] FWCFB 1001 (*Penalty Rates decision*) considered the operation of section 134(1), provisions with a similar structure to section 284(1).

509. There are two aspects of this issue. First, the primary issue concerns the interaction between the obligation to set a safety net of fair minimum wages and the paragraphs in the subsection which set out the considerations that must be taken into account when setting those wages; the breadth of matters outside those paragraphs that are to be taken into account when setting fair minimum wage rates; and the nature and purpose of the safety net that the FWC is required to set and maintain. Second, the subsidiary issue concerns the basis upon which the FWC is to evaluate relevant matters when setting minimum wage rates. In the June 2018 decision the FWC stated that it is “required to set the NMW and modern award minimum wages that are fair to both employees and to employers” (paragraph 339). That is, it evaluates the considerations that it takes into account on the criterion of fairness to employers and employees. We contend that this test does not give proper recognition to the essential purpose of the wages safety net,

which is to protect workers, and is also contrary to the judgment in the *Penalty Rates Review Decision*, where a broader test was identified, while taking into account the perspectives of employers and employees.

510. The contentions that we make about the construction issues are to the contrary of the conclusion that the FWC came to in *Annual Review 2016–17 Preliminary decision* [2017] FWCFB 1931 of 7 April 2017 (*Preliminary decision*). This decision concerned an application by United Voice for the FWC to adopt a medium-term target for the NMW, set at 60% per cent of median adult ordinary time earnings. The objective of the target was to support low paid workers, many of whom were living in poverty and disadvantage, whose wages had been cut relative to median and average wage levels.
511. The essence of the FWC's decision to reject the application was that “to adopt such a target would effectively elevate one statutory consideration (‘relative living standards and the needs of the low paid’) above the other considerations we are required to take into account” (June 2017 decision, paragraph 34).
512. We contend that the *Preliminary decision* was in error in its construction of the terms of section 284(1) and that it should be reconsidered by the FWC.
513. Further, we contend that the adoption of the target sought is permissible providing it does not exclude the proper consideration of relevant matters, including economic circumstances, arising under section 284(1) and other relevant provisions of the *Fair Work Act*; see, for example, *Gbojueh v Minister for Immigration and Border Protection* [2014] FCA 883, at 39
514. The reasoning in the *Preliminary decision* and similar reasoning past Annual Wage Reviews (for example, the May 2016 decision at paragraphs 95, 114 and 151) have negatively impacted on the living standards of low paid workers, whether they rely on the NMW or on a low paid award rate. In particular, the reasoning has meant that the FWC has denied itself the capacity to give appropriate priority to the alleviation of poverty and disadvantage among low income working families by setting appropriate targets or goals to address the current level of poverty and disadvantage among minimum wage-dependent workers and their families and to redress the substantial cuts in the relative value of minimum wage rates over the past two decades.
515. The FWC’s construction of section 284(1), both in respect of the primary construction issue and the subsidiary construction issue are inimical to the interests of low paid workers and working families.

Award relativities

516. The second legal issue concerns the policy and practice of the FWC since 2011 to apply uniform percentage increases across all minimum wage rates. The purpose of this policy has been to maintain the wage relativities within the award system and between the NMW and award wage rates. The effect of this has been to prevent the NMW from being set independently of the award system, which we contend the *Fair Work Act* requires, and to prevent the FWC from awarding relatively greater increases to those workers most in need, the workers. This "one size fits all" policy has prevented the FWC from alleviating the unacceptable degree of poverty and disadvantage among low income working families.
517. The *Fair Work Act* requires that the NMW be set independently of the setting of award wage rates. The NMW is a general right of all workers covered by the *Fair Work Act*. The NMW is the base upon which awards (set by the FWC), enterprise agreements and individual arrangements award can provide higher rates of pay. It is intended as the wage rate below which wage those rates in cannot fall. The legislation requires the annual review of the NMW and award rates and specifies that the FWC is to determine the increase it proposes to order in respect of the NMW *before* setting the award wage rates.
518. Since 2011 claims for relatively greater increases in the rates for low paid workers and claims for further increases in the NMW (so as to raise the floor upon which awards operate) have been rejected because the awarding of relatively greater amounts would compress the wage relativities.
519. ACCER's submission that the wages relativities policy is contrary to law was considered and rejected by the FWC in the Annual Wage Review 2016-17. ACCER argued that it prevented the FWC from providing support to those most in need, as intended by the legislation. One of the reasons for the rejection was that in seeking relatively greater increases for low paid workers, ACCER had sought to impermissibly elevate one of the matters to be taken into account by the FWC (the needs of the low paid) above all other considerations. This reason relates to the construction issue referred to above.
520. The second reason given for the rejection related to ACCER's contention that the FWC had conflated the decision making processes and had made no distinction between the setting of the NMW and award wage rates. This was rejected on the basis that it had

approached the two separately and that the coincidence in the increases of the NMW and award rates was the result of there being "little practical difference between the range of considerations".

521. ACCER sought a review of the decision on wages relativities in the Annual Wage Review 2017-18. This was rejected in the June 2018 decision without further elaboration:

“[106] As to ACCER’s ‘wages relativities policy’ argument, we considered, and rejected, a submission in substantially the same terms in the 2016–17 Review decision. Nothing put in the present proceedings has persuaded us to depart from the views expressed in our previous decision.” (Footnote omitted)

522. The wages relativities issue is raised again this year because of the issue concerning the construction of section 284(1) and specifically because of the following paragraph in the FWC’s June 2018 decision in relation to the setting of the NMW:

"[105] Workers at the lower end of the wage distribution (such as those paid the NMW), including those on modern awards who tend to have less skill than other workers, are more vulnerable to disemployment. *There is no justification to increase the NMW by a higher rate than modern award minimum wages (as proposed by ACCER).* To do so would create a significant risk of disemployment effects—thus putting low-paid workers at risk of unemployment and poverty. *Nor would it be fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative ‘work value.’*” (Emphasis added)

523. The FWC’s conclusion that one of the reasons it would not increase the NMW relative to award rates because it would not be "fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative ‘work value.’” was, we submit, an impermissible consideration as it compromises the proper setting of the NMW, which is to be done independently of such award considerations. Further, we submit that this consideration has been an integral part of the wages relativities policy since 2011.

524. In Chapters 6.B. and 6.C. we provide further material on each of these matters, with Contentions of Law in respect of both being set out in Chapter 6.D.

6.B. The proper construction of the section 284(1) of the Fair Work Act 2009

525. By way of introduction to the issues regarding the construction of section 284(1), we start with the abovementioned *Preliminary decision* of 7 April 2017 concerning an application by United Voice for the FWC to set a medium term target for the NMW.

The decision included the following passages, which relate to the primary construction issue:

“[64] Those supporting a medium-term target for the NMW do so principally for the reason that they believe a target would increase the weight given to the requirements for the Panel to set rates that ‘establish and maintain a safety net of fair, relevant and enforceable minimum wages’; and to consider the relative living standards and the needs of the low paid’ as the Panel considers the full range of matters that it is required to take into account. Those who oppose a medium-term target share this view, that such a target would give greater weight to these criteria, and oppose it on those grounds (among others).”

“[66] As we have mentioned, 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)). The adoption of the proposed target would, in our view, have the effect of elevating one statutory consideration (‘relative living standards and the needs of the low paid’) above all others on an ongoing basis, rather than requiring consideration of that matter in the social and economic context of each review and weighting it accordingly relative to the other considerations. As we have mentioned while the relevant statutory considerations must be taken into account it is important to bear in mind that they inform the modern awards objective and the minimum wages objective, but they do not themselves constitute the relevant statutory objectives.” (Emphasis added)

526. The subsidiary construction issue, regarding the role of fairness in decision making, is found in the following paragraph of the *Preliminary decision*:

“[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 omitted, emphasis added.)

527. It is apparent from this passage that the relevant statutory objective is seen to be fairness: fairness between employers and employees. This passage was based on the reasoning of a differently constituted bench of the FWC in the *Penalty Rates decision* of 23 February 2017, which considered the terms of the similarly structured section 134(1) of the *Fair Work Act*.

528. The *Preliminary decision* concluded with the advice that "We intend to conduct the 2016-17 Review in accordance with the principles set out above" (paragraph 78).

529. Because the date on which the *Preliminary decision* was handed down was after the date for the filing of initial submissions, the FWC gave the parties leave to respond up until the consultations in May 2017. ACCER's Reply submission of 13 April referred to the decision and stated that it would respond to the decision prior to the consultations in May 2017 and foreshadowed that it would contend that the FWC's construction of the section 284(1) of the *Fair Work Act* was erroneous:

“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 Reply, April 2017, paragraph 18)

530. ACCER provided further submissions in its Post-Budget submission of 12 May 2017 regarding this matter and regarding fairness in decision making. The submissions contended that the last sentence of paragraph 57 (quoted above) was erroneous and not consistent with the proper construction of the terms of sections and 284(1) and 134(1) and the object of the Act in section 3. It was contended that 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.

531. The FWC’s June 2017 decision made no reference to ACCER’s submissions on these matters.

532. ACCER's March 2018 submission raised both aspects of the *Preliminary decision*. The connection between the introductory words of section 284(1) and the considerations in the paragraphs of the subsection was the primary construction issue and the criterion for decision making (fairness as between employers and employees or some other criterion) was the subsidiary construction issue.

533. The FWC referred to ACCER’s submissions in its Questions on Notice to the parties and sought responses. ACCER replied to the responses in its May 2018 Post-Budget submission.

534. In order to focus on the primary construction issue we refer to the Australian Government's response to the FWC’s question to the parties. The response provides a succinct statement of the FWC's view on the construction of section 284(1):

"In determining a fair increase to minimum wages that meets the Object of the *Fair Work Act 2009*, the Expert Panel is required to take into account the various

paragraphs in subsection 284(1) of the Act. However, the Expert Panel has discretion as to how these considerations are balanced against each other."

535. This response simply summarised the way in which the FWC has viewed its statutory duty: the balancing of the particular considerations specified in the paragraphs of section 284(1).
536. The Australian Government's response reflects, we submit, a lack of jurisprudence regarding legislation that is of vital importance to the living standards of working Australians and their families; and of vital importance to a Government that provides supplementary support to working families.
537. The lack of jurisprudence is found in, for example, the absence of any consideration of the nature and purpose of the wages safety net that the FWC is commanded to establish and maintain. The command in the legislation is not simply to set the NMW by reference to the considerations in the paragraphs. Rather the command is to set a safety net, which is, of its nature, for the protection of workers, and the adjective "fair" refers to the worker's safety net. The safety net is to be fair for workers having regard to, among other matters, the considerations in the paragraphs, which include the economic interests of employers, i.e. the perspectives of employers.

The June 2018 decision

538. The June 2018 decision (at paragraphs 18 to 26) refers to ACCER's submissions, dealing with the fairness issue (the subsidiary issue) and, then, the primary construction issue. We start with the primary construction issue.

The safety net and the operational objective

539. In previous Annual Wage Reviews, ACCER proposed what it termed the "operational objective" as "an appropriate formulation of the NMW safety net". The operational objective, based on passages from past annual wage review decisions, was:

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. (March 2017 submission, paragraph 20)

540. In referring to this objective in its March 2018 submission, ACCER said:

"This formulation, we submit, expresses the nature and purpose of the safety net NMW. It 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 operational objective for the NMW specifies the basis upon which the award system should operate, with award classifications and wage rates

recognising increasing levels of skills and responsibilities among different work classifications. The function of setting work classifications is undertaken in the award system. The award wages are intended to operate on a NMW ..., which could be appropriately described as a wage that would enable the worker to purchase the essentials for a "decent standard of living" and to engage in community life, assessed in the context of contemporary norms." (Paragraph 216)

541. Although the components of the operational objective were taken from views expressed in previous Annual Wage Review decisions, they were used for a different purpose. The FWC had used the components of this objective in its discussion of the needs of the low paid, i.e. as one of the considerations in the paragraphs of section 284(1), "the needs of the low paid". Needs were seen to include the need not to live in poverty and to have a decent standard of living. They could not, in the FWC's view, be elevated above the other considerations and be given primacy. However, ACCER contended the operational objective was an appropriate expression of the nature and purpose of the safety net intended by the legislation. It was not just a consideration, with no primacy, among a range of considerations, but the purpose and objective of a fair safety net.

542. Later in its March 2018 submission, ACCER referred to the proper scope of "the needs of the low paid"

"By treating the scope of "the needs of the low paid" as including a decent standard of living, the FWC has moved the decent standard of living away from the object of section 284(1) to being a consideration without any primacy or priority. We submit that the "needs of the low paid" as ordinarily understood and as they appear in this context, requires a consideration of the costs of the goods and services that are relevant to the setting of a wage that provides a decent standard of living. 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 FWC's view of this matter is to treat the needs of the low paid in a way that erroneously includes the object of a decent standard of living, rather than the information that informs the setting of the safety net." (Paragraph 230)

543. ACCER's submissions on this matter were in its March 2018 submission, at paragraphs 214-55, and, in reply, in its Post-Budget submission, at paragraphs 34-59. It was also specifically addressed in the consultations on 16 May 2018 in the following passage, taken from the transcript.

"PN368

.... The consequences of the construction issue, that is how section 284(1) is to be understood and applied, are profound. Under the Commission's past decisions, the achievement of a decent standard of living is only one of a number of objectives of the wage setting process and one with no primacy.

PN369

Under the sub-section, properly understood, the achievement of a decent standard of living is the objective of the national minimum wage subject, of course, to a proper evaluation of economic circumstances that may constrain that objective. The object of the minimum wage provisions in section 284(1) of the Fair Work Act is the establishment and maintenance of a wage safety net.

PN370

The term safety net is not defined. By its ordinary meaning, a safety net wage is a wage that protects a worker against poverty and provides the worker with a decent standard of living with due account for those workers with family responsibilities. *The Commission will have noted that none of the submissions, other than ACCER's, have addressed the nature and purpose of a safety net yet the term is central to an understanding of the objective and purpose of the minimum wage provisions in the sub-section.*

PN371

The principle to be applied when giving effect to a generally expressed human right in legislation and in decision making is that the enacting legislation and decisions made under it must be reasonable and proportionate to the right. The right that is recognised does not extend to the setting of a minimum wage for unusual or exceptional cases, such as setting a wage that would be needed to support a family with nine children.

PN372

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 one or two children is within the scope of the ordinary and expected circumstances.” (Italics added)

544. The June 2018 decision did not address the nature and purpose of the wage safety net which it is commanded to establish and maintain. Nor had previous decisions addressed this matter.
545. The FWC’s rejection of the primary construction argument in the June 2018 decision is brief:

“[25] We also reject ACCER’s submission as to the ‘operational objective’ of minimum wage setting under the Act. The proposition advanced finds no support in the words of the statute and seeks to elevate one relevant consideration (‘relative living standards and the needs of the low paid’) above all others. As the Full Court observed in the *Penalty Rates Review decision*:

‘It is not legitimate to take one element in the overall suite of potentially relevant considerations to the discharge of the FWC’s functions ... and discern from that one matter a Parliamentary intention that the scheme as a whole is to be construed with that end alone in mind.’

[26] However, as we note later, we accept the proposition that it is reasonable for full time employees to expect a standard of living in excess of poverty. But, 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.” (Footnotes omitted. The footnotes to paragraph 26 refer to past Annual Wage Review decisions.)

546. We contend that the claim that "finds no support in the words of the statute and seeks to elevate one relevant consideration ('relative living standards and the needs of the low paid') above all others" is incorrect. This was not a case where ACCER advanced a construction that made relative living standards and the needs of the low paid the determinative factors in wage setting. The FWC had already noted, at paragraph 20, that "ACCER acknowledges that the specified considerations in s.284(1)(a)–(e) inform and constrain this 'operational objective'".
547. The FWC's response in paragraph 25 emphasises that, in its view, the object of protecting and improving the living standards of workers is embedded in a consideration that has no primacy. The claim that the words of the statute provide no support for ACCER's position is, we submit, inconsistent with a plain reading of the text: the living standards of workers are to be protected by a safety net that takes into account the relative living standards, the needs of the low paid (including the costs of those needs), and economic factors that affect employment opportunities.

