

3. ACTU AND ACCER SUBMISSIONS

3.1 INTRODUCTION

101. Part 2 outlined the statutory confines the Commission must act within when it exercises its discretion to vary both pre-reform and transitional awards.
102. This Part addresses issues raised by the ACTU in respect of the 12 month drought relief deferral and by ACCER seeking to not give effect to the AFPC decision and to instead have a more than 2½ times higher increase awarded.

3.2 ONUS

103. As outlined in Part 2, a proper construction of the Act should lead to a conclusion that there is a strong presumption that the AIRC should give effect to decisions of the AFPC. This means two things.
- a. In the first order, the onus is on those representative parties and interveners arguing to not give effect (or whose positions would ultimately be of that character) to provide to the Commission with substantial reasons, to attempt to disturb the AFPC's reasons, conclusions and decisions.
 - b. Secondly, even if substantial reasons are provided, the Commission should exercise extreme caution and be reticent at not giving full effect to the AFPC's decision, as the Act mandates a presumption of consistency between outcomes. Even where a substantial case is argued, a strong presumption in favour of giving effect to the AFPC's decisions would need to be overturned.
104. A very high threshold must be met to rebut the presumption to giving effect to the AFPC's decisions, particularly considering the statutory considerations the AIRC must inform itself of when exercising its discretion to vary awards.

3.3 DROUGHT RELIEF OBJECTION

105. The ACTU seeks to flow-on the quantum awarded by the AFPC in its 2007 wage-setting decisions to 25 pre-reform and transitional awards. As indicated in Part 1 and 2, ACCI does not oppose the flow-on of the quantum awarded by

- the AFPC on this occasion and there is substantial commonality between the ACCI and ACTU positions regarding giving effect to the AFPC decision.
106. However, the ACTU does oppose and/or wants to limit the 12 month drought relief exemption, and in doing so is failing to support the full and proper flow on of the AFPC decision. The ACTU is in effect seeking to have the AFPC do something other than give effect to the 2007 AFPC decision.
107. As articulated in Part 2, the AIRC must have regard to the AFPC's 2007 Wage-Setting Decisions. This clearly includes Wage-Setting Decision 2/2007 which grants a 12 month deferral of the main Wage-Setting Decision 3/2007 for farm businesses most severely affected by drought and who are:
- a. In receipt of the Exceptional Circumstances Interest Rate Subsidy (ECIRS), and
 - b. Have employees work in an Exceptional Circumstances Declared Area.
108. The reasons for this 12 month deferral are set out in the AFPC's 2007 reasons for decision contained at pp.74-79 of **Attachment A**.
109. The AFPC's decision to apply drought relief for a number of respondent pastoral industry employers forms a material part of its decision and should, on this occasion, be followed by the AIRC in a consistent manner. It is not in ACCI's view severable as the ACTU would have this Full Bench conclude.
110. To the extent argued by the NFF, ACCI supports scope for the 12 month deferral of the 2007 increase where an employer is in receipt of the Exceptional Circumstances Interest Rate Subsidy and an employee works in an Exceptional Circumstances Declared Area. It is for the NFF to further detail to the Full Bench how this would operate in relation to particular awards of this Commission.
111. As a fundamental principle, an employer party to a transitional award, or subject to a pre-reform award, should be able to benefit from this deferral without any additional evidence or obligations beyond those determined by the AFPC.
- a. This is an important point of comity between constitutional corporation based employers and transitional employers.

- b. The AFPC's decision is not only that there be wages relief to accompany drought relief. It extends to applying this automatically and as of right to particular minimum wages, without drought affected employers having to meet additional tests.
 - c. This is a substantive decision of the AFPC. It would have been open to the AFPC to have applied some more restrictive or procedural approach, including those well known to this Commission and parties through previous approaches to situations of incapacity to pay safety net increases.
 - d. The AFPC did not adopt such an approach – and this was its decision which must now be given effect to. The decisions which must be considered are numbers 2 and 3 of 2007 – and not some mutation upon these which may have been dreamed up by the ACTU.
112. Constitutional corporations do not have to provide further evidence/proof/submissions to the AFPC: it applies as result of the AFPC's decision that varies specific federal and state pastoral industry pay scales. Imposing additional hurdles would create inconsistency.
113. ACCI supports the submissions of the NFF with respect to the flow-on of this material aspect of the 2007 AFPC Wages Review decisions and particularly the ability of employers to be exempted for a narrow period (ie. 12 months) by satisfying two criteria set out in A1 of Wage-Setting Decision 2/2007.

