



**Written Submission
to the
AUSTRALIAN INDUSTRIAL
RELATIONS COMMISSION
SAFETY NET REVIEW - 2003**

25 February 2003

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Introduction

1. The Australian Catholic Commission for Employment Relations (“ACCER”) is a body established by the Australian Catholic Bishops’ Conference. It provides the Conference and Catholic Church organisations with advice, research, and advocacy on matters affecting employment in the Australian workplace, within the context of the Catholic Church’s social teachings.
2. For some years ACCER has participated in Safety Net Review hearings in the Australian Industrial Relations Commission (“the AIRC”) with a view to, amongst other matters, giving emphasis to Catholic social teaching on employment relations. In doing so, its primary concern has been for the needs of low paid employees.
3. In past Safety Net Review hearings ACCER and other organisations have submitted that the Commission should:
 - (a) conduct an investigation or inquiry into the needs of the low paid and review the Federal Minimum Wage; and
 - (b) establish a benchmark against which the Federal Minimum Wage should be set.

ACCER again presses the need for an inquiry, through which an appropriate benchmark can be established. ACCER is concerned to ensure that the needs of the low paid are adequately protected. Under the current regime this is not happening. Under previous Safety Net Review decisions, the Federal Minimum Wage has been below the poverty line. ACCER proposes to seek leave to intervene in the hearing and to brief Counsel to appear and make further oral submissions on this matter and to urge the Commission to direct such investigation.

The ACTU Claim

4. This case arises out of the Living Wage Claim made by the Australian Council of Trade Unions (“the ACTU”) on behalf of its affiliates. The claim is for a \$24.60 per week increase in all award rates, with a commensurate increase in award allowances.

Catholic Social Teaching

5. Since the publication of the papal encyclical **Rerum Novarum** in 1891 the Catholic Church has consistently affirmed the dignity of labour and the right of the employee to earn a just wage. The payment for a just wage is not only important in maintaining the dignity of the individual person, but also in maintaining a just socio-economic system. Pope John Paul II, in **Laborem Exercens** stated:

“It should also be noted that the justice of a socio-economic system and, in each case, its just functioning, deserve in the final analysis to be evaluated in the way in which man’s work is properly remunerated in the system In every system, ... wages, that is to say remuneration for work, are still a practical means whereby the vast majority of people can have access to those goods which are intended for common use.... Hence, in every case, a just wage is the concrete means of verifying the justice of the whole socio-economic system and, in any case, of checking that it is functioning justly.” (Paragraph 19)

6. In 1993 the Australian Catholic Bishops’ Committee for Industrial Affairs published **Industrial Relations – The Guiding Principles**. It said the following on the nature of work:

“Work is a principal means by which human kind seek their personal fulfilment and make their contribution to the common good. Thus there is a natural priority of labour over capital. Simply expressed, work exists for the person, not the person for the work. It follows that human work cannot be treated as a resource or as a commodity to be traded in like any other commodity.... Every

family has the right to sufficient income through work. Workers have the right to just minimum wages and to just and safe working conditions.”

7. The Catholic Church’s concern for low paid employees manifests itself in a variety of economic situations. The plight of the working poor in advanced western economies confronts the Church and those who wish to address the human condition. The Labor Day Statement of September 3, 2001, published on behalf of the United States Conference of Catholic Bishops, addressed these issues in a way that has relevance to Australia. Entitled **The Dignity of Work and Workers: The Message of *Laborem Exercens***, it states:

“Across the United States, many low wage workers seeking meaningful employment and trying to achieve self-sufficiency find it difficult to meet their needs and those of their families. Some struggle to find decent and affordable housing, health care, or safe childcare. The restructuring of the welfare system to focus on work - bolstered by a strong economy and tight labor markets - has reduced the welfare rolls significantly. But enthusiasm for falling welfare numbers should be tempered by the reality of persistent poverty and wages too meager to provide for a family’s needs. Many may be leaving welfare; too few have left poverty....

In our own tradition, work is not a burden or punishment, but an expression of our dignity and creativity. Those who can work should work and by their labor meet their basic needs and those of their families. As a nation we must ensure that everyone who works full-time can earn enough to raise a family. The ongoing effort to raise the minimum wage, such as the bill currently in Congress, is a modest step toward that goal, but still insufficient. Even with this increase, a head of household who works full-time, year round at minimum wage would still live in poverty. As Americans, we can do better than this; raising the minimum wage is just a beginning, but it is the least we should do.”