Penalty Rates Review Decision

548. The passage quoted in paragraph 25 of the decision is from paragraph 33 of the Full Court's *Penalty Rates Review Decision* and needs to be considered in context. It was in response to an argument (in Ground 1 of the application) concerning the FWC's powers under section 156 of the *Fair Work Act*. The applicants had argued that the review of penalty rates should not be "inconsistent with the element of the modern awards objective in s 134(1)(g) insofar as it refers to the need for a stable modern award system" (paragraph 31). The full paragraph of the Full Court's judgment reads:

“33. The reference in s 134(1)(g) to the “need to ensure a simple, easy to understand, stable and sustainable modern award system” does not support the applicants. That is a matter which the FWC must take into account as part of the modern awards objective. *It is thus a matter for the FWC to determine the weight to be given to the value of stability in the particular review it is conducting, along with the weight to be given to all other matters it must take into account, cognisant of its duty (which itself involves an evaluative assessment of potentially competing considerations) to ensure that modern awards, together with the National Employment Standards, provide the required fair and relevant minimum safety net.* It is not legitimate to take one element in the overall suite of potentially relevant considerations to the discharge of the FWC's functions, such as stability, and discern from that one matter a Parliamentary intention that the scheme as a whole is to be construed with that end alone in mind.” (Italics added)

549. The paragraph emphasises the purpose or objective of the decision-making process: “to ensure that modern awards, together with the National Employment Standards, provide the required fair and relevant minimum safety net”. The specifically mentioned matters in the paragraphs in the subsection and other relevant matters are considered for the proper exercise of the statutory duty and the pursuit of the statutory objective. By contrast, the objective in paragraph 57 of the *Preliminary decision* (quoted earlier) was the limited criterion of fairness as between employers and employees by reference to the matters in the paragraphs to the subsection.
550. Later in the *Penalty Rates Review Decision*, in considering Ground 2 of the application for review (which is the critical aspect of the judgment for present purposes), the Full Court returned to the construction of section 134(1). One aspect of this ground was the claim that “s 134(1)(a)-(h) is a code so that the FWC, in applying the modern awards objective to the review (as required by s 134(2)(a)), was required to consider all of the section “134(1)(a)-(h) matters and was precluded from considering any other matter” (paragraph 47). This claim was directed at the FWC’s frequent references to and use of “contemporary circumstances” in coming to its decision, circumstances which are not explicitly covered by the paragraphs in the subsection.
551. It is convenient to set out paragraphs 48 to 53 of the Federal Court’s judgment because they are relevant (especially those parts which we have underlined) to the primary construction issue and the subsidiary construction issue concerning fairness.

“48. This submission should be rejected. It fails to recognise that the modern awards objective requires the FWC to perform two different kinds of functions, albeit that the modern awards objective embraces both kinds of function. 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” and in so doing, must take into account the s 134(a)-(h) matters. What must be recognised, however, is that the duty of ensuring that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions itself involves an evaluative exercise. While the considerations in s 134(a)-(h) inform the evaluation of what might constitute a “fair and relevant minimum safety net of terms and conditions”, they do not necessarily exhaust the matters which the FWC might properly consider to be relevant to that standard, of a fair and relevant minimum safety net of terms and conditions, in the particular circumstances of a review. The range of such matters “must be determined by implication from the subject matter, scope and purpose of the” Fair Work Act (Minister for Aboriginal Affairs v Peko-Wallsend Ltd [1986] HCA 40; (1986) 162 CLR 24 at 39-40).

49. This construction of s 134(1) necessarily rejects the applicants’ argument that the words “fair and relevant” qualify the considerations in s 134(1)(a)-(h) and not

the minimum safety net of terms and conditions. This submission is untenable. It is apparent that “a fair and relevant minimum safety net of terms and conditions” is itself a composite phrase within which “fair and relevant” are adjectives describing the qualities of the minimum safety net of terms and conditions to which the FWC’s duty relates. Those qualities are broadly conceived and will often involve competing value judgments about broad questions of social and economic policy. As such, the FWC is to perform the required evaluative function taking into account the s 134(1)(a)-(h) matters and assessing the qualities of the safety net by reference to the statutory criteria of fairness and relevance. It is entitled to conceptualise those criteria by reference to the potential universe of relevant facts, relevance being determined by implication from the subject matter, scope and purpose of the Fair Work Act.

50. Accordingly, the applicants’ submissions that what is fair and relevant is to be determined by weighing the matters in s 134(1)(a)-(h), with no other facts, matters or circumstances being permitted to be taken into account, should not be accepted. The statutory criteria of “fair and relevant” qualify the nature of the safety net which is the subject of the duty. They inform the taking into account of the matters in s 134(1)(a)-(h) but are not confined by those matters. They are confined only by implication from the subject matter, scope and purpose of the Fair Work Act.

51. These conclusions also necessarily reject the applicants’ submission that there is “no statutory text from which a “contemporary circumstances” criterion can be derived”. The applicants’ submission to this effect fails at all levels. For one thing, many, perhaps all, of the s 134(1)(a)-(h) matters themselves permit, indeed require, consideration of “contemporary circumstances”; the range of “needs” and “impacts” these matters identify necessarily include needs and impacts assessed by reference to contemporary circumstances. This is not to say that contemporary circumstances exhaust the universe of considerations mandated by s 134(1)(a)-(h). But it is to say that a consideration of those matters without having in mind the circumstances as they exist at the time the function is performed is likely to miscarry. The matters in s 134(1)(a)-(h) embrace this criterion. The objects of the Fair Work Act in s 3 implicitly embrace this criterion. Indeed, it is inconceivable that contemporary circumstances are immaterial to those objects being achieved. It could hardly be otherwise given that the operation of the objects is ambulatory. Thus, it is also the case that the “fair and relevant” safety net criteria which dictate the quality of any modern award embrace the concept of “fair and relevant” having regard to contemporary circumstances, that conception being within the subject matter, scope and purpose of the *Fair Work Act*.

52. The real issue which emerged during the course of the hearing is that the FWC said this (emphasis added):

[116] As to the proper construction of the expression ‘a fair and relevant minimum safety net of terms and conditions’ we would make three observations.

[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 ...

[120] Second, the word ‘relevant’ is defined in the Macquarie Dictionary (6th Edition) to mean ‘bearing upon or connected with the matter in hand; to

the purpose; pertinent'. In the context of s.134(1) *we think the word 'relevant' is intended to convey that a modern award should be suited to contemporary circumstances.* As stated in the Explanatory Memorandum to what is now s.138:

527 ... the scope and effect of permitted and mandatory terms of a modern award must be directed at achieving the modern awards objective of a fair and relevant safety net that accords with community standards and expectations.' ...

[121] Finally, as to the expression 'minimum safety net of terms and conditions', the conception of awards as 'safety net' instruments was introduced by the *Industrial Relations Reform Act 1993* (Cth) (the 1993 Reform Act)...

53. For the reasons already given it cannot be doubted that the perspectives of employers and employees and the contemporary circumstances in which an award operates are circumstances within a permissible conception of a "fair and relevant" safety net taking into account the s 134(1)(a)-(h) matters. The issue is this: did the FWC confine its conception of a fair and relevant safety net to one that was suited to contemporary circumstances having regard to the perspective of employers and employees and, if so, was that an impermissible approach to the performance of its functions?" (Italics in original, underlining added)

552. The Full Court's judgment then turns to the wide range of matters considered by the FWC in coming to its conclusions. The question for determination was whether, having regard to the obligation to "provide a fair and relevant minimum safety net of terms and conditions", impermissible emphasis had been given to "contemporary circumstances having regard to the perspective of employers and employees". The Court concluded:

"64. Accordingly, the FWC did not confine its conception of a fair and relevant safety net to one that was suited to contemporary circumstances having regard to the perspective of employers and employees. While it said at [120] that "the word 'relevant' is intended to convey that a modern award should be suited to contemporary circumstances" and repeated that (for example at [885]) its actual application of the modern awards objective was not so confined. Had the FWC, in substance, done nothing more than decide that Sunday penalty rates were not suited to contemporary circumstances and thus had to be varied then, no doubt, its discharge of its functions would have miscarried. It would have given too narrow a meaning to "fair and relevant" which embraces a broad universe of considerations confined only by the particular function being performed in the context of the subject matter, scope and purpose of the Fair Work Act. It also would have failed to take into account the s 134(1)(a)-(h) matters in the task of ensuring that "modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions". For the reasons given, however, it is apparent the FWC did no such thing.

65 As such, this is not a case in which the FWC misapplied the statutory provisions. Its description of "relevant" as meaning "suited to contemporary circumstances" at [120] and elsewhere is too narrow if it is to be read literally

as meaning suited to modern circumstances. As discussed “fair and relevant”, which are best approached as a composite phrase, are broad concepts to be evaluated by the FWC taking into account the s 134(1)(a)-(h) matters and such other facts, matters and circumstances as are within the subject matter, scope and purpose of the Fair Work Act. Contemporary circumstances are called up for consideration in both respects, but do not exhaust the universe of potentially relevant facts, matters and circumstances. But, as we have tried to demonstrate, the primary reasons when read as a whole amply demonstrate that the function, as in fact performed by the FWC, was not confined by reference to the criterion of contemporary circumstances. Nor, do the reasons demonstrate that, as a criterion, contemporary circumstances were elevated or given undue priority. This suggests that by “contemporary circumstances” the FWC may have simply meant “present circumstances” or, in other words, the circumstances at hand.” (Underlining added)

The primary construction issue

553. The introductory and substantive part of section 134(1) provides:

"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:"

554. The Court’s judgment emphasises that the statutory duty under section 134(1) must focus on this obligation when setting fair and relevant award terms and conditions. To do this, it must take into account, as appropriate, the particular matters in the paragraphs, but its duty “embraces a broad universe of considerations confined only by the particular function being performed in the context of the subject matter, scope and purpose of the Fair Work Act” (paragraph 65 and earlier).

555. It was not necessary in the context of the judicial review to spell out that “broad universe of considerations”, but in section 284(1) they must include, we submit, the recognition in an international treaty, which binds Australia and obliges Australia to give effect to its provisions, on minimum wages: the *International Covenant on Economic, Social and Cultural Rights*. This treaty 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)).

556. Nor was it necessary for the Court to define “safety net”. However, the nature and scope of the safety net is to be discerned from its ordinary meaning and, in the words adopted by the Full Court, "the subject matter, scope and purpose of" the legislation. This supports the contention that the objective and purpose of the wage setting provisions, the NMW in particular, is to provide a decent standard of living to those

workers who come within the reasonable and proportionate application of the protection under section 284(1). Once that task is undertaken, especially by the step of giving meaning to the term safety net, a range of matters are raised in regard to the alleviation of poverty. It contrasts with the FWC's view that it cannot give priority to the low paid or target poverty because that would raise one consideration above the others.

557. The June 2018 decision did, however, recognise that the statutory task is broader than the mere application of the considerations in the paragraphs in section 284(1):

[14] The statutory tasks in ss 134 and 284 involve an 'evaluative exercise' which is informed by the considerations in s.134(1)(a)–(h) and s.284(1)(a)–(e). While these statutory considerations inform the evaluation of what might constitute 'a fair and relevant minimum safety net of terms and conditions' and 'a safety net of fair minimum wages', they do not necessarily exhaust the matters which the Panel might properly consider to be relevant. The range of such matters 'must be determined by implication from the subject-matter, scope and purpose' of the Act. (Footnote to paragraph: *Minister for Aboriginal Affairs and Another v Peko-Wallsend Limited and Others* (1986) 162 CLR 24 at [39]-[40]; *Penalty Rates Review Decision* [2017] FCAFC 161 at [48])

558. However, there is no examination of what that means, save that it meant, in the FWC's opinion, the application of the criterion of fairness as between employers and employees. It must be more than that.

559. In the following paragraph the FWC referred to the judgment of the Full Court of the Federal Court in *National Retail Association v Fair Work Commission* ([2014] FCAFC 118)

[15] The considerations which the Panel is required to take into account do not generally set a particular standard against which a modern award or the 'safety net of fair minimum wages' can be evaluated; many of them may be characterised as broad social objectives. As the Full Court of the Federal Court said in *National Retail Association v Fair Work Commission*:

'It is apparent from the terms of s 134(1) that the factors listed in (a) to (h) are broad considerations which the FWC must take into account in considering whether a modern award meets the objective set by s 134(1), that is to say, whether it provides a fair and relevant minimum safety net of terms and conditions. The listed factors do not, in themselves, however, pose any questions or set any standard against which a modern award could be evaluated. Many of them are broad social objectives. What, for example, was the finding called for in relation to the first factor ("relative living standards and the needs of the low paid")?' (Footnote omitted)

560. The footnote to this passage refers to the paragraph in the judgment and includes "albeit the Court was considering a different statutory context, the observation at [109] is applicable to the Commission's task in the Review".

561. The role of the considerations in section 284(1) is to inform the exercise of the duty to set a safety net of fair minimum wages: they require the FWC to inform itself about a range of social and economic factors.
562. It should be noted that this passage from *National Retail Association v Fair Work Commission* includes the following sentence: "The listed factors do not, in themselves, however, pose any questions or set any standard against which a modern award could be evaluated." This is to the contrary of the FWC's construction of section 284(1) which includes within one of the listed factors, the needs of the low paid, a standard or objective, i.e. a decent standard of living. This passage and the paragraph as a whole in the Court's judgment support the contention that "the needs of the low paid" is concerned with the costs of living of the low paid so as to inform the setting of the wage safety net. It is contrary to the process to have embedded in one of the fact finding exercises, the needs of the low paid, the living standard that is the object of the safety net.

The subsidiary construction issue: Fairness

563. We now turn to the subsidiary construction issue: the role of fairness in the setting of safety net wages. It is apparent from the preceding paragraphs that the issue cannot be simply separated from the primary construction issue.
564. The FWC's response is in the following paragraphs:

[18] The Australian Catholic Council for Employment Relations (ACCER) submits that the Panel's construction of s.284(1) in the 2016–17 Review decision was erroneous and should be reconsidered.²²

[19] ACCER contends that a beneficial reading of s.284(1) excludes decision making being based on the application of the criterion of fairness as between employers and employees and that the Panel's 'primary obligation' in setting wage rates is to set a safety net wage rate that will provide a decent standard of living.²⁴ In particular, ACCER contends that the 'operational objective' of minimum wage setting under the Act is 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 community norms.'

[20] ACCER acknowledges that the specified considerations in s.284(1)(a)–(e) inform and constrain this 'operational objective.'

[21] We reject the proposition that 'fairness' in the context of the modern awards objective and the minimum wages objective excludes the perspective of employers." (Footnotes omitted).

565. The characterisation in paragraph 21 of ACCER's submission is incorrect. Contrary to the suggestion, ACCER did not exclude the perspectives of employers from the matters

that need to be taken into account. We will return to this matter after referring to the following paragraphs in the decision.

566. Paragraphs 22 and 23 of the June 2018 decision refer to the Full Court's *Penalty Rates Review Decision*. The passages quoted are paragraphs 49 and part of 53, which we reproduced in full earlier. The conclusion on this issue is in the following paragraph:

“[24] The above observations are entirely consistent with the proposition that fairness in the context of minimum wage fixation is to be assessed from the perspective of the employees *and* employers affected by Review decisions.”

567. In the FWC's view, the Full Court endorsed its fairness test, based on an assessment of the perspectives of employers and employees.

568. However, the introductory sentence of paragraph 53 of the judgment does not support this claim. This passage in the judgment does not refer to fairness, but to perspectives; and the two are not the same. The Court did not adopt the fairness test; but it did say that the perspectives of employers and employees are to be taken into account in decision making and, relevantly, said they are "within the permissible conception of a 'fair and relevant' safety net taking into account the s 134(1)(a)-(h) matters". This is a reference to the need to take into account a broad range of matters when determining the safety net. The judgment then went on to consider whether the FWC had confined itself to "contemporary circumstances having regard to the *perspectives* of employers and employees" (emphasis added).

569. The Court rejected the claim that the FWC had confined its consideration of the matters before it to the contemporary circumstances having regard to the perspectives of employers and employees. In doing so, it emphasised the breadth of the task in setting a fair and relevant safety net:

"'fair and relevant' ... embraces a broad universe of considerations confined only by the particular function being performed in the context of the subject matter, scope and purpose of the Fair Work Act.

'fair and relevant, ... are best approached as a composite phrase, are broad concepts to be evaluated by the FWC taking into account the s 134(1)(a)-(h) matters and such other facts, matters and circumstances as are within the subject matter, scope and purpose of the Fair Work Act." (Paragraphs 64-5)

570. The Federal Court did not adopt the fairness criterion which the FWC had applied in balancing the considerations in the paragraphs in section 284(1). Nevertheless, later in the FWC's decision, when dealing with poverty and ACCER's claims for wage increases

to help the most marginal workers, fairness was used as the criterion for decision making:

“... we note that we have one instrument available, namely the level of minimum wages, and a number of statutory considerations that we have to take into account. *We are required to set the NMW and modern award minimum wages that are fair to both employees and to employers.* It is not possible, with this one instrument, to accommodate the normal variation in the composition of families and in the levels” (Paragraph 339)

571. ACCER summarised the issue in its Post-Budget submission of May 2018:

“75. The basis upon which a "fair" safety net wage is to be set is the subsidiary construction issue in ACCER's submissions. The FWC has applied the criterion of balancing fairness to employers and employees on the basis of what ACCER has contended is an erroneous construction of section 284(1). *There is, however, a broader issue: whether, on a proper construction of the subsection, the setting of a fair safety net for the protection and benefit of workers is to be made on the basis of an assessment of fairness to employers and employees.*” (Emphasis added)

572. It should be noted that ACCER did not argue that the *perspectives* of employers are excluded; for example:

“79. The legislation requires, ACCER contends, that the FWC sets a "safety net" of "fair" minimum wages. The adjective "fair", ACCER argues, applies to the safety net wage which is to operate for the benefit of workers. Adapting the words used by the Full Court (at paragraph 49) "fair" is the adjective that describes the qualities of the wages safety net to which the FWC's duty in section 284(1) relates. It is the workers' safety net that has to be fair. ACCER submits that it has to be fair from the perspective of employees, having regard to a range of social and economic factors, with economic factors including economic conditions that may affect employers.

80. ACCER has contended it is not necessary to frame the setting of the safety net wage in terms of fairness to employers and employees in order to take into account the interests, or perspectives, of employers. The economic interests of employers are covered by some of the matters that the FWC is required to take into account; for example, "the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth" and promoting social inclusion through increased workforce participation"; section 284(1)(a) and (b). These matters take into account the interests, or perspectives, of employers without the need to factor in fairness to employers when deciding what is a fair safety net for employees.” (Post-Budget submission May 2018)

573. These matters concerning “perspectives” and “fairness” are not about semantics. More important than any debate about semantics is the Full Court’s view that the statutory obligation extends beyond the perspectives of employers and employees.

574. The Full Court found that the perspectives of employers and employees should be taken into account, but they do not define and limit the obligation to set the safety net in accordance with the legislation.
575. There is no support in the judgment for the position claimed in paragraph 339 that the FWC is “*required to set the NMW and modern award minimum wages that are fair to both employees and to employers*”.

A beneficial construction of the legislation

576. One of the issues raised by ACCER in regard to both aspects of construction issue concerned the beneficial nature of the wage setting provisions in the *Fair Work Act*. A beneficial construction of the legislation would support ACCER's argument that the object of the wages safety net is to provide workers with a decent standard of living and not a mere consideration without any primacy among the list of considerations in section 284(1). The FWC responded to submissions on the beneficial construction in its June 2018 decision:

"[16] The statutory provisions relating to the Review and to NMW orders are set out in Divisions 3 (ss 284–292) and 4 (ss 293–299) of Part 2-6 of Chapter 2 of the Act. The purpose of Chapter 2 of the Act is to prescribe minimum terms and conditions of employment for national system employees (including those terms and conditions arising from a NMW order). We accept that it is appropriate to characterise the statutory provisions relating to the Review and to NMW orders as remedial, or beneficial, provisions. They are intended to benefit national system employees by creating regulatory instruments which intervene in the market, setting minimum wages to lift the floor of such wages. While these statutory provisions 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." (Footnote omitted)

577. A characteristic of the *Fair Work Act* is the objective of taking into account and balancing different and competing interests and perspectives and the frequently diverging interests and perspectives of employers and employees. This passage refers specifically to the wage setting part of the Act, but those provisions have to be seen in the context of the Act as a whole and the object of the legislation in section 3. The principal object includes the promotion of social inclusion and Australia's international obligations in respect of employment matters are referred to. Some of the matters covered by the legislation, such as the provisions against discrimination, are not based on balancing the perspectives of, or fairness between, employers and employees, but with the protection of fundamental rights. The protection of the rights of workers to a

"decent living for themselves and their families" under the *International Covenant on Economic, Social and Cultural Rights* is a fundamental right. An award, an enterprise agreement or a workplace policy cannot discriminate against employees for a range of reasons, not because of any balancing of the interests and perspectives of employers and employee, but because of the fundamental rights of employees.

578. There was a fuller discussion of these matters in the June 2017 decision. Paragraph 16 of the June 2018 decision, quoted above, reflects the conclusion in paragraph 142 of the earlier decision. The conclusion, however, left some uncertainty, which ACCER sought to address in its March 2018 submission. We adopt those submissions:

“247. The conclusion in paragraph 142 accepts that the section 284(1) has to be read beneficially and in a way that promotes the protection of workers, subject, of course, to the proper application of the statutory considerations.

248. ACCER submits that its construction of section 284(1), as outlined earlier, is established by a plain reading of the terms of the subsection and is preferable to the construction adopted by the FWC in the June 2017 decision. To the extent that there may be any doubt or ambiguity about the construction of section 284(1), the beneficial nature of the subsection supports ACCER's construction. In the FWC's words in *Bowker [Bowker and others v DP World Melbourne Limited T/A DP World, Maritime Union of Australia and others, [2014] FWCFB 9227]* "if more than one interpretation is available or there is uncertainty as to the meaning of the words, such that the construction of the legislation presents a choice, then a beneficial interpretation may be adopted."

249. Furthermore, a beneficial reading of section 284(1) excludes decision-making being based on the application of the criterion of fairness as between employers and employees, as was said by the FWC in the passages referred to earlier. The plain reading and the beneficial reading are consistent with the interests and perspectives of employers being taken into account through the consideration of the matters in section 284(1)(a) and (b).

250. Finally in relation to this aspect, it should be noted that the beneficial construction of legislation has two consequences: it informs the construction of legislation and it means, in cases where the construction impacts on a decision-making process, such as the setting of minimum wage, that the decision maker is to exercise those powers in a way that is "fair, large and liberal". This means extending within a fair reading of the terms of the legislation, rather than restricting, the effective coverage of the minimum wage protections in the *Fair Work Act*. The exclusion of single breadwinner couple families with children, as discussed in Chapter 6, from the effective protection of the legislation is contrary to a beneficial construction of the legislation."

6.C. The FWC's wages relativities policy and the National Minimum Wage

579. In each year since 2011 the FWC has increased the NMW and award rates of pay by a uniform percentage. The basis for this practice has been, what ACCER has termed, the

FWC's "wages relativities policy". In each year until and including 2017 the ACTU claimed tiered increases in minimum wage rates: a flat dollar amount for all classifications up to the C10 classification rate and a percentage increase, based on the percentage equivalent of the C10 increase, for classifications above that rate. The reason for the tiered claim was to provide relatively more to those most in need. Since 2011 ACCER has made claims that have sought relatively more for low paid, but has added claims for a further increase in the NMW. In each year the ACTU and ACCER have failed to get one dollar extra for low paid workers and for those most in need.

580. The wages relativities policy has locked the NMW into a fixed relationship with award wage rates and, we submit, has prevented the setting of the NMW in accordance with the requirements of the *Fair Work Act*: the FWC has failed to set the NMW as a fair safety net, as intended by the legislation.
581. ACCER argued in its March 2017 submission that the wages relativities policy was contrary to law. The argument was rejected in the June 2017 decision, at paragraphs 146-65. In 2018 ACCER asked the FWC to reconsider its decision on the issue and presented further submissions on the issue. The FWC dismissed that request by simply referring to its conclusion in the June 2017 decision, without adding more (see paragraph 106 of the June 2018 decision).
582. This is the third year in which the wages relativities issue is raised, but in this year the submission also relies on a change in the basis upon which the wages relativities policy is expressed and on the arguments set out in the previous section of this chapter on the primary construction issue, informed by the judgment of the Full Court of the Federal Court in the *Penalty Rates Review Decision*.

The wages relativities policy 2011-18

583. Over the years 2011 to 2017 the relevant paragraphs setting out the FWC's conclusion on award increases were similar in content. However, a further reason has been added in each of the June 2016 and June 2017 decisions. The following paragraph from the June 2017 decision highlights the additions of those decisions. The italicised sentence first appeared in the May 2016 decision and the underlined passages first appeared in the June 2017 decision. Otherwise, the form of the paragraph is very similar to that of earlier years, save that the percentage increase 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 worked 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.)

584. This expression of the wages relativities policy was not repeated in the June 2018 decision. Instead, it was replaced by a paragraph that focussed on ACCER’s proposal to increase the NMW by a greater margin than the increases in award rates. This was not the total concern of ACCER about the wages relativities policy because it had also been seeking relatively greater increases in low paid award rates by the granting of money, not percentage increases. The new paragraph read:

"[105] Workers at the lower end of the wage distribution (such as those paid the NMW), including those on modern awards who tend to have less skill than other workers, are more vulnerable to disemployment. *There is no justification to increase the NMW by a higher rate than modern award minimum wages (as proposed by ACCER).* To do so would create a significant risk of disemployment effects—thus putting low-paid workers at risk of unemployment and poverty. *Nor would it be fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative ‘work value.’*" (Emphasis added)

585. This second reason clearly compromises the FWC’s obligation to set the NMW independently of award rates, with the effect of continuing to lock the NMW into a fixed relationship with those rates.

586. Although the June 2018 decision does not expressly say so, we assume that, consistent with past decisions, the reasoning expressed in paragraph 105 also applied to any proposal to provide relatively greater increases for low paid award rates; for example providing a relatively greater increase to a cleaner on the base wage rate for cleaners would, in the FWC's view, be unfair to higher paid workers who would see their wage relativities compressed.

The June 2017 decision

587. In order to identify the issues concerning the wages relativities policy we need to revisit the FWC’s June 2017 decision to reject ACCER’s submission.

“[147] The argument put [by ACCER] relies on the different statutory considerations involved in setting the NMW and modern award minimum wages and the proposition that the ‘needs of the low paid’ have been effectively disregarded by the adoption of the ‘wage relativities policy.’ ACCER characterises the NMW as a ‘general legal right conferred on Australian workers, independent of, and not ancillary to, the award system’ and contends that ‘as a general safety net entitlement the NMW should not [be] set by reference to wage relativities that may be set by awards and/or collective bargains’.

[148] We reject the submission advanced by ACCER. It is fundamentally misconceived, for 2 reasons.

[149] First, we accept that there is no legislative requirement to set the NMW rate at the same level as the lowest modern award minimum wage rate. The setting of the NMW rate is a discretionary decision which takes into account the statutory considerations relevant to that discrete task. However, as we have mentioned, 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.

[150] Second, 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’

....

[153] ACCER’s composite formulation, which it describes as the ‘operational objective of the NMW’, is in the following terms:

‘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.’” (Footnotes omitted)

588. The FWC went on to explain, as ACCER had done, that the origins of the component parts of the objective were found in earlier decisions. It concluded:

[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.” (Footnotes omitted)

589. In effect, the FWC was stating that it couldn't do more to alleviate poverty because poverty (encompassed within the “needs of the low paid”) is embedded in just one of the considerations that it had to take into account and it has no priority or primacy over the other factors. For the reasons given in Chapter 6.B., we submit this position is incorrect. The FWC's capacity to provide relatively more to those most in need and alleviate their poverty and disadvantage is not constrained by the legislation.
590. We return to the first of the two reasons in the June 2017 decision for rejecting ACCER's submission. This reason was particularly related to ACCER's complaint that the wages relativities policy had locked the NMW into a fixed relationship with the award rates and prevented the NMW from being adjusted independently of award rates, as intended by the legislation. ACCER had provided substantial submissions: tracing its repeated attempts to break the unchanging relationship between the NMW and award rates; the conflation of the separate considerations relevant to the NMW and award rates; and, despite the FWC agreeing in 2016 with ACCER's submission that the legislation required separate processes for the setting of the NMW and award rates, the continuation of identical increases in the NMW and award rates.
591. The FWC's first reason in the June 2017 decision for rejecting ACCER's submission was that “there is little practical difference between the range of considerations the Panel is obliged to take into account”. It is true that the list of considerations is the same in section 284(1) (but broader in section 134(1), which also applies to award wages), but the wage setting task is not limited to those considerations. The nature of the NMW is quite different to the nature of award rates. The NMW is a general right, a general safety net.
592. The FWC's conclusion that there was no practical difference between the considerations of each section failed to take into account the different objectives of the NMW and award wages. The conclusion does not distinguish between the fundamentally different purposes of the NMW and award wage rates. The NMW is to be set as a general right of workers regardless of the skills, responsibilities and work value of the workers and the circumstances of his or her employment. On the other hand, award wages are to be set in the context of the operation of the industry and employment covered by the award and in circumstances where recognition can be given to these aspects of the work

environment. Once that distinction is made, the considerations cannot be regarded or treated as if there is no practical difference between them.

593. Importantly, for the present case, a policy in respect of award rates and their relativities cannot compromise the FWC's obligation to set the NMW as a fair safety net. 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 intended to provide a decent standard of living. The FWC's primary obligation in setting wage rates is to set a safety net wage that will provide a decent standard of living.
594. The wages relativities policy is also inimical to the proper setting of award wages. The award making provisions empower the FWC to make awards that attract different wage rates. The *Fair Work Act* provides that may prescribe further minimum wage entitlements covering "skill-based classifications and career structures"; see section 139(1)(a)(i). The FWC has the capacity to adopt policies in relation to the setting of classifications and the wages rates for those classifications. However, the exercise of that discretion cannot be inconsistent with the obligation to take into account the purpose of the wage safety net and the particular matters specified in the paragraphs in section 284(1), none of which expressly or implicitly sanction the wages relativities policy.
595. ACCER's argument that relatively more should be awarded to low paid award-dependent workers (through money increases) does not depend upon the need for the FWC to take into account the needs of the low paid (which relates to the costs of goods and services needed for a decent standard of living), but on the primary obligation to establish a safety net that has the objective of providing a decent standard of living.
596. A statutory tribunal such as the FWC is entitled to adopt policies to guide the way in which it exercises its jurisdiction. 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.”

597. The wages relativities policy is contrary to these principles. Since 2011 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, with their wage increases being determined by a global assessment of what the FWC concludes should apply to all award classifications.

6.D. Contentions of Law

Minimum Wages Objective

598. The Fair Work Commission (FWC) must establish and maintain a safety net of fair minimum wages; *Fair Work Act 2009* (FW Act) section 284(1).

599. In establishing and maintaining a safety net of fair minimum wages the FWC must take 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 wage to junior employees, employees to whom training arrangements apply and employees with a disability.

This is the minimum wages objective under the FW Act, section 284(1). The substantive obligation is to establish 'a safety net of fair minimum wages'. This is an evaluative exercise.

Safety Net of Fair Minimum Wages

600. The meaning of 'safety net of fair minimum wages' is not defined in the FW Act but is to be understood according to its ordinary meaning, context and the object of the FW Act.

601. The object of the FW Act is set out in section 3 which provides (in part):

"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"

Balanced Framework and Fairness

602. The object of providing a "balanced framework" is achieved through a wide range of provisions, which include the regulation of industrial disputes, the prohibition of certain kinds of industrial and workplace activities, the protection against discrimination and the protection of rights.

603. The balanced framework includes the element of fairness.

604. Fairness in section 3 is found in "providing workplace relations laws that are *fair* to working Australians" and in "ensuring a guaranteed safety net of *fair*, relevant and enforceable terms and conditions" (emphasis added). Fairness to employees is

promoted and protected in the context of a recognised need to promote economic activity. While the objects speak of fairness to employees, the perspectives and interests of employers are taken into account through the recognition of the need to have provisions that "are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity".

Social Inclusion

605. The term "social inclusion", one of the two principal objects of the Act, is not defined and must be given its ordinary meaning. It is a term that is intended to advance the interests of workers and their families. The promotion of social inclusion requires a wages system based on the objective of providing workers with wages that are sufficient for themselves and their families to live in dignity and participate in society by reference to contemporary community standards.

606. The term social inclusion is also used in section 284(1)(b): "promoting social inclusion through increased workforce participation". The FWC observed in the June 2018 decision:

[28] As noted earlier, the Panel is required to take into account the need to promote 'social inclusion through increased workforce participation' (ss 134(1)(c) and 284(1)(b)). Consistent with past Review decisions, we interpret this to mean increased employment. We also accept however that minimum rates of pay impact upon an employee's capacity to engage in community life and the extent of their social participation. Higher minimum wages can also provide incentives to those not in the labour market to seek paid work, which needs to be balanced against potential negative impacts of increases in minimum wages on the supply of jobs for low-paid workers. In each Review, we must take into account the employment impacts of the NMW and modern award minimum wages and any proposed increases to those rates.

Australia's international labour obligations

607. Article 7 of the *International Covenant on Economic, Social and Cultural Rights* (*International Covenant*) is important for an understanding of 'a safety net of fair minimum wages'.

608. Article 7 provides:

"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) *Remuneration which provides all workers, as a minimum, with:*

(i) *Fair wages* and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) *A decent living for themselves and their families in accordance with the provisions of the present Covenant;*

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays." (Emphasis added)

609. A safety net of fair minimum wages is one that provides a decent living for workers, for themselves and their families.