The full text of the document is to be found at: www.nccbuscc.org/sdwp/laborday2001.htm

The Federal Minimum Wage

8. ACCER's major concern in these submissions is to address the level and operation of the Federal Minimum Wage.

9. The Federal Minimum Wage was introduced into Federal awards by the AIRC in 1997; see **Safety Net Review-Wages, April 1997** (1997) 71 IR 1, 59-60 ("the **SNR Case 1997**"). The amount of the Federal Minimum Wage was derived from the lowest classification rate in the **Metal Industry Award**, i.e. the C14 classification. Although the Federal Minimum Wage has been adjusted by successive decisions of the AIRC, the AIRC has not yet been persuaded to conduct an investigation and review in order to determine whether it is fixed at an appropriate level. Nor was the C14 rate derived from such an exercise. At the present time the Federal Minimum Wage is \$431.40 per week or \$11.35 per hour. If granted, the ACTU claim would increase the Federal Minimum Wage to \$456.00 per week or \$12.00 per hour.

10. The **SNR Case 1997** contains an extensive review of the operation of a number of provisions of the **Workplace Relations Act 1996** ("the Act"). These provisions were introduced into the Act in 1996 for the purpose of establishing fair "safety net" terms and conditions of employment and encouraging bargaining between employers and employees. In particular, section 3(d)(ii) provides that it is an object of the Act "to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment." Other relevant objects are also found in section 3 and are set out in section 88A. Requirements for the performance of the AIRC's award-making functions are set out in section 88B. The AIRC is required to have regard to "the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community", a range of economic factors and "the needs of the low paid".

11. One of the functions of the AIRC in fixing award rates of pay and other terms and conditions is to provide a safety net above which employers and employees are free to bargain. The AIRC has recognised that many employees do not have the ability to engage in this process. This extends to the situation of non-award employees in Victoria under Schedule 1A of the Act. Successive safety net reviews have recognised that the wages of these employees will only increase as a result of safety net decisions by the AIRC. Employees who are most likely to remain on safety net award rates are at the lower end of the award classification rates. In general, employees in low paid classifications will only obtain higher rates of pay through bargaining if they are union members and – especially - if they are associated with more highly paid employees who are able to exert some industrial strength.

12. ACCER recognises that the AIRC has given emphasis to lower paid employees, even at the cost of compressed relativities between the various classifications within the awards. A large part of the capacity of the economy to deliver wage increases has been directed towards those who are most in need. In safety net cases from 1997 the weekly Federal Minimum Wage has increased by \$10.00 (1997), \$14.00 (1998), \$12.00 (1999), \$15.00 (2000), \$13.00 (2001) and \$18.00 (2002).

13. It is open to the AIRC to increase the Federal Minimum Wage to a level decided upon following an appropriate inquiry. There is no question about the AIRC's power. In the **Safety Net Review – Wages May 2001** the AIRC observed:

“Although it would be open to the Commission to award an increase only to those persons employed on the federal minimum wage or only to those employed at or below the level of the C10 classification in the Metal Industry Award we are convinced it would be unfair to limit the increase in that way because of the effect on employees at the higher levels.” (Paragraph [140]).

14. ACCER accepts that fairness (with its necessary elements of equity and justice) may require that the AIRC exercise its powers in different ways from time to time. However, it would be manifestly unfair to ignore the plight of the lowest of the low paid. A major priority must be the determination of a fair and just Federal Minimum Wage.
15. An increase in the Federal Minimum Wage in the absence of other award increases would have direct and indirect effects. Those employees on the Federal Minimum Wage and those on classification rates that are overtaken by the adjusted Federal Minimum Wage would have a direct benefit. There would also be an indirect effect resulting from increases given to some employees in workplaces where relativities are maintained. This would need to be taken into account in estimating the economic impact of an increase in the Federal Minimum Wage. This is a matter upon which the AIRC would be required to make a judgment.
16. The combination of collective bargaining based on a system of minimum terms and conditions of employment is consistent with Catholic social teaching. The freedom to join trade unions and to engage in collective action in order to secure better terms and conditions of employment has been fundamental in Catholic social teaching since **Rerum Novarum**. Further, there has been a recognition of the role of governments in providing an appropriate environment in which that freedom is to be exercised and those objectives pursued.
17. Inevitably, the attention of those concerned with the plight of low paid employees has been directed to those who are unable to secure better terms and conditions through the various forms of enterprise bargaining. Consequentially, there has been recognition that the minimum wage must be fixed at a level that is consistent with the dignity and respect that is to be accorded to employees and that meets their material needs. The Federal Minimum Wage is the lowest level safety net in regard to wages and requires the closest attention.