610. This proposition, that a safety net of fair minimum wages is one that provides a decent living for workers, for themselves and their families, is evident in the *Explanatory Memorandum* for the Bill introduced in 2008 which was enacted as the FW Act. It included:

"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)

611. The *Forward with Fairness* policy, released in April 2007, which is referred to in the *Explanatory Memorandum*, 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)

612. The contents of this policy, drawn upon in the *Explanatory Memorandum*, support the contention that the principal objective of the minimum wage provision was the establishment of a wage safety net for the protection of workers and their families and not merely one of a range of considerations without any primacy.

Beneficial and remedial legislation

613. The minimum wage provisions in Parts 2.3 and 2.6 of the Act are beneficial and remedial provisions and should not be construed or applied narrowly. A construction of the legislation that enhances the capacity of the FWC to protect workers and their families against poverty and provide them with a decent standard of living should be preferred to a construction that limits that capacity.
614. The minimum wage decisions should take into account the beneficial and remedial nature of the legislation.
615. In providing a summary in the June 2018 decision of the provisions of the FW Act, the FWC referred to the beneficial nature of the minimum wage system;

“We accept that it is appropriate to characterise the statutory provisions relating to the Review and to national minimum wage orders as remedial, or beneficial, provisions. They are intended to benefit national system employees by creating regulatory instruments which intervene in the market, setting minimum wages to lift the floor of such wages. While these statutory provisions 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.” (Paragraph 16)

616. Striking a balance between competing interests or considerations does not require neutrality as between those interests, but it does mean that where the principal purpose is accompanied by contrary consideration, those contrary considerations need to be given recognition and appropriate weight.
617. Having regard to the nature of the right and protection recognised in the minimum wage provisions and the beneficial and remedial nature of those provisions, the FWC should be satisfied that any demonstrated economic costs will outweigh the benefit accruing to the employees concerned; specifically, when the National Minimum Wage

is at a level that is insufficient to meet the objective in the *International Covenant* and the safety net objective of the Act, it should increase the National Minimum Wage to the level beyond which it can be reasonably demonstrated that the economic costs outweigh the further benefit to the employees concerned.

Section 284

618. Section 284(1), like section 134(1), comprises a substantive obligation and an ancillary obligation. The substantive obligation is to establish and maintain a *safety net* of fair minimum wages. The ancillary obligation is to take into account the particular matters stated in the paragraphs (a) to (e) to inform the substantive obligation
619. The substantive obligation is to be exercised in a broad way, taking into account the particular matters in the paragraphs to the subsection and other matters determined by implication from the subject matter, scope and purpose of the FW Act. The determination of the fairness of the safety net has to take into account the stated objects of the Act and any other relevant provisions in the Act; *Shop, Distributive and Allied Employees Association v The Australian Industry Group* [2017] FCAFC 161 (*Penalty Rates Review Decision*), at paragraphs 48, 49 and 64.
620. The ancillary obligation directs that account be taken of various matters in paragraphs section 284(1)(a) to (e) in exercising the substantive obligation. Each specified matter in the minimum wages objective must be taken into account.
621. The nature of the paragraphs in section 134, regarding the substantive obligation in that section of the modern awards objective, was referred to by a Full Court in of the Federal Court in *National Retail Association v Fair Work Commission* ([2014] FCAFC 118).
- ‘It is apparent from the terms of s 134(1) that the factors listed in (a) to (h) are broad considerations which the FWC must take into account in considering whether a modern award meets the objective set by s 134(1), that is to say, whether it provides a fair and relevant minimum safety net of terms and conditions. The listed factors do not, in themselves, however, pose any questions or set any standard against which a modern award could be evaluated. Many of them are broad social objectives. What, for example, was the finding called for in relation to the first factor (“relative living standards and the needs of the low paid”)?’ (Paragraph 109)
622. The same reasoning applies in relation to the paragraphs in section 284(1). The rhetorical question at the end of the passage, concerning the same matters as those

found in paragraph (c) of section 284(1), highlights the submission that a paragraph does not refer to a standard or an objective for minimum wage setting. Rather, a paragraph is intended to provide relevant information to the substantive matter in the section of setting a safety net wages for the protection of workers.

623. Paragraph (c) requires the FWC to take into account the goods and services needed by the low paid and the costs of those goods and services so as to *inform* the setting of a safety net wage which is to provide a decent standard of living for workers and their families. 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. Similarly, the obligation to take into account relative living standards is to inform that same objective.

Annual Wage Review

624. Each year the FWC must conduct and complete an annual wage review – section 285(1)

625. In each 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 – section 285(2).

626. A national minimum wage order (among other things) sets the national minimum wage which applies to all award/agreement free employees (who are not junior employees, employees to whom training arrangements apply or employees with a disability) – section 294(1) and (3).

627. The base rate of pay under an enterprise agreement must not be less than the modern award rate or the national minimum wage order – section 206.

628. The minimum wages objective applies to the performance or exercise of the FWC’s function or powers in setting the national minimum wages – section 284(2). Each of the

matters to be taken into account by the FWC to make a national minimum wage order and set the national wage inform the evaluation of what might constitute a safety net of fair minimum wages.

629. The national minimum wage is to be set independently of, and unconstrained by, the terms of awards made under Part 2.3 of the Act. The provisions of Part 2-3 of the Act and the modern awards objective do not apply to the review and making of a national minimum wage order.

630. In addition to the specific matters to be taken into account identified in section 284(1)(a)-(e) the FWC must take into account other matters determined by implication from the subject matter, scope and purpose of the FW Act.

The construction of 284(1)

The primary issue

631. The primary construction issue concerns the substantive provision of section 284(1), commanding the FWC to set a safety net of fair minimum wages, and the various matters to be taken into account which are set in (a) to (e) when setting a safety net.

632. The FWC has held that:

- the objective of protecting the living standards of workers and providing them with a decent standard of living in excess of poverty is encompassed within the scope of the term "the needs of the low paid" in section 284(1)(c);
- the needs of the low paid are but one of a number of considerations in the paragraphs in the subsection and that none of them has primacy;
- it would be contrary to the terms of the legislation to give any priority or preference to the improvement in the living standards of low paid workers even where they and their families are living in poverty and disadvantage because to do so would elevate one consideration (the needs of the low paid) above the other considerations in the paragraphs in section 284(1); see *Preliminary decision* of 7 April 2017 (at paragraph 66), the June 2017 decision (at paragraphs 34 and 150) and the June 2018 decision (at paragraph 25); and

- the judgment of the Full Court in the *Penalty Rates Review Decision* (at paragraph 33) supports this construction of the legislation (June 2018 decision, paragraph 25).

633. The passage from the *Penalty Rates Review Decision* referred to by the FWC was:

"It is not legitimate to take one element in the overall suite of potentially relevant considerations to the discharge of the FWC's functions ... and discern from that one matter a Parliamentary intention that the scheme as a whole is to be construed with that end alone in mind." (Paragraph 33)

634. We submit the FWC to be in error and that, on a proper construction of section 284(1):

- the nature and the purpose of the safety net, informed by the objects of the Act and the *International Covenant*, is to protect the living standards of workers and their dependents and to provide them with a decent standard of living in excess of poverty;
- this objective of protecting and providing is found in the substantive part of the subsection and not within the scope of the "needs of the low paid" in section 284(1)(c);
- the "needs of the low paid" require the FWC to take into account the goods and services needed by workers and their families and the costs of those goods and services in order to inform the setting of safety net wages; and
- the passage in the *Penalty Rate Review Decision* relied on by the FWC is not germane to the current issue because it is not directed to the primary obligation of establishing and maintain a safety net.

The subsidiary issue

635. The FWC has held that;

- in setting the national minimum wage it is "required to set the national minimum wage and modern award minimum wages that are fair to both employees and to employers" (June 2018 decision, paragraph 339); and
- the judgment of the Full Court in the *Penalty Rates Review Decision* (at paragraphs 49 and 53) supports this view (June 2018 decision, paragraphs 23 and 24)

636. After quoting from paragraphs 49 and 53 of the *Penalty Rates Review Decision*, the FWC stated:

"[24] The above observations are entirely consistent with the proposition that fairness in the context of minimum wage fixation is to be assessed from the perspective of the employees *and* employers affected by Review decisions." (Italics in original and underlining added)

637. We contend that:

- the setting of minimum wages is not to be made on the criterion of fairness to employers and employees, but on a broader consideration of a range of matters that include the scope and purpose of the Act, including giving effect to the terms of the *International Covenant*;
- the interests and perspectives of employers are taken into account by the requirement that the FWC take into account "the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth"; and
- the Full Court did not accept fairness per se to employers and employees as the criterion for decision making because it referred to the "perspectives" of employers and employees, a qualitatively different term to fairness and, more importantly, made it clear that other factors, in addition to the perspectives of employers and employees had to be taken into account; see *Penalty Rates Review Decision*, paragraphs 53, 64 and 65.

638. Further to this contention, the Court found that the perspectives of employers and employees were "within a permissible conception of a "fair and relevant" safety net taking into account the section 134(1)(a)-(h) matters", but then turned to the question of whether impermissible emphasis had been given to "contemporary circumstances having regard to the perspective of employers and employees".

639. After considering a wide range of matters the Court concluded (at paragraph 64) that:

- "'fair and relevant" ... embraces a broad universe of considerations confined only by the particular function being performed in the context of the subject matter, scope and purpose of the Fair Work Act."

- "“fair and relevant”, which are best approached as a composite phrase, are broad concepts to be evaluated by the FWC taking into account the s 134(1)(a)-(h) matters and such other facts, matters and circumstances as are within the subject matter, scope and purpose of the Fair Work Act."

640. The Full Court was identifying a broader test for the determination of the fair and relevant safety net in section 134(1) and, by extension, section 284(1). Furthermore, it was emphasising that the substantive function of the section was to be informed by a number of factors outside the particular considerations in the subsection, with emphasis on the "subject matter, scope and purpose of the legislation".

The FWC's wages relativities policy: setting the national minimum wage

641. The FWC has set the national minimum wage by reference to the wage rates set in modern awards and in doing so has failed its obligation to set the national minimum wage independently of, and unconstrained by, the award system. The failure to set the national minimum wage as it is required to do is evident in the following passage from the June 2018 decision:

"[105] Workers at the lower end of the wage distribution (such as those paid the national minimum wage), including those on modern awards who tend to have less skill than other workers, are more vulnerable to disemployment. *There is no justification to increase the national minimum wage by a higher rate than modern award minimum wages (as proposed by ACCER)*. To do so would create a significant risk of disemployment effects—thus putting low-paid workers at risk of unemployment and poverty. *Nor would it be fair to those on higher modern award minimum wages as it would erode the recognition of their higher skill and relative ‘work value.’*" (Emphasis added)

642. The FWC has justified the awarding of uniform percentage increase to all award wage rates, and has awarded the same percentage increase to low paid classifications as it has to the highest paid classifications, even though low paid workers and their families are living in poverty or disadvantage, on the grounds that it should not compress wage relativities and that to award relatively more would impermissibly elevate one consideration, the needs of the low paid, above all other considerations that it is obliged to take into account when setting award wages.

643. This policy (at least in the present circumstances) does not give effect to the purpose of the safety net under section 284(1) and does not meet the substantive obligation under section 284(1) of establishing and maintaining a safety net. Awarding uniform

percentage wage increase across all award wage rates is contrary to the terms of the minimum wages objective (at least in the present circumstances).

Conclusion

644. The matters raised in this submission are of such importance to the setting of the national minimum wage under the Fair Work Act that they should be re-considered and determined in this Application.

Appendix A

Measures of Living Standards

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Table A1
Median equivalised disposable household income
January 2001 – January 2019
(\$ per week)

	Median equivalised disposable household income (ABS)	Household Disposable Income per head (Melbourne Institute)	Median equivalised disposable household income (MEDHI)
January 2001	414.00	413.61	414.00
January 2002	-	455.00	437.00
January 2003	435.00	451.58	435.00
January 2004	500.00	477.34	500.00
January 2005	-	512.56	544.00
January 2006	568.00	530.84	568.00
January 2007	-	570.89	620.00
January 2008	687.00	619.91	687.00
January 2009	-	683.90	716.00
January 2010	714.00	680.19	714.00
January 2011	-	722.35	756.00
January 2012	790.00	753.39	790.00
January 2013	-	761.43	809.00
January 2014	844.00	795.09	844.00
January 2015	-	810.18	860.00
January 2016	853.00	815.35	853.00
January 2017	-	818.71	856.00
January 2018		828.92	868.00
January 2019		838.51	877.00

Household Disposable Income (HDI) per head figures for January 2001 to January 2015 are taken from *Poverty Lines Australia, September Quarter 2016*, published by the Melbourne Institute. The figures for January 2016 to January 2018 are taken from *Poverty Lines Australia, September Quarter 2018*, the latest available publication in this series. The figure used for each January is the published figure for the immediately preceding December quarter. The HDI estimate for January 2019 is the published figure for September 2018 *Poverty Lines Australia, September Quarter 2018*. The next in this series, covering the December quarter 2018, is due to be published in April 2019.

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 Wealth, Australia, 2013-14*, cat. no. 6523.0, at Table 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

and rounded to the nearest dollar. The median equivalised disposable household income figure for January 2016 is from *Household Income and Wealth, Australia, 2015-16*, cat. no. 6523.0, at Table 1. The financial year figures calculated by the ABS have been used for each January within the survey periods. The MEDHI figure for January 2017 is calculated by applying the HDI increase of 0.4% from December 2015 to December 2016 to the ABS calculated figure of \$853.00 per week in 2015-16. The MEDHI figure for January 2018 is calculated by applying the HDI increase of 1.7% from December 2015 to September 2017 to the ABS calculated figure of \$853.00 per week in 2015-16. The MEDHI figure for January 2019 is calculated by applying the HDI increase of 2.8% from December 2015 to September 2018 to the ABS calculated figure of \$853.00 per week in 2015-16. Consistent with the ABS practice, the figures for the years not covered by the ABS surveys have been rounded to the nearest dollar.

Table A2
Relative living standards single workers without children
January 2001 – January 2019
(\$ per week)

	Median equivalised disposable household Income (MEDHI)	Disposable income (DI) NMW- dependent	DI of NMW as % of MEDHI	Disposable income (DI) C12- dependent	DI of C12 as % of MEDHI	Disposable income (DI) C10- dependent	DI of C10 as % of MEDHI
January 2001	414.00	346.38	83.7%	370.50	89.5%	406.53	98.2%
January 2002	437.00	354.76	81.2%	380.05	87.0%	416.81	95.4%
January 2003	435.00	366.37	84.2%	391.74	90.1%	429.14	98.7%
January 2004	500.00	377.93	75.6%	408.93	81.8%	444.77	89.0%
January 2005	544.00	396.78	72.9%	421.18	77.4%	457.78	84.2%
January 2006	568.00	412.84	72.7%	438.14	77.1%	475.4	83.7%
January 2007	620.00	449.93	72.6%	475.17	76.6%	510.94	82.4%
January 2008	687.00	467.59	68.1%	500.28	72.8%	538.06	78.3%
January 2009	716.00	494.29	69.0%	526.67	73.6%	570.03	79.6%
January 2010	714.00	497.17	69.6%	529.54	74.2%	572.9	80.2%
January 2011	756.00	521.86	69.0%	553.15	73.2%	596.56	78.9%
January 2012	790.00	537.49	68.0%	569.59	72.1%	614.52	77.8%
January 2013	809.00	556.87	68.8%	589.96	72.9%	636.14	78.6%
January 2014	844.00	569.44	67.5%	603.31	71.5%	648.47	76.8%
January 2015	860.00	581.11	67.6%	615.71	71.6%	658.72	76.6%
January 2016	853.00	593.75	69.6%	629.22	73.8%	670.69	78.6%
January 2017	856.00	606.23	70.8%	641.07	74.9%	682.48	79.7%
January 2018	868.00	623.78	71.9%	656.23	75.6%	698.99	80.5%
January 2019	877.00	645.59	73.6%	678.48	77.4%	724.79	82.6%

Note: The MEDHI calculations are taken from Table A1. The disposable incomes in the three columns are taken from the net minimum wage rates in Tables A6 to A8, below.

Table A3
Relative living standards of
Couple parent families with two children
January 2001 – January 2019
(\$ per week)

	Median equivalised disposable household Income (MEDHI)	Disposable income (DI) NMW- dependent	DI of NMW as % of MEDHI	Disposable income (DI) C12- dependent	DI of C12 as % of MEDHI	Disposable income (DI) C10- dependent	DI of C10 as % of MEDHI
January 2001	869.40	553.80	63.7%	578.51	66.5%	615.33	70.8%
January 2002	917.70	573.16	62.5%	599.04	65.3%	636.62	69.4%
January 2003	913.50	591.41	64.7%	617.37	67.6%	655.59	71.8%
January 2004	1050.00	609.60	58.1%	641.18	61.1%	677.84	64.6%
January 2005	1142.40	660.49	57.8%	685.48	60.0%	722.90	63.3%
January 2006	1192.80	688.40	57.7%	714.28	59.9%	752.36	63.1%
January 2007	1302.00	731.95	56.2%	757.77	58.2%	794.36	61.0%
January 2008	1442.70	760.09	52.7%	793.37	55.0%	831.97	57.7%
January 2009	1503.60	795.93	52.9%	828.89	55.1%	873.07	58.1%
January 2010	1499.40	808.36	53.9%	841.31	56.1%	885.49	59.1%
January 2011	1587.60	840.44	52.9%	872.32	54.9%	916.54	57.7%
January 2012	1659.00	864.41	52.1%	897.12	54.1%	942.89	56.8%
January 2013	1698.90	915.54	53.9%	949.25	55.9%	996.30	58.6%
January 2014	1772.40	938.24	52.9%	972.75	54.9%	1018.81	57.5%
January 2015	1806.00	961.70	53.3%	997.17	55.2%	1041.41	57.7%
January 2016	1791.30	980.78	54.8%	1017.15	56.8%	1059.88	59.2%
January 2017	1797.60	973.71	54.2%	1009.62	56.2%	1052.18	58.5%
January 2018	1822.80	992.61	54.5%	1026.31	56.3%	1070.40	58.7%
January 2019	1841.70	1011.65	54.9%	1045.53	56.8%	1093.22	59.4%

Note: The MEDHI calculations are taken from Table A1, multiplied by 2.1. The disposable incomes in the three columns are taken from the Disposable Income rates in Tables A6 to A8, below.

Table A4
Relative living standards of
Sole parent with two children families
January 2001 – January 2019
(\$ per week)

	Median equivalised disposable household Income (MEDHI)	Disposable income (DI) NMW- dependent	DI of NMW as % of MEDHI	Disposable income (DI) C12- dependent	DI of C12 as % of MEDHI	Disposable income (DI) C10- dependent	DI of C10 as % of MEDHI
January 2001	662.40	553.80	83.6%	578.51	87.3%	615.33	92.9%
January 2002	699.20	573.16	82.0%	599.04	85.7%	636.62	91.0%
January 2003	696.00	591.41	85.0%	617.37	88.7%	655.59	94.2%
January 2004	800.00	609.60	76.2%	641.18	80.1%	677.84	84.7%
January 2005	870.40	660.49	75.9%	685.48	78.8%	722.90	83.1%
January 2006	908.80	688.40	75.7%	714.28	78.6%	752.36	82.8%
January 2007	992.00	731.95	73.8%	757.77	76.4%	794.36	80.1%
January 2008	1099.20	760.09	69.1%	793.37	72.2%	831.97	75.7%
January 2009	1145.60	795.93	69.5%	828.89	72.4%	873.07	76.2%
January 2010	1142.40	808.36	70.8%	841.31	73.6%	885.49	77.5%
January 2011	1209.60	840.44	69.5%	872.32	72.1%	916.54	75.8%
January 2012	1264.00	864.41	68.4%	897.12	71.0%	942.89	74.6%
January 2013	1294.40	915.54	70.7%	949.25	73.3%	996.30	77.0%
January 2014	1350.40	938.24	69.5%	972.75	72.0%	1018.81	75.4%
January 2015	1376.00	961.70	69.9%	997.17	72.5%	1041.41	75.7%
January 2016	1364.80	980.78	71.9%	1,017.15	74.5%	1059.88	77.7%
January 2017	1372.80	973.71	70.9%	1,009.62	73.5%	1052.18	76.6%
January 2018	1388.80	992.61	71.5%	1,026.31	73.9%	1070.40	77.1%
January 2019	1403.20	1011.65	72.1%	1,045.53	74.5%	1093.22	77.9%

Note: The MEDHI calculations are taken from Table A1, multiplied by 1.6. The disposable incomes in the three columns are taken from the Disposable Income rates in Tables A6 to A8, below. The children are aged 8 to 12

Table A5
60% of median poverty lines for workers and families
January 2001 – January 2019
(\$ 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	414.00	248.40	521.64	397.44
January 2002	437.00	262.20	550.62	419.52
January 2003	435.00	261.00	548.10	417.60
January 2004	500.00	300.00	630.00	480.00
January 2005	544.00	326.40	685.44	522.24
January 2006	568.00	340.80	715.68	545.28
January 2007	620.00	372.00	781.20	595.20
January 2008	687.00	412.20	865.62	659.52
January 2009	716.00	429.60	902.16	687.36
January 2010	714.00	428.40	899.64	685.44
January 2011	756.00	453.60	952.56	725.76
January 2012	790.00	474.00	995.40	758.40
January 2013	809.00	485.40	1019.34	776.64
January 2014	844.00	506.40	1063.44	810.24
January 2015	860.00	516.00	1083.60	825.60
January 2016	853.00	511.80	1074.78	818.88
January 2017	856.00	513.60	1078.56	821.76
January 2018	868.00	520.80	1093.68	833.28
January 2019	877.00	526.20	1105.02	841.92

Table A6
Wages, taxes and family payments for NMW-dependent workers and families
January 2001 – January 2019
(\$ 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
2018	694.90	36,260	623.78	13.90	188.69	55.49	27.84	6.79	78.12	992.61
2019	719.20	37,528	645.59	14.38	182.21	54.13	28.82	7.00	79.52	1,011.65

Notes: Data for years to 2018 are from ACCER submission, March 2018, Table B6. Payments are calculated on the basis of the year being 52.18 weeks. The children are aged 8 to 12

Table A7
Wages, taxes and family payments for C12-dependent workers and families
January 2001 – January 2019
(\$ 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	14.52	186.99	55.49	27.84	6.79	76.92	1,009.62
2018	742.30	38,733	656.23	14.85	186.99	55.49	27.84	6.79	78.12	1,026.31
2019	768.30	40,090	678.48	15.37	182.21	54.13	28.82	7.00	79.52	1,045.53

Notes: Data for years to 2018 are from ACCER submission, March 2018, Table B7. Payments are calculated on the basis of the year being 52.18 weeks. The children are aged 8 to 12

Table A8
Wages, taxes and family payments for C10-dependent workers and families
January 2001 – January 2019
(\$ 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
2018	809.10	42,219	698.99	16.18	186.99	55.49	27.84	6.79	78.12	1,070.40
2019	837.40	43,696	724.79	16.75	182.21	54.13	28.82	7.00	79.52	1,093.22

Notes: Data for years to 2018 are from ACCER submission, March 2018, Table B8. Payments are calculated on the basis of the year being 52.18 weeks. The children are aged 8 to 12

Table A9
Selected minimum wage rates as ratios of median earnings in main job
August 1997 - August 2018
(\$ per week, unless otherwise indicated)

Year August	Median Earnings	NMW	NMW as % of Median earnings	C12	C12 as % of Median Earnings	C10	C10 as % of Median Earnings
1997	581.00	359.40	61.9%	398.60	68.6%	451.20	77.7%
1998	615.00	373.40	60.7%	412.60	67.1%	465.20	75.6%
1999	652.00	385.40	59.1%	424.60	65.1%	477.20	73.2%
2000	694.00	400.40	57.7%	439.60	63.3%	492.20	70.9%
2001	712.00	413.40	58.1%	452.60	63.6%	507.20	71.2%
2002	750.00	431.40	57.5%	470.60	62.7%	525.20	70.0%
2003	769.00	448.40	58.3%	487.60	63.4%	542.20	70.5%
2004	800.00	467.40	58.4%	506.60	63.3%	561.20	70.2%
2005	843.00	484.40	57.5%	523.60	62.1%	578.20	68.6%
2006	900.00	511.86	56.9%	551.00	61.2%	605.56	67.3%
2007	940.00	522.12	55.5%	561.26	59.7%	615.82	65.5%
2008	1000.00	543.78	54.4%	582.92	58.3%	637.48	63.7%
2009	1000.00	543.78	54.4%	582.92	58.3%	637.48	63.7%
2010	1050.00	569.90	54.3%	609.00	58.0%	663.60	63.2%
2011	1100.00	589.30	53.6%	629.70	57.2%	686.20	62.4%
2012	1150.00	606.40	52.7%	648.00	56.3%	706.10	61.4%
2013	1153.00	622.20	54.0%	664.80	57.7%	724.50	62.8%
2014	1200.00	640.90	53.4%	684.70	57.1%	746.20	62.2%
2015	1206.00	656.90	54.5%	701.80	58.2%	764.90	63.4%
2016	1246.00	672.70	54.0%	718.60	57.7%	783.30	62.9%
2017	1265.00	694.90	54.9%	742.30	58.7%	809.10	64.0%
2018	1330.00	719.20	54.1%	768.30	57.8%	837.40	63.0%

Notes: Over the period 1997 to 2019 the annual wage review decisions and their operative dates have varied. The Table assumes that the annual wage increase in each year was in operation before the month (August) in which the survey was undertaken. In 2006, 2007 and 2008 the wage increases came into operation after August.

Median earnings for years 2008 to 2018 are from the FWC's *Statistical Report* of 25 February 2019. Median earnings for the years 1999 to 2007 are taken from the FWC's *Statistical Report* of 16 June 2011. The median earnings for 1997 are taken from *Employee Earnings, Benefits and Trade Union Membership, Australia, August 1997*, cat. no. 6310.0, page 30. The median earnings for 1998 are taken from *Employee Earnings, Benefits and Trade Union Membership, Australia, August 1998*, cat. no. 6310.0, page 30.

Table A10
Safety net rates compared to Average Weekly Earnings
November 2001-November 2018
(\$ per week, unless otherwise indicated)

Year November	Average Weekly Ordinary Time Earnings (AWOTE)	National/ Federal Minimum Wage	NMW/FMW as % of AWOTE)	C12 wage rate	C12 as % of AWOTE	C10 wage rate	C10 as % of AWOTE
1997	712.10	359.40	50.5%	398.60	56.0%	451.20	63.4%
1998	739.30	373.40	50.5%	412.60	55.8%	465.20	62.9%
1999	760.20	385.40	50.7%	424.60	55.9%	477.20	62.8%
2000	798.80	400.40	50.1%	439.60	55.0%	492.20	61.6%
2001	843.10	413.40	49.0%	452.60	53.7%	507.20	60.2%
2002	882.20	431.40	48.9%	470.60	53.3%	525.20	59.5%
2003	929.60	448.40	48.2%	487.60	52.5%	542.20	58.3%
2004	964.90	467.40	48.4%	506.60	52.5%	561.20	58.2%
2005	1014.50	484.40	47.7%	523.60	51.6%	578.20	57.0%
2006	1045.40	511.86	49.0%	551.00	52.7%	605.56	57.9%
2007	1100.70	522.12	47.4%	561.26	51.0%	615.82	55.9%
2008	1158.50	543.78	46.9%	582.92	50.3%	637.48	55.0%
2009	1225.20	543.78	44.4%	582.92	47.6%	637.48	52.0%
2010	1274.10	569.90	44.7%	609.00	47.8%	663.60	52.1%
2011	1333.40	589.30	44.2%	629.70	47.2%	686.20	51.5%
2012	1392.80	606.40	43.5%	648.00	46.5%	706.10	50.7%
2013	1437.20	622.20	43.3%	664.80	46.3%	724.50	50.4%
2014	1474.50	640.90	43.5%	684.70	46.4%	746.20	50.6%
2015	1499.90	656.90	43.8%	701.80	46.8%	764.90	51.0%
2016	1532.00	672.70	43.9%	718.60	46.9%	783.30	51.1%
2017	1567.70	694.90	44.3%	742.30	47.3%	809.10	51.6%
2018	1604.90	719.20	44.8%	768.30	47.9%	837.40	52.2%

Notes: Until 2005, wage increases were awarded in the first half of the calendar year. In 2006 wage increases awarded by the Australian Fair Pay Commission commenced in December 2006 and subsequent wage increases awarded by it commenced by November. Decisions from 2010 have taken effect on 1 July.

For November 1997 to November 2011 see *Average Weekly Earnings, Australia, November 2011, cat. no. 6302.0*, Table 1 Average Weekly Earnings, Australia (Dollars) – Trend A2810223V

For November 2012 to November 2018: see *Average Weekly Earnings, Australia, November 2018, cat. no. 6302.0*, Table 1 Average Weekly Earnings, Australia (Dollars) – Trend A84990044V

Table A11
Disposable incomes of safety net families and national Household Disposable Income
(Couple parent and sole parent families with two children)
January 2001–January 2019
(\$ 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	815.35	980.78	120.7%	1,017.15	125.1%	1,059.88	130.4%
2017	818.71	973.71	118.1%	1,009.47	122.4%	1,052.18	127.6%
2018	828.92	992.61	119.7%	1,026.31	123.8%	1,070.40	129.1%
2019	838.51	1,011.65	120.6%	1,045.53	124.7%	1,093.22	130.4%

Notes: Household Disposable Income (HDI) figures have been calculated by the Melbourne Institute; see Table A1. The disposable incomes for families dependent on the NMW, C12 and C10 wage rates are taken from Tables A6, A7 and A8, respectively.

Note the disposable incomes for both families are the same because they receive the same amount of family payments

Table A12
Safety Net Wages and Household Disposable Income – Single worker
April 1997–January 2019
(\$ per week, unless stated)

Year	HDI	NMW gross	NMW net	NMW net as % of HDI	C10	C10 net	C10 net as % of HDI
1997	354.63	359.40	305.70	86.2%	451.2	367.96	103.8%
1998	365.10	359.40	305.70	83.7%	451.2	367.96	100.8%
1999	367.62	373.40	316.69	86.1%	465.2	376.43	102.4%
2000	392.38	385.40	326.11	83.1%	477.2	384.03	97.9%
2001	413.61	400.40	346.38	83.7%	492.2	406.53	98.3%
2002	455.00	413.40	354.76	78.0%	507.2	416.81	91.6%
2003	451.58	431.40	366.37	81.1%	525.2	429.14	95.0%
2004	477.34	448.40	377.93	79.2%	542.2	444.77	93.2%
2005	512.56	467.40	396.78	77.4%	561.2	457.78	89.3%
2006	530.84	484.40	412.84	77.8%	578.2	475.4	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	83.3%
2010	680.19	543.78	497.17	73.1%	637.48	572.9	84.2%
2011	722.35	569.90	521.86	72.2%	663.6	596.56	82.6%
2012	753.39	589.30	537.49	71.3%	686.2	614.52	81.6%
2013	761.43	606.40	556.87	73.1%	706.1	636.14	83.5%
2014	795.09	622.20	569.44	71.6%	724.5	648.47	81.6%
2015	810.18	640.90	581.11	71.7%	746.2	658.72	81.3%
2016	815.35	656.90	573.79	70.4%	764.9	670.7	82.3%
2017	818.71	672.70	606.23	74.0%	783.3	682.48	83.4%
2018	828.92	694.90	623.78	75.3%	809.1	698.99	84.3%
2019	838.51	719.20	645.59	77.0%	837.4	724.79	86.4%

Notes: The gross and net wages for 1997 are at April of that year following the decision of the Safety Net Review Case, April 1997. The HDIs for the period 2001 to 2019 are taken from Table A1 and are at January each year. The HDI for 1997 to 2000 are taken from *Poverty Lines Australia: September Quarter 2019*. The NMW column includes the FMW before 2010.

Table A13
Ratio of disposable income of selected households to their
60 per cent of median income poverty lines
September 2018

Adapted from Table 8.6 of the *Statistical Report* of 8 March 2019

	Household	60% median income (\$ pw)	Disposable income NMW-dependent (\$ pw)	Ratio disposable income to 60% of median poverty line NMW-dependent	Disposable income C10-dependent (\$ pw) (estimate)	Ratio disposable income to 60% of median poverty line C10-dependent
1	Single adult	526.34	646.15	1.23	726.35	1.38
2	Single parent working full time, 1 child	684.24	906.87	1.33	985.31	1.44
3	Single parent working part time, 1 child	684.24	605.93	0.89	663.71	0.97
4	Single parent working full time, 2 children	842.14	1012.71	1.20	1094.91	1.30
5	Single parent working part time, 2 children	842.14	711.77	0.85	774.77	0.92
6	Single-earner couple, one with Newstart,	789.51	823.15	1.05	828.99	1.05
7	Single-earner couple,	789.51	659.94	0.84	726.35	0.92
8	Single-earner couple, one with Newstart, 1 child	947.41	1012.53	1.07	1023.20	1.08
9	Single-earner couple, 1 child	947.41	906.87	0.96	985.31	1.04
10	Single-earner couple, one with Newstart 2 children	1105.31	1120.74	1.02	1138.47	1.03
11	Single-earner couple, 2 children	1105.31	1012.71	0.92	1094.26	0.99
12	Dual-earner couple	789.51	1005.75	1.27	1144.79	1.45
13	Dual-earner couple, 1 child	947.41	1192.83	1.26	1288.48	1.36
14	Dual-earner couple, 2 children	1105.31	1298.67	1.18	1392.69	1.26

The disposable incomes of NMW-dependent households are taken from Table 8.4 of the Statistical Report. The report does not include the disposable incomes of C10-dependent households. The estimates of the C10-dependent households in this table are the product of the FWC's poverty lines and the ratios for the C10-dependent households.