18. Since 1997 the AIRC has been presented with substantial evidence and submissions regarding the economic needs of employees and their families. Primarily this has been undertaken by the ACTU. However, the Australian Council of Social Services (“ACOSS”) and other welfare groups have made significant contributions. ACCER has found a great deal of common ground with these welfare groups in regard to their concern for low paid employees. From 1997 to 2001, ACOSS called for the establishment of an enquiry into the proper level for the minimum wage. In each year the request was rejected by the AIRC. ACCER has also asked for the establishment of an inquiry into what should be a fair and equitable level for the lowest minimum wage provided by the AIRC. It repeats that request in this Submission.

19. In its Safety Net Review Submission of February 2000, ACCER called for the AIRC to establish a set of criteria for determining the needs of the low paid and to provide a context in which the maintenance of minimum wages could be established. ACCER contended that the establishment of principles upon which adjustments to minimum wages could be made should replace the current adversarial approach. At the same time, ACOSS made a similar submission. ACCER maintains its position on this aspect and suggests that the work of the Low Pay Commission in the United Kingdom provides valuable guidance on such a task. The Low Pay Commission was established by the **National Minimum Wage Act 1998** to advise the Government about the National Minimum Wage. It is found at www.lowpay.gov.uk.

20. There has been a substantial amount of material put before the AIRC concerning the needs of low paid employees. In particular, that material can be found in the **SNR Case 1997** decision even though it did not have any impact on the level of the Federal Minimum Wage adopted at that time. Two aspects of that decision should be noted. First, the AIRC and a number of parties have been attracted to the “single person” test for the determination of wages. This is evident in both the majority decision in 1997 (71 IR at page 52) and in the minority decision (71 IR at page 135). In the former, the

majority expressed the opinion that “it is not desirable for the Commission to identify any family unit as appropriate for a benchmark” (71 IR at page 52).

21. The second relevant aspect of the **SNR Case 1997** concerns the material presented to the AIRC regarding the establishment of an appropriate benchmark in respect of low paid employees. ACOSS, in particular, advanced material on this aspect. The majority found that the adoption of a benchmark approach was not practical at that time (71 IR at pages 52-3). Vice-President Ross, however, was prepared to accept material presented about the “consensual poverty line” and that employees in receipt of less than that rate were low paid. The consensual poverty line in 1997 was \$530 per week (71 IR at pages 135-6).

22. The AIRC has not ruled out a reconsideration of this matter. The following passage from the **Safety Net Review – April 1998** (1998) 79 IR 37, 76 demonstrates a preparedness to do so:

“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.”

23. ACCER believes that the present level of the Federal Minimum Wage is manifestly inadequate and that it must be reviewed as a matter of urgency. It proposes that it be done in accordance with the procedures set out below.

The Minimum Wage Standard

24. In its 1997 decision the AIRC referred to the approach adopted by the AIRC and its predecessors in considering the needs of the low paid in the context of prevailing living standards when fixing rates of pay in federal awards. In referring to the decision of Higgins J in **Ex parte HV McKay** (1907) 2 CAR 1 (“the **Harvester decision**”), the AIRC said:

“The first attempt at establishing a wage based upon needs, below which no worker should be expected to live, occurred when Higgins J, President of the Commonwealth Court of Conciliation and Arbitration, in 1907 said in the **Harvester decision** that a “fair and reasonable” wage for an unskilled labourer would be based on “the normal needs of the average employee, regarded as a human being living in a civilised community” [at p 3]. The rate determined was based on the households of unskilled labourers, after taking into account the household expenditure costs covering the “modest requirements of the workers’ household”. The wages required by a worker to live in a civilised community were described by Higgins J in a later decision as the “living wage” which ultimately became known as the “basic wage”.” (71 IR at page 41)

25. It should be added that Higgins J thought that the amount fixed as a reasonable weekly rate represented the necessary expenditure for “a labourer’s home of about five persons”.
26. The AIRC has recognised the impact of taxation and welfare benefits on low-income earners and their families. There is increasing debate in the community regarding the impact of these policies on people who move from unemployment to employment. The interaction of wages and governmental benefits is important and needs to be considered by the Commission when dealing with wage claims for the low paid. This is particularly so with regard to the provision of financial support for the dependants of wage earners through the operation of the taxation and welfare systems. The AIRC has concluded that

wages can only meet part of the needs of the employee. In the **SNR Case 1997** the majority stated:

“...the needs of the low paid award wage-earners, however, cannot be met solely by the Commission’s establishing and maintaining a safety net of fair minimum wages and conditions. There are many factors apart from wages that determine the living standards of such employees. They include private circumstances, the level of assistance provided by income support programmes, the taxation system and other government social initiatives.” (71 IR at page 56)

27. Various parties and the AIRC have indicated attraction to the argument that minimum wages should be fixed by reference to a single person. The adoption of the single person test would involve a significant departure from the principle established in the **Harvester decision**, a decision that underpinned decades of Federal wage adjustments. However, it is apparent that for many years there has been a drift away from the family-based test established in that case. This drift has been accompanied by increased reliance on governmental payments and benefits. Clearly, the combination has not been sufficient. These kinds of governmental initiatives are not only central to the future of wage fixing; they are also vital in the establishment of more effective policies to deal with unemployment.
28. If the AIRC were to formally adopt the single person criteria for the establishment of the Federal Minimum Wage it should only do so if it is satisfied that there are adequate mechanisms in place, by way of the taxation and welfare systems, that would guarantee the proper financial needs of the wage earner’s dependants. Moreover, unless and until governments make commitments to the continuation and further implementation of policies for the support of dependants, the AIRC should not abandon the principle that a minimum wage should take into account the needs of dependants.

29. Given the position of the Catholic Church on the need for wages to be sufficient to support the wage earner and his/her dependents, any support by the ACCER for the single person test for the purposes of wage fixation would only be conditional upon governments recognising that wage rates must be fixed on that basis and that they have an obligation to provide for the needs of dependent family members through the taxation and welfare systems.

ACCER's Proposals: Current and Future

30. ACCER believes that there is an urgent need to address the position of those low paid employees who do not receive fair and just wages. They are the first priority. ACCER also believes that the material put before the AIRC in recent years demonstrates that, notwithstanding the emphasis given by the AIRC to low paid employees, there is a considerable gap between the Federal Minimum Wage and the necessary and appropriate amount for the Federal Minimum Wage. Even by reference to the minimum needs of the single person, at present there is a substantial gap between the Federal Minimum Wage and the level required for a just minimum wage.
31. At present, and as an interim measure, ACCER supports an increase in the Federal Minimum Wage of \$24.60 per week or 65 cents per hour. This increase would mean that the Federal Minimum Wage would move to \$456.00 or \$12.00 per hour.
32. ACCER also requests the AIRC to establish an inquiry into the appropriate level for the Federal Minimum Wage.
33. ACCER makes the following submissions for the adjustment of the Federal Minimum Wage and addressing related issues:
 - (a) In the current case, the AIRC should increase the Federal Minimum Wage by \$24.60 per week or 65 cents per hour and increase other award rates of pay if, and to the extent that, it finds such increases are appropriate. In any adjustment of other award rates of pay the primary beneficiaries should be those at the lower paid levels of the award system. This is consistent with previous decisions where a tiered approach has been adopted by the AIRC when reviewing the award safety net.
 - (b) If the AIRC concludes in the current case that there is insufficient economic capacity to adjust the Federal Minimum Wage by \$24.60 per week, it should

increase only the Federal Minimum Wage and do so to the maximum extent possible consistent with relevant statutory requirements.

- (c) The AIRC should conduct a hearing for the purpose of inquiring into the appropriate level of the Federal Minimum Wage, with a view to the implementation of its findings in 2004. For example, this could be facilitated through the AIRC appointment of a member of the Commission to oversee the inquiry process under section 107 of the Act.
- (d) On the completion of the hearing into the Federal Minimum Wage, the AIRC should conduct a hearing into the relativities between the Federal Minimum Wage and the rates of pay in award classifications, including classifications overtaken by the adjustment in the Federal Minimum Wage, with a view to the implementation of its findings in or from 2005.

Conclusion

34. ACCER believes that there should be informed debate in Australia about minimum wages. It recognises that the AIRC is in a unique position to adjudicate in such a debate because of its statutory powers and obligations.

35. The AIRC should take a lead role because of its historical role in the resolution of industrial conflict and the resolution of competing claims for justice and equity in employment matters. ACCER sees no other institution better able to provide a forum for the ventilation and resolution of the employment issues that confront this nation. Although its powers are circumscribed by legislation, the exercise of those powers must take place in the context of the deliberations and decisions of others, especially governments.

36. ACCER believes that many individuals and organisations within the community are prepared to advance and debate matters which have the capacity to bring about fundamental changes in economic and social policies and laws that impinge on matters with which the AIRC must be concerned. A “whole of government” set of responses is required to address the pressing issues of unemployment and the position of low paid employees and to enhance the social and economic fabric of society.