The FWC's notes to Table 8.6 are:

Poverty lines are based on estimates of median equivalised household disposable income for 2013–14 for December 2013 and 2015–16 for December 2017 and September 2018, and adjusted for movements in household disposable income per head as calculated by the Melbourne Institute of Applied Economic and Social Research, and adjusted for household composition using the modified OECD equivalence scale. The C14, C10 and C4 are minimum award rates set under the *Manufacturing and Associated Industries and Occupations Award 2010*. AWOTE data are expressed in original terms.

Assumptions: Tax-transfer parameters as at December 2013, December 2017 and September 2018. Wage rates for 2013: C14 = \$622.20 pw, C10 = \$724.50 pw, C4 = \$870.30 and AWOTE of full-time adult employees = \$1437.00 pw. Wage rates for 2017: C14 = \$694.90 pw, C10 = \$809.10 pw, C4 = \$971.90 pw and AWOTE of full-time adult employees = \$1569.60. Wage rates for 2018: C14 = \$719.20 pw, C10 = \$837.40 pw, C4 = \$1005.90 pw, AWOTE of full-time adult employees = \$1605.50. Other assumptions as per Table 8.4.

Source: ABS, *Average Weekly Earnings, Australia, Nov 2018*, Catalogue No. 6302.0; ABS, *Household Income and Income Distribution, Australia, 2011–12*, Catalogue No. 6623.0; ABS, *Household Income and Wealth, Australia, 2015–16*, Catalogue No. 6523.0; Fair Work Commission modelling; *Manufacturing and Associated Industries and Occupations Award 2010*; Melbourne Institute of Applied Economic and Social Research (2018), *Poverty Lines: Australia*, September quarter 2018.

Appendix B

The 2016 Census and low paid working families

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Introduction

1. The purpose of this Appendix is to draw on data from the national Census of 9 August 2016 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 and without a decent standard of living.
2. 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, so as to better understand the needs of low paid workers with family responsibilities.
3. A focus on low paid workers and their families 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, "relative living standards and the needs of the low paid" (section 284(1)).
4. The 2016 Census found that there were 2,234,389 couple parent families with dependent children and 617,431 sole parent families with dependent children; and that there were 481,862 couples with non-dependent children and 342,137 sole parent families with non-dependent children; see Tables B7 and B8. The term "dependent children" covers children younger than 15 years and dependent students aged 15 to 24 years. This Census data regarding families with dependent children can be broken down by the number of dependent children (with the largest category being six and more children), the incomes of the families and the labour force status of the couples and sole parents.
5. This chapter provides an insight into the lives of 286,563 couple parent families and 294,608 sole parent families by reference to their incomes and labour force status. It provides data on the way in which parents exercise their family responsibilities. The

couple parent families identified in this chapter as low paid comprise 12.8% of the total number of couple parent families with dependent children. The sole parent families identified as low paid comprise 47.8%, of the sole parent families with dependent children.

6. The basis upon which these low income families are identified is by the use of an estimate of the 60% relative poverty line for each type of family. The 60% relative poverty line is not a precise measure of poverty, but it is, at least, a risk of poverty line and, as discussed in Chapters 3.C. and 4.D.(4), it is a conservative measure of the standard of living needed to secure a decent standard of living in contemporary Australia.
7. The Census data does not permit the 60% of median poverty line to be fixed with precision. The categorisation that we have used is the best fit available in the Census data. It should be noted that the use of the 60% of median benchmark is not intended to capture all low paid workers with family responsibilities: the FWC has accepted that the term "low paid" in section 284(1) of the *Fair Work Act* should be taken to include those workers earning up to two-thirds of median wages, with that figure, according to the then most recent data, being \$833.33 or \$917.33 per week, depending on the source being used; see the June 2017 decision at paragraphs 369-70.
8. It should also be noted that the categorisation used here does not turn on the basis upon which workers are paid: the Census data covers low paid workers without any distinction being made between whether they are award reliant (i.e. only being 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.
9. The published poverty reports do not estimate how many children are living in poverty in wage-dependent households where there is a person in full time work. The Census provides data that shed considerable light on this important aspect. The Census data provide information about the labour force status, or the absence from the labour force, of the couple parents and of the sole parents in low income families.
10. The basic data from the Census is in Tables B7 to B14. The summaries in Tables B15 to B21 extract relevant data on low income families, that is families who fall, as best we can calculate them, below their 60% relative poverty lines. These tables 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 in respect of families with dependent children are set out in B15 to B17, in respect of couple parent families, and Tables B18 to B20, in respect of sole parent families. These tables are compiled on the basis of the number of children in the families: one, two and three or more children. Tables B4 and B6 provide further information on the families with three or more children.

11. Respondents to the Census were required to state the incomes of all members of their households from among a number of income ranges. Included in the Census income columns were the weekly amounts of \$650.00 to \$799.00 per week, \$800.00 to \$999.00 per week and \$1,000.00 to \$1,249.00 per week. The Census question in respect of each person in the household was "What is the total of all income the person usually receives?". It stated that tax and various other payments were not to be deducted from this amount. 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. At the time of the Census the taxation payable on the NMW, then \$672.70 per week, was \$66.21 and at the C10 base trade-qualified wage rate, then \$783.30 per week, income tax was \$99.30; see the FWC's *Statistical Report*, 5 May 2017, Table 8.6. 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.
12. The comparison between the Census data and the estimated poverty lines, therefore, needs to take into account the fact that the Census required income data by reference to income ranges and that the Census recorded pre-tax, not disposable, incomes.
13. The poverty lines are based on the median equivalised disposable household income reported in the ABS publication *Household Income and Wealth, Australia, 2015-16*, cat. no. 6523.0. At December 2015 the median equivalised disposable household income for a single person was \$853.00 per week, with the 60% relative poverty line being \$511.80 (see Table A11 in Appendix A). Using the FWC's adjustment method, based on changes in Household Disposable Income published in the *Poverty Lines: Australia* newsletter, this figure should be increased by 1.3%; see *Poverty Lines Australia June*

Quarter 2017, Table 2. The estimated figure for June 2016 is \$518.45. For present purposes, the figure for August 2016 can be rounded to \$520.00 per week. Applying the equivalence scales used by the ABS, the 60% of median relative poverty line can be calculated for various kinds of households.

14. Table B1 sets out the estimated 60% of median poverty lines at the time of the Census, rounded to the nearest \$10.00, for the six family groups covered in the following calculations. Also included in the table is the highest income column in the Census returns that has been used in each calculation.

Table B1
Census Income Levels and Estimated Poverty Lines
August 2016
(\$ per week)

Family	60% Relative Poverty Line	Maximum income range in Census
Couple and one child	936.00	800.00 - 999.00
Couple and two children	1,092.00	1,000.00 - 1249.00
Couple and three or more children	1,248.00	1,000.00 - 1,249.00
Sole parent and one child	676.00	650.00 - 799.00
Sole parent and two children	832.00	800.00 - 999.00
Sole parent and three or more children	988.00	800.00 - 999.00

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

The work profiles of low income families

15. The Census records the labour force status of couples with dependent children. Tables B9 to B11 identify low income couple families by reference to income, labour force status and the number of dependent children. (Table B9 covers couples with one child, Table B10 covers couples with two children and Table B11 covers couples with three or more children.) These and similar tables regarding sole parent families exclude the Census returns where there was a nil or negative income recorded (0.5% in couple families and 2.0% in sole parent families) and where no or only partial income was

stated (13.0% in couple families and 11.2% in sole parent families).

16. Table B2 collates the data in respect of the labour force status of parents in low income couple parent families by reference to the number of dependent children.

Table B2
Census 2016
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	17793	22.4	35256	27.5	20470	26.0	73519	25.7
2. One part time and other not in labour force	13831	17.4	17767	13.8	11732	14.9	43330	15.1
3. One away from work and other not in labour	1806	2.3	2763	2.2	2032	2.6	6601	2.3
4. One unemployed and other not in labour	5345	6.7	5793	4.5	5462	6.9	16600	5.8
5. Both not in labour force	15807	19.9	15137	11.8	14742	18.7	45686	15.9
6. Both full time	2205	2.8	5166	4.0	2544	3.2	9915	3.5
7. One full time and other part time	5426	6.8	19392	15.1	9110	11.6	33928	11.8
8. Both part time	5105	6.4	9116	7.1	3894	5.0	18115	6.3
9. Both (employed and) away from work	340	0.4	683	0.5	349	0.4	1372	0.5
10. One away from work and other unemployed	442	0.6	508	0.4	277	0.4	1227	0.4
11. One part time and other away from work	708	0.9	1342	1.1	679	0.9	2729	1.0
12. One full time and other away from work	609	0.8	1501	1.2	711	0.9	2821	1.0
13. One full time and other unemployed	3698	4.7	6455	5.0	2427	3.1	12580	4.4
14. One part time and other unemployed	3869	4.9	4678	3.6	2343	3.0	10890	3.8
15. Both unemployed	1988	2.5	2186	1.7	1436	1.8	5610	2.0
16. Status of one or both not stated	531	0.7	607	0.5	502	0.6	1640	0.6
Totals	79503	100.0	128350	100.0	78710	100.0	286563	100.0

17. Table B3 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

produced in households.

Table B3
Census 2016
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	73519	73519		73519			
2. One part time and other not in labour force	43330		43330	43330			
3. One away from work and other not in labour force	6601			6601	6601		
4. One unemployed and other not in labour force	16600			16600	16600		
5. Both not in labour force	45686			91372			
6. Both full time	9915	19830					
7. One full time and other part time	33928	33928	33928				
8. Both part time	18115	36230					
9. Both (employed and) away from work	1372				2744		
10. One away from work and other unemployed	1227				1227	1227	
11. One part time and other away from work	2729		2729		2729		
12. One full time and other away from work	2821	2821			2821		
13. One full time and other unemployed	12580	12580				12580	
14. One part time and other unemployed	10890		10890			10890	
15. Both unemployed	5610					11220	
16. Status of one or both not stated	1640						3280
Totals	286563	178908	90877	231422	32722	35917	3280

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

18. Tables B2 and B3 show that the great majority of these low income couple parent families were engaged in some kind of employment. In the following figures we record the average across all three categories, with the figure for the families with two children recorded in brackets. Only in 15.9% (11.8%) of these households were both parents out of the labour force. As for the rest of the households:

- 25.7% (27.5%) had one parent employed full time and the other parent not in the labour force;
- 15.1% (13.8%) had one parent employed part time and the other parent not in the labour force;
- 8.1% (6.7%) had one parent unemployed or temporarily away from work and the other parent not in the labour force;
- 3.5% (4.0%) had both parents employed full time;
- 11.8% (15.1%) had one parent employed full time and the other employed part time;
- 6.3% (7.1%) had both parents employed part time; and
- 8.2% (8.6%) had one parent employed full time or part time with the second parent unemployed.

19. 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. It is the predominant group by a large margin among low income families. Single breadwinner families (where the parent is working full time or part time) are substantially more common than dual breadwinner family: 42.8% (and 41.3% in families with two children) compared to 21.6% (26.2% in families with two children); see Table B2, rows 1 and 2 rows 6 to 8). Of these two categories, 66.5% are single breadwinner families. A comparison between families where only one works full time and the other parent is out of the labour force (ie comparing rows 1 and 7) is mentioned in the previous paragraph: 25.7% (and 27.5% in two child families) have the second parent out of the labour force and 11.8% (and 15.1% in two child families) have the second parent in part time employment. If we exclude those families where both parents are out of the labour force, these figures are relatively higher.

20. The figures demonstrate single breadwinner families are by far the major category in the labour force profile of low income couple parent families, despite the inevitable economic pressure on the parents for both of them to be in employment. However, even with the extra income from the second parent working many families still find themselves living in or at the risk of poverty.

Children in or at risk of poverty: couple parent families

21. Table B4 is based on the data in Table B3, with some further details being supplied in respect of the couple parent families with three or more children from Table B7.
22. All of the families covered by Table B4 are low income families, who are described as being "in or at risk of poverty".

Table B4
Census 2016
Total number of children and adults in low income couple parent families
in or near poverty

	No. of families	Number of children	Total in or at risk of poverty
Couple and one child	79,503	79,503	238,509
Couple and two children	128,350	256,700	513,400
Couple and three children	53,530	160,590	267,650
Couple and four children	18,237	72,948	109,422
Couple and five children	4,614	23,070	32,298
Couple and six or more children	2,527	15,162	20,216
Total	286,761	557,973	1,181,495

The numbers of families with three or more children are from Table A1 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 A1 we find that at the time of the 2016 Census there were 4,271,077 dependent children in couple parent families, assuming again that the maximum number is six per family.

23. Taking into account the inclusion of income tax in the Census figures we can reasonably conclude that the 79,503 couple parent families with one child are living below the 60% poverty line. In regard to couple parent families with two children, the best fit from the census data has gross income at \$157.00 per week above that poverty line. Taking into account income tax, which would be considerable for a family with that income, it is likely that a small proportion of the 128,350 families are not under the 60% of median poverty line.
24. The Census has identified 78,710 couple parent families with three or more children. Couple parents with three or more children is a diverse cohort. The poverty line for the couple parent family with three children is \$1,248.00 per week (see Table B1), with an extra \$156.00 per week for each extra child. The maximum weekly Census figure that

we have used is \$1,249.00 per week. After taking income taxation into account, we can conclude that all of these families would be below the 60% relative poverty line, with the poverty gap increasing with each additional child.

25. Having regard to these matters, it is reasonable to conclude that any overestimate of poverty among couple parent families with two children is more than offset by the underestimate of families living below the poverty line with three or more children.
26. Table B4 identifies 1,181,495 people, including 557,973 dependent children, in couple parent families living in or at risk of poverty. After taking into account the families in which both parents are not in the labour force, we can identify just under a million people (993,637) who live in working families that are in or at risk of poverty. The working parents in these families are a large part of Australia's working poor. By contemporary standards, these workers and their families are deprived of a decent standard of living.
27. This material demonstrates that, for many low paid workers and their families, full time employment; and even full time employment supplemented by part time employment, is not a pathway out of poverty and into a decent standard of living.

Sole parent families: work patterns and poverty

28. Table B5 presents data from the 2016 Census regarding the employment status of parents in sole parent low income families. The figures are drawn from Tables B12, B13 and B14. The basis of the selection of the numbers of low paid sole parent families is set out in Table B2.
29. It can be seen from Table B5 that, after taking into account income tax, the cut-off points available from the Census may capture a significant number of sole parent families with one child or two children who have a disposable income in excess of the 60% of median poverty line. In regard to sole parents with three or more children the contrary appears: a significant number of those under the 60% of median line may not be counted with the cut-off point used. With these qualifications, Table B5 shows a general estimation of the number of dependent children and adults in low income sole parent families in or at risk of poverty by reference to family size. As we note later, there is some reason to doubt that the figures overestimate the number living in or at the risk of poverty.

Table B5**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	12438	9.6	13326	12.3	4011	7.1	29775	10.1
2. Employed, part time	40180	30.9	37045	34.3	13422	23.7	90647	30.8
3. Employed, away from work	3341	2.6	2640	2.4	1124	2.0	7105	2.4
4. Unemployed	15926	12.3	10912	10.1	5690	10.0	32528	11.0
5. Not in labour force	57538	44.3	43805	40.5	32265	56.9	133608	45.4
6. Labour force status not stated	457	0.4	321	0.3	167	0.3	945	0.3
Totals	129880	100.0	108049	100.0	56679	100.0	294608	100.0

30. In the following figures we record the average across all three categories of sole parent families, with the figure for sole parents with two children recorded in brackets. Table B5 shows that in low income sole parent families:

- 10.1% (12.3%) of the parents were employed full time;
- 30.8% (34.3%) were employed part time;
- 2.4% (2.4%) were employed, but away from work;
- 45.4% (40.5%) were not in the labour market; and
- 11.0% (10.1%) were unemployed.

31. 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, 40.9% of sole parent families with dependent children, and 46.6% of sole parent families with two dependent children, were in employment. These parents are another large component of Australia's working poor.

32. The number of sole parent households in Table B5, 294,608, comprise 47.8% of all sole parent households recorded in Table B8 of Attachment, save for those where the family income is not sufficiently recorded or where there is a nil or negative income recorded. Table B8 also includes the number of sole parent families with various numbers of children, up to families with six or more children. The total number of dependent children in sole parent families (counting all those with six or more children as families

with six children) totalled 1,053,993 across all income groups.

33. Table B6 records the number of children living in or at risk of poverty.

Table B6
Total number of children and adults in low income sole parent families in or near poverty

	Number of families	Number of children	Total in or at risk of poverty
Parent and one child	129,880	129,880	259,760
Parent and two children	108,049	216,098	324,147
Parent and three children	40,029	120,087	160,116
Parent and four children	12,333	49,332	61,665
Parent and five children	3,330	16,650	19,980
Parent and six or more children	978	5,868	6,846
Total	294,599	537,915	832,514

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 A2 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. The numbers of families with three or more children are from Table A2 in Appendix A

34. Table B6 covers 51.0% of children in sole parent families: the bottom half of the income distribution of these families Table B6 shows that there were 537,915 children and 294,559 sole parents living in homes in or at risk of poverty.
35. These figures are very troubling. While they raise important issues beyond the scope of the FWC's responsibilities, they provide important information about the workers and their families which should be of very great concern to the FWC when it sets safety net wage rates for low paid work classifications.
36. 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 should, we submit, accept that their poverty will not be alleviated unless it decides to substantially increase the wage rates for low paid workers.

Table B7. Count of Dependent Children in Couple Parent Families by Total Family Income (weekly), 2016

	Negative and Nil income	\$1-\$149 (\$1-\$7,799)	\$150-\$299 (\$7,800-\$15,599)	\$300-\$399 (\$15,600-\$20,799)	\$400-\$499 (\$20,800-\$25,999)	\$500-\$649 (\$26,000-\$33,799)	\$650-\$799 (\$33,800-\$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-\$1,749 (\$78,000-\$90,999)	\$1,750-\$1,999 (\$91,000-\$103,999)	\$2,000 or more (\$104,000 or more)	Partial income stated and All incomes not stated	Total
Couple family with: No dependent children	1,824	592	1,327	940	1,730	3,383	7,803	12,984	25,976	27,646	27,919	27,505	243,494	98,739	481,862
Couple family with: One dependent child	4,521	1,962	3,338	2,272	8,479	11,634	20,571	31,220	49,008	57,197	55,237	56,656	404,189	97,479	803,763
Couple family with: Two dependent children	4,277	1,790	2,788	1,737	7,501	10,434	18,523	32,056	53,545	66,507	67,927	72,043	530,399	100,983	970,510
Couple family with: Three dependent children	1,659	662	1,124	700	3,546	4,629	7,744	13,164	21,781	25,847	25,551	26,292	175,875	39,710	348,284
Couple family with: Four dependent children	635	263	461	239	1,465	1,888	2,772	4,625	6,524	7,674	6,974	6,965	34,030	11,530	86,045
Couple family with: Five dependent children	169	62	96	89	395	526	716	1,160	1,570	1,752	1,469	1,341	5,465	2,650	17,460
Couple family with: Six or more dependent children	132	42	93	46	231	294	431	631	759	847	717	635	2,157	1,312	8,327
Total	13,217	5,373	9,227	6,023	23,347	32,788	58,560	95,840	159,163	187,470	185,794	191,437	1,395,609	352,403	2,716,251

Table B8. Count of Dependent Children in Sole Parent Families by Total Family Income (weekly), 2016

	Negative and Nil income	\$1-\$149 (\$1-\$7,799)	\$150-\$299 (\$7,800-\$15,599)	\$300-\$399 (\$15,600-\$20,799)	\$400-\$499 (\$20,800-\$25,999)	\$500-\$649 (\$26,000-\$33,799)	\$650-\$799 (\$33,800-\$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-\$1,749 (\$78,000-\$90,999)	\$1,750-\$1,999 (\$91,000-\$103,999)	\$2,000 or more (\$104,000 or more)	Partial income stated and All incomes not stated	Total
One parent family with: No dependent children	2,927	1,695	4,049	2,173	9,609	11,697	27,727	36,947	41,841	34,984	25,802	21,844	70,582	50,260	342,137
One parent family with: One dependent child	8,836	4,072	13,553	17,258	26,105	38,894	29,972	31,177	32,521	23,029	18,006	13,212	32,021	27,530	316,186
One parent family with: Two dependent children	5,209	2,115	7,027	10,292	14,425	28,953	24,043	21,199	21,028	14,441	10,987	7,888	17,896	18,493	203,996
One parent family with: Three dependent children	1,685	699	2,122	3,580	4,547	9,878	11,391	7,812	6,665	4,182	2,958	1,991	4,456	7,218	69,184
One parent family with: Four dependent children	525	193	599	967	1,340	2,635	3,594	3,005	1,930	1,037	684	368	935	2,420	20,232
One parent family with: Five dependent children	170	54	169	284	339	671	886	927	580	255	180	116	210	822	5,663
One parent family with: Six or more dependent children	72	21	75	73	101	177	246	285	320	137	103	61	117	382	2,170
Total	19,424	8,849	27,594	34,627	56,466	92,905	97,859	101,352	104,885	78,065	58,720	45,480	126,217	107,125	959,568

Table B9. Labour Force Status of Parents in Couple Parent Families by Total Family Income (weekly), One Dependent Child in Family, 2016

	Negative and Nil income	\$1-\$149 (\$1-\$7,799)	\$150-\$299 (\$7,800-\$15,599)	\$300-\$399 (\$15,600-\$20,799)	\$400-\$499 (\$20,800-\$25,999)	\$500-\$649 (\$26,000-\$33,799)	\$650-\$799 (\$33,800-\$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-\$1,749 (\$78,000-\$90,999)	\$2,000 or more (\$104,000 or more)	Partial income stated and All incomes not stated	Total
Couple family: Both employed, worked full-time	305	122	95	39	190	216	585	958	2,443	5,878	7,201	11,165	146,152	13,934
Couple family: One employed full-time, other part-time	155	98	126	51	243	503	1,175	3,230	10,121	17,960	19,693	20,603	133,245	13,500
Couple family: One employed full-time, other away from work	29	7	8	4	13	61	139	377	898	1,829	1,993	2,435	28,219	1,720
Couple family: One employed full-time, other unemployed	42	27	36	43	110	417	962	2,103	3,148	2,850	2,780	2,346	8,914	1,148
Couple family: One employed full-time, other not in the labour force	221	128	213	225	590	1,885	4,493	10,259	16,249	14,762	13,442	11,654	49,744	6,430
Couple family: One employed full-time, other labour force status not stated	3	0	4	3	7	9	29	50	54	57	62	55	277	19,554
Couple family: Both employed, worked part-time	58	62	118	35	331	609	1,511	2,439	4,135	4,336	2,976	2,676	11,515	2,150
Couple family: One employed part-time, other away from work	19	11	17	7	35	106	172	360	661	839	782	714	4,829	818
Couple family: One employed part-time, other unemployed	37	61	191	201	492	797	900	1,227	1,115	818	585	407	1,609	476
Couple family: One employed part-time, other not in the labour force	153	218	600	610	1,418	2,630	3,744	4,611	4,296	3,098	2,205	1,669	5,826	2,176
Couple family: One employed part-time, other labour force status not stated	3	3	0	3	14	14	28	27	30	16	20	12	77	12,988
Couple family: Both employed, away from work	50	22	10	5	35	39	81	148	303	497	450	555	4,744	1,345
Couple family: One away from work, other unemployed	10	9	19	20	54	73	118	149	171	174	115	122	496	154
Couple family: One away from work, other not in the labour force	81	42	77	54	168	304	460	701	922	745	644	548	2,428	1,127
Couple family: One away from work, other labour force status not stated	13	9	3	0	0	10	17	23	32	23	32	35	87	2,731
Couple family: Both unemployed	452	161	224	72	550	341	359	281	238	163	127	92	357	233
Couple family: One unemployed, other not in the labour force	728	263	514	269	1,171	1,070	1,120	938	770	517	306	244	1,056	502
Couple family: One unemployed, other labour force status not stated	0	4	0	0	7	9	6	3	4	6	0	4	12	1,804
Couple family: Both not in the labour force	2,138	709	1,065	615	3,012	2,520	4,620	3,266	3,345	2,546	1,795	1,285	4,421	3,407
Couple family: One not in the labour force, other labour force status not stated	14	8	13	12	20	26	35	39	35	22	22	8	35	9,560
Couple family: Both labour force status not stated	13	0	5	3	13	10	34	31	34	40	29	23	120	1,728
Total	4,524	1,964	3,338	2,271	8,473	11,649	20,588	31,220	49,004	57,176	55,259	56,652	404,163	97,485

Table B10. Labour Force Status of Parents in Couple Parent Families by Total Family Income (weekly), Two Dependent Children in Family, 2016

	Negative and Nil income	\$1-\$149 (\$1-\$7,799)	\$150-\$299 (\$7,800-\$15,599)	\$300-\$399 (\$15,600-\$20,799)	\$400-\$499 (\$20,800-\$25,999)	\$500-\$649 (\$26,000-\$33,799)	\$650-\$799 (\$33,800-\$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-\$1,749 (\$78,000-\$90,999)	\$1,750-\$1,999 (\$91,000-\$103,999)	\$2,000 or more (\$104,000 or more)	Partial income stated and All incomes not stated	Total
Couple family: Both employed, worked full-time	376	133	86	31	212	241	628	1,128	2,707	6,090	7,497	11,612	173,506	12,616	216,863
Couple family: One employed full-time, other part-time	292	138	220	42	340	692	1,507	4,126	12,327	23,246	27,357	30,704	219,446	14,369	334,806
Couple family: One employed full-time, other away from work	32	9	17	8	28	61	130	337	911	1,715	1,995	2,410	23,216	1,598	32,467
Couple family: One employed full-time, other unemployed	45	21	48	34	92	315	757	1,834	3,354	3,208	3,126	2,939	11,541	1,142	28,456
Couple family: One employed full-time, other not in the labour force	300	155	234	191	570	1,739	4,158	10,139	18,070	18,536	17,831	15,682	64,405	6,463	158,473
Couple family: One employed full-time, other labour force status not stated	3	0	0	0	4	3	25	51	56	82	68	72	327	19,272	19,963
Couple family: Both employed, worked part-time	56	67	116	37	301	570	1,357	2,364	4,304	4,675	3,455	3,188	14,009	1,808	36,307
Couple family: One employed part-time, other away from work	20	16	17	4	50	80	174	316	685	847	851	839	5,462	817	10,178
Couple family: One employed part-time, other unemployed	41	69	167	157	358	730	837	1,220	1,140	792	599	430	2,043	436	9,019
Couple family: One employed part-time, other not in the labour force	152	206	503	514	1,238	2,346	3,370	4,745	4,845	3,161	2,121	1,584	5,252	1,662	31,699
Couple family: One employed part-time, other labour force status not stated	0	0	7	5	7	7	15	20	23	33	19	14	81	17,875	18,106
Couple family: Both employed, away from work	64	17	13	6	31	38	100	145	333	500	520	538	4,032	1,403	7,740
Couple family: One away from work, other unemployed	7	14	18	8	33	69	76	135	155	151	124	90	454	153	1,487
Couple family: One away from work, other not in the labour force	90	44	69	46	157	293	404	768	982	927	754	699	2,564	1,034	8,831
Couple family: One away from work, other labour force status not stated	11	0	3	0	0	5	12	15	31	28	19	20	98	2,551	2,793
Couple family: Both unemployed	398	139	177	90	473	321	352	390	244	179	104	110	350	185	3,512
Couple family: One unemployed, other not in the labour force	635	238	363	187	1,039	901	1,172	1,180	713	507	360	283	938	478	8,994
Couple family: One unemployed, other labour force status not stated	0	5	0	0	4	3	0	5	10	0	7	3	8	2,068	2,113
Couple family: Both not in the labour force	1,722	512	707	367	2,536	1,975	3,396	3,075	2,569	1,752	1,080	791	2,519	2,136	25,137
Couple family: One not in the labour force, other labour force status not stated	18	16	14	5	12	22	31	32	40	34	20	17	37	11,396	11,694
Couple family: Both labour force status not stated	12	0	3	3	15	18	21	22	37	42	23	30	115	1,518	1,859
Total	4,274	1,799	2,782	1,735	7,500	10,429	18,522	32,047	53,536	66,505	67,930	72,055	530,403	100,980	970,497

Table B11. Labour Force Status of Parents in Couple Parent Families by Total Family Income (weekly), Three or more Dependent Children in Family, 2016

	Negative and Nil income	\$1-\$149 (\$1-\$7,799)	\$150-\$299 (\$7,800-\$15,599)	\$300-\$399 (\$15,600-\$20,799)	\$400-\$499 (\$20,800-\$25,999)	\$500-\$649 (\$26,000-\$33,799)	\$650-\$799 (\$33,800-\$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-\$1,749 (\$78,000-\$90,999)	\$1,750-\$1,999 (\$91,000-\$103,999)	\$2,000 or more (\$104,000 or more)	Partial income stated and All incomes not stated	Total
Couple family: Both employed, worked full-time	173	46	53	20	122	122	335	581	1,265	2,334	2,636	4,152	56,365	6,307	74,511
Couple family: One employed full-time, other part-time	121	79	104	41	178	371	822	2,017	5,498	9,745	11,414	13,103	92,169	8,367	144,029
Couple family: One employed full-time, other away from work	13	6	14	3	13	29	60	157	429	763	877	1,070	8,202	854	12,490
Couple family: One employed full-time, other unemployed	19	16	18	23	54	138	314	646	1,218	1,484	1,319	1,277	4,578	681	11,785
Couple family: One employed full-time, other not in the labour force	198	90	131	121	391	1,150	2,524	5,386	10,677	12,762	12,289	10,760	38,986	5,294	100,759
Couple family: One employed full-time, other labour force status not stated	0	0	0	0	4	5	13	26	43	45	41	42	167	6,410	6,796
Couple family: Both employed, worked part-time	22	24	49	9	146	261	553	1,049	1,803	1,985	1,506	1,304	5,534	1,185	15,430
Couple family: One employed part-time, other away from work	10	10	9	5	34	43	102	155	321	410	374	400	2,154	460	4,487
Couple family: One employed part-time, other unemployed	16	32	81	61	193	326	431	598	621	447	302	206	759	336	4,409
Couple family: One employed part-time, other not in the labour force	108	102	320	285	768	1,520	2,040	2,975	3,722	2,626	1,601	1,078	2,800	1,557	21,502
Couple family: One employed part-time, other labour force status not stated	0	0	3	5	4	18	21	18	18	16	20	14	27	7,632	7,796
Couple family: Both employed, away from work	23	7	7	9	8	26	50	84	158	234	225	218	1,403	735	3,187
Couple family: One away from work, other unemployed	6	9	10	6	18	27	53	68	86	81	81	63	186	126	820
Couple family: One away from work, other not in the labour force	75	29	62	45	108	192	294	575	727	715	600	471	1,560	1,073	6,526
Couple family: One away from work, other labour force status not stated	0	3	0	0	0	7	12	0	9	13	12	8	44	1,124	1,232
Couple family: Both unemployed	182	66	76	32	278	221	248	315	200	122	66	70	135	216	2,227
Couple family: One unemployed, other not in the labour force	421	138	279	141	921	759	917	1,418	889	542	307	235	602	596	8,165
Couple family: One unemployed, other labour force status not stated	0	0	3	0	0	4	0	8	3	0	6	0	4	967	995
Couple family: Both not in the labour force	1,184	357	547	267	2,362	2,084	2,815	3,446	2,864	1,746	1,003	741	1,757	2,484	23,657
Couple family: One not in the labour force, other labour force status not stated	17	8	5	4	24	17	26	30	53	24	16	12	37	7,686	7,959
Couple family: Both labour force status not stated	12	0	7	3	8	16	14	23	37	30	16	10	56	1,113	1,345
Total	2,600	1,022	1,778	1,080	5,634	7,336	11,644	19,575	30,641	36,124	34,711	35,234	217,525	55,203	460,107

Table B12. Labour Force Status of Parents in Sole Parent Families by Total Family Income (weekly), One Dependent Child in Family, 2016

	Negative and Nil income	\$1-\$149 (\$1-\$7,799)	\$150-\$299 (\$7,800-\$15,599)	\$300-\$399 (\$15,600-\$20,799)	\$400-\$499 (\$20,800-\$25,999)	\$500-\$649 (\$26,000-\$33,799)	\$650-\$799 (\$33,800-\$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-\$1,749 (\$78,000-\$90,999)	\$1,750-\$1,999 (\$91,000-\$103,999)	\$2,000 or more (\$104,000 or more)	Partial income stated and All incomes not stated	Total
One parent family: Employed, worked full-time	251	174	365	490	944	3,137	7,328	12,565	16,515	13,420	11,871	9,201	23,204	9,627	109,092
One parent family: Employed, worked part-time	253	751	2,397	3,703	6,523	14,034	12,772	11,114	8,868	5,409	3,607	2,215	4,415	5,744	81,805
One parent family: Employed, away from work	103	115	275	355	594	1,038	964	958	980	710	563	427	1,050	1,364	9,496
One parent family: Unemployed	1,402	738	2,943	2,902	3,915	3,919	1,509	1,190	1,029	622	376	253	611	1,485	22,894
One parent family: Not in the labour force	6,783	2,261	7,495	9,743	14,043	16,676	7,320	5,286	5,076	2,847	1,567	1,094	2,698	7,332	90,221
One parent family: Labour force status not stated	47	31	85	72	90	94	85	60	60	34	21	27	48	1,982	2,736
Total	8,839	4,070	13,560	17,265	26,109	38,898	29,978	31,173	32,528	23,042	18,005	13,217	32,026	27,534	316,244

Source of data: Australian Bureau of Statistics - Census of Population and Housing 2016 (TableBuilder LFSF by CDCF by FINF)

Table B13. Labour Force Status of Parents in Sole Parent Families by Total Family Income (weekly), Two Dependent Children in Family, 2016

	Negative and Nil income	\$1-\$149 (\$1-\$7,799)	\$150-\$299 (\$7,800-\$15,599)	\$300-\$399 (\$15,600-\$20,799)	\$400-\$499 (\$20,800-\$25,999)	\$500-\$649 (\$26,000-\$33,799)	\$650-\$799 (\$33,800-\$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-\$1,749 (\$78,000-\$90,999)	\$1,750-\$1,999 (\$91,000-\$103,999)	\$2,000 or more (\$104,000 or more)	Partial income stated and All incomes not stated	Total
One parent family: Employed, worked full-time	136	91	160	310	545	1,720	3,821	6,679	9,452	7,887	7,012	5,553	13,046	6,427	62,839
One parent family: Employed, worked part-time	170	436	1,545	2,425	4,067	9,455	9,859	9,258	7,323	4,005	2,501	1,413	2,536	4,426	59,419
One parent family: Employed, away from work	79	64	133	184	307	739	645	568	521	366	280	200	503	798	5,387
One parent family: Unemployed	896	327	1,303	1,488	1,939	3,438	1,606	811	629	382	201	117	338	1,081	14,556
One parent family: Not in the labour force	3,902	1,190	3,850	5,844	7,507	13,523	8,040	3,851	3,066	1,784	984	596	1,456	4,701	60,294
One parent family: Labour force status not stated	30	8	33	47	60	66	72	35	40	17	12	8	16	1,070	1,514
Total	5,213	2,116	7,024	10,298	14,425	28,941	24,043	21,202	21,031	14,441	10,990	7,887	17,895	18,503	204,009

Source of data: Australian Bureau of Statistics - Census of Population and Housing 2016 (TableBuilder LFSF by CDCF by FINF)

Table B14. Labour Force Status of Parents in Sole Parent Families by Total Family Income (weekly), Three Dependent Children in Family, 2016

	Negative and Nil income	\$1-\$149 (\$1-\$7,799)	\$150-\$299 (\$7,800-\$15,599)	\$300-\$399 (\$15,600-\$20,799)	\$400-\$499 (\$20,800-\$25,999)	\$500-\$649 (\$26,000-\$33,799)	\$650-\$799 (\$33,800-\$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-\$1,749 (\$78,000-\$90,999)	\$1,750-\$1,999 (\$91,000-\$103,999)	\$2,000 or more (\$104,000 or more)	Partial income stated and All incomes not stated	Total
One parent family: Employed, worked full-time	61	24	66	97	165	535	1,215	1,909	2,650	2,163	1,926	1,425	3,459	2,258	17,953
One parent family: Employed, worked part-time	63	166	588	774	1,365	3,123	3,730	3,676	3,247	1,702	977	511	928	2,231	23,081
One parent family: Employed, away from work	32	26	55	83	117	280	296	267	233	148	107	75	134	386	2,239
One parent family: Unemployed	304	148	421	574	669	1,543	1,526	809	433	259	112	78	159	805	7,840
One parent family: Not in the labour force	1,982	587	1,821	3,368	3,982	7,843	9,316	5,348	2,925	1,328	797	437	1,012	4,352	45,098
One parent family: Labour force status not stated	11	15	12	11	29	40	41	19	20	9	6	11	20	804	1,048
Total	2,453	966	2,963	4,907	6,327	13,364	16,124	12,028	9,508	5,609	3,925	2,537	5,712	10,836	97,259

Source of data: Australian Bureau of Statistics - Census of Population and Housing 2016 (TableBuilder LFSF by CDCF by FINF)

Note: the following tables do not include the numbers of families recording nil or negative income, nor do they include Partial income stated and all incomes not stated.

**Table B15
Working patterns of couple parent families with one child
August 2016**

	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	17793	22.4	105851	17.0	123644	17.6
2. One part time and other not in labour force	13831	17.4	17094	2.7	30925	4.4
3. One away from work and other not in labour force	1806	2.3	5287	0.8	7093	1.0
4. One unemployed and other not in labour force	5345	6.7	2893	0.5	8238	1.2
5. Both not in labour force	15807	19.9	13392	2.2	29199	4.2
6. Both full time	2205	2.8	172839	27.8	175044	24.9
7. One full time and other part time	5426	6.8	201622	32.4	207048	29.5
8. Both part time	5105	6.4	25638	4.1	30743	4.4
9. Both (employed and) away from work	340	0.4	6549	1.1	6889	1.0
10. One away from work and other unemployed	442	0.6	1078	0.2	1520	0.2
11. One part time and other away from work	708	0.9	7825	1.3	8533	1.2
12. One full time and other away from work	609	0.8	35374	5.7	35983	5.1
13. One full time and other unemployed	3698	4.7	20038	3.2	23736	3.4
14. One part time and other unemployed	3869	4.9	4534	0.7	8403	1.2
15. Both unemployed	1988	2.5	977	0.2	2965	0.4
16. Status of one or both not stated	531	0.7	1263	0.2	1794	0.3
Totals	79503	100.0	622254	100.0	701757	100.0

Table B16
Working patterns of couple parent families with two children
August 2016

	Total income less than \$1250 per week		Total income \$1250 per week or more		Total families	
	N	%	N	%	N	%
1. One full time and other not in labour force	35256	27.5	116454	15.8	151710	17.5
2. One part time and other not in labour force	17767	13.8	12118	1.6	29885	3.5
3. One away from work and other not in labour force	2763	2.2	4944	0.7	7707	0.9
4. One unemployed and other not in labour force	5793	4.5	2088	0.3	7881	0.9
5. Both not in labour force	15137	11.8	6142	0.8	21279	2.5
6. Both full time	5166	4.0	198705	27.0	203871	23.6
7. One full time and other part time	19392	15.1	300753	40.8	320145	37.0
8. Both part time	9116	7.1	25327	3.4	34443	4.0
9. Both (employed and) away from work	683	0.5	5590	0.8	6273	0.7
10. One away from work and other unemployed	508	0.4	819	0.1	1327	0.2
11. One part time and other away from work	1342	1.0	7999	1.1	9341	1.1
12. One full time and other away from work	1501	1.2	29336	4.0	30837	3.6
13. One full time and other unemployed	6455	5.0	20814	2.8	27269	3.2
14. One part time and other unemployed	4678	3.6	3864	0.5	8542	1.0
15. Both unemployed	2186	1.7	743	0.1	2929	0.3
16. Status of one or both not stated	607	0.5	1197	0.2	1804	0.2
Totals	128350	100.0	736893	100.0	865243	100.0

Table B17
Working patterns of couple parent families with three or more children
August 2016

	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	20470	26.0	74797	23.1	95267	23.7
2. One part time and other not in labour force	11732	14.9	8105	2.5	19837	4.9
3. One away from work and other not in labour force	2032	2.6	3346	1.0	5378	1.3
4. One unemployed and other not in labour force	5462	6.9	1686	0.5	7148	1.8
5. Both not in labour force	14742	18.7	5247	1.6	19989	5.0
6. Both full time	2544	3.2	65487	20.2	68031	16.9
7. One full time and other part time	9110	11.6	126431	39.1	135541	33.7
8. Both part time	3894	4.9	10329	3.2	14223	3.5
9. Both (employed and) away from work	349	0.4	2080	0.6	2429	0.6
10. One away from work and other unemployed	277	0.4	411	0.1	688	0.2
11. One part time and other away from work	679	0.9	3338	1.0	4017	1.0
12. One full time and other away from work	711	0.9	10912	3.4	11623	2.9
13. One full time and other unemployed	2427	3.1	8658	2.7	11085	2.8
14. One part time and other unemployed	2343	3.0	1714	0.5	4057	1.0
15. Both unemployed	1436	1.8	393	0.1	1829	0.5
16. Status of one or both not stated	502	0.6	660	0.2	1162	0.3
Totals	78710	100.0	323594	100.0	402304	100.0

Table B18
Working patterns of sole parent families with one child
August 2016

	Total income less than \$800 per week		Total income \$800 per week or more		Total families	
	N	%	N	%	N	%
1. Employed, full time	12438	9.6	86776	57.9	99214	35.4
2. Employed, part time	40180	30.9	35628	23.8	75808	27.1
3. Employed, away from work	3341	2.6	4688	3.1	8029	2.9
4. Unemployed	15926	12.3	4081	2.7	20007	7.1
5. Not in labour force	57538	44.3	18568	12.4	76106	27.2
6. Labour force status not stated	457	0.4	250	0.2	707	0.3
Totals	129880	100.0	149991	100.0	279871	100.0

Table B19
Working patterns of sole parent families with two children
August 2016

	Total income less than \$1000 per week		Total income \$1000 per week or more		Total families	
	N	%	N	%	N	%
1. Employed, full time	13326	12.3	42950	59.5	56276	31.2
2. Employed, part time	37045	34.3	17778	24.6	54823	30.4
3. Employed, away from work	2640	2.4	1870	2.6	4510	2.5
4. Unemployed	10912	10.1	1667	2.3	12579	7.0
5. Not in labour force	43805	40.5	7886	10.9	51691	28.7
6. Labour force status not stated	321	0.3	93	0.1	414	0.2
Totals	108049	100.0	72244	100.0	180293	100.0

Table B20
Working patterns of sole parent families with three or more children
August 2016

	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	4011	7.1	11623	42.6	15634	18.6
2. Employed, part time	13422	23.7	7365	27.0	20787	24.8
3. Employed, away from work	1124	2.0	697	2.6	1821	2.2
4. Unemployed	5690	10.0	1041	3.8	6731	8.0
5. Not in labour force	32265	56.9	6499	23.8	38764	46.2
6. Labour force status not stated	167	0.3	66	0.2	233	0.3
Totals	56679	100.0	27291	100.0	83970	100.0

Table B22
2016 Census
Labour Force Status of 15-19 year olds

<i>LFSP Labour Force Status</i>	<i>Employed, worked full-time</i>	<i>Employed, worked part-time</i>	<i>Employed, away from work</i>	<i>Unemployed, looking for full-time work</i>	<i>Unemployed, looking for part-time work</i>	<i>Not in the labour force</i>	<i>Not stated</i>	<i>Total</i>
<i>TYPP Type of Educational Institution Attending</i>								
Preschool	0	0	0	0	0	0	0	0
Infants/Primary - Government	0	0	0	0	0	0	0	0
Infants/Primary - Catholic	0	0	0	0	0	0	0	0
Infants/Primary - Other Non Government	0	0	0	0	0	0	0	0
Secondary - Government	565	109,401	8,250	1,458	31,372	286,874	556	438,476
Secondary - Catholic	173	54,982	4,473	258	11,829	106,088	106	177,917
Secondary - Other Non Government	181	32,415	2,753	202	8,121	106,260	93	150,029
Technical or Further Educational Institution (including TAFE Colleges)	23,747	20,115	2,230	2,675	7,225	23,481	317	79,785
University or other Tertiary Institution	3,803	96,558	6,690	978	24,775	73,860	128	206,800
Other	1,557	3,954	357	758	1,440	9,843	89	17,999
Not stated	1,081	5,529	1,026	596	1,499	26,010	66,475	102,226
Not applicable	74,689	72,107	8,304	31,336	9,682	49,213	3,034	248,366
<i>Total</i>	<i>105,797</i>	<i>395,068</i>	<i>34,089</i>	<i>38,260</i>	<i>95,954</i>	<i>681,633</i>	<i>70,797</i>	<i>1,421,597</i>

Appendix C

Statements on employment relations by the Australian Catholic Bishops Conference

1. Statement by the Australian Catholic Bishops Conference on the Work Choices legislation, 25 November 2005

2. Statement by the Australian Catholic Bishops Conference on the 120th anniversary of *Rerum Novarum*, May 2011

1. The Bishops' Statement of 25 November 2005

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

1. 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.
2. 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

3. 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.
4. 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)

5. 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

6. 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.
7. 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

8. 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?
9. 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

10. 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

11. 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

12. 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

13. 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

14. 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."

Statement by the Australian Catholic Bishops Conference, May 2011

Rerum Novarum: 120th Anniversary

Sunday 15 May 2011 will mark the 120th anniversary of Pope Leo XIII's Encyclical *Rerum Novarum*, which was the genesis of Catholic teaching on the spiritual, economic and social aspects of modern industrial societies. The Encyclical was very much a product of its time, and even in Australia it had its influence on our evolving industrial relations system.

In many places, events connected with the Industrial Revolution profoundly changed centuries-old societal structures, raising serious problems of justice and posing the first great social question - the labour question - prompted by the conflict between capital and labour. The Church felt the need to become involved and intervene in a new way: the *res novae* ("new things") brought about by these events represented a challenge to Church teaching and stirred special concern for millions of working people. A new discernment of the situation was needed, a discernment capable of finding appropriate solutions to unfamiliar and unexplored problems.

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" (Congregation for Catholic Education, *Guidelines for the Study and Teaching of the Church's Social Doctrine in the Formation of Priests*, Vatican Polyglot Press, Rome, 1988, page 24).

Rerum Novarum became the document inspiring Christian social engagement and the point of reference for this engagement. Since its appearance, the Church's social doctrine can be seen as a deeper analysis and expansion of the original nucleus of principles presented in *Rerum Novarum*.

At various times over the past 120 years, *Rerum Novarum* has been commemorated by further Encyclicals seeking to address the emergence of *new things* throughout the world. Many of the *new things* of the 21st century could not be imagined by Pope Leo XIII, but many of the evils of the nineteenth century are still with us, frequently in the factory systems of the developing world that supply the needs of wealthy nations.

Blessed John Paul II, through his Encyclicals *Laborem Exercens* (1981) and *Centesimus Annus* (1991), marking the 90th and 100th anniversary of *Rerum Novarum*, expounded and

developed Catholic teaching on the centrality of work to the human condition and the requirements of a system that promotes economic progress and the dignity of work.

The nature of work and the rights that flow from it continue to be a central part of modern Catholic social teaching. As much as ever, we affirm that the worker is entitled to a just wage for the work performed and that the wage should be *at least* sufficient to support the worker and the worker's dependents.

Catholic social teaching on minimum wages is summarised in the following passage from the Australian Catholic Bishops' 1991 Pastoral Letter, *A Century of Catholic Social Teaching*:

“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.”

The Church has long had a strong interest in the protection of workers and their families through a decent wage and employment protection. As the Bishops pointed out in the 1991 Pastoral Letter:

"The publishing and dissemination of *Rerum Novarum* in 1891 coincided with a period of serious social, political and industrial upheaval in Australia. At the time, the Archbishop of Sydney, Cardinal Moran, was seen as one of our country's outstanding defenders of the rights of workers, many of whom were suffering from the very kind of exploitation denounced by Leo XIII. A number of the lay Catholics, who contributed to the historical growth of those political and industrial organisations which were created to win a more just deal for working people in the following years and the early decades of the twentieth century, were influenced by *Rerum Novarum*."

In November 2005 the Bishops Conference issued a statement on various aspects of the then proposed *Work Choices* legislation. One of the matters that concerned the Bishops was the proposed wage-setting provisions. They said:

"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."

On Monday 16 May 2011, almost exactly 120 years after *Rerum Novarum*, Fair Work Australia will begin hearing final submissions in this year's Annual Wage Review. The Australian Catholic Council for Employment Relations has filed extensive submissions in support of low paid workers with family responsibilities. The Tribunal will make a decision

under provisions in the *Fair Work Act 2009* that are consistent with the objective stated in the 2005 Statement. However, it is only by the outcomes of the decisions that the success of the legislation can be measured.

We hope for outcomes that are truly consistent with the great vision of *Rerum Novarum*, a vision born of the Gospel and no less relevant to the situations we face now than it was to the situation addressed by Pope Leo XIII at the end of the nineteenth century.