3.3.1 Allowances Issue

114. Furthermore, comity should be accorded in the interests of preventing an a wages and allowances inconsistency for constitutional corporations who may be exempted for 12 months from paying wages under a pastoral industry pay scale, but on the other hand, having to pay allowances contained in the applicable pre-reform award.
115. This would occur if the 12 month deferral does not apply for the same pre-reform awards or the AIRC places further restrictions on drought affected employers / requires additional actions from those above those required by the AFPC. This would be an absurd and inequitable situation.

3.3.2 Onus on ACTU

116. If a party proposes a different process or mechanism which would result in imposing additional obligations (whether they be administrative or otherwise) to obtain the same exemption that constitutional corporations receive, not only would this be inconsistent with the wage-setting decision of the AFPC, it would potentially undermine the principle, in relation for transitional awards, under cl.8(2)(c) of Schedule 6 that:

... the costs to transitional employers of wages and other monetary entitlements should not place them at a competitive disadvantage in relation to employers (within the meaning of subsection 6(1)) .

117. It also goes to the consideration that the AIRC must have regard to the *“the desirability of high levels of productivity, low inflation, creation of jobs and high levels of employment”* (s.511(2)(a), cl.8(2)(a) of Schedule 6).

118. Section 2, at p. 81 of the AFPC’s reasons provides the following:

The Commission has a clear understanding that not all areas in which agricultural businesses operate are drought affected. Further, within these areas not all agricultural businesses are severely financially affected. The Commission has carefully considered how to target its deferral so that only employers who have demonstrated the prospect of long-term viability and direct financial hardship resulting from the exceptional drought will be eligible for a deferral of the Commission’s Wage Setting Decision 3/2007.

In the Commission’s consideration, the financial viability of farm enterprises is critical to sustaining jobs in the rural sector into the future. While there is considerable variability in agricultural employment from state to state (for example, estimated changes in employment over 2006-07 range from a 12 per cent increase in Queensland to a 10 per cent decrease in Western Australia), combined with projections of minimal growth over the next five years the Commission believes there is scope to provide further assistance to maintain jobs during this difficult period.

The Commission emphasises that its decision only defers the increase granted in Wage Setting Decision 3/2007 and that within 12 months all eligible businesses will be required to pay the 2007 increase in addition to any further increases subsequently awarded by the Commission.

119. And further:

The Commission recognises that even minor cost increases for farm businesses in Exceptional Circumstances areas currently in receipt of drought assistance may increase financial strain on these businesses resulting in job losses. The Commission has determined that farm businesses in receipt of an ECIRS are the most severely affected by the drought and are most likely to suffer detriment from increases in labour costs at this time.

The Commission notes that the granting of a deferral does not preclude these individual businesses and employers from deciding to pay the 2007 minimum wage increase to their employees.

The Commission grants a deferral of Wage Setting Decision 3/2007 to specified Australian Pay and Classification Scales for employees of farm businesses located in an Exceptional Circumstances declared area and where the employer is in receipt of the Farm Business ECIRS.

Specified Australian Pay and Classification Scales are at Appendix B.

The deferral of the general wage increase will be for a maximum period of 12 months from 1 October 2007. If a farm business ceases to be in receipt of an ECIRS, the farm business will cease to be exempt from paying the 2007 general wage increase.

120. It is clear that the exemption of particular employers covered by certain pastoral pay scales is reasonable and there is nothing to suggest that the AFPC decision should be disturbed or not followed in full in these proceedings.
121. The AIRC should not accept in whole or in part the ACTU's submissions (or the AWU submissions in Annexure C of the ACTU's submissions) on a number of grounds.

3.3.3 ACTU Primary Position – No Evidence

122. On p.33 of its submission the ACTU states:

The decision by the AFPC to defer a wage increase to the lowest paid workers in the agricultural, horticultural and pastoral industries is in the view of the ACTU unjustified and motivated by factors other than those stated by the AFPC.

The deferral decision by the AFPC will inevitably result in considerable confusion and uncertainty regarding the rights and responsibilities apply to employers and employees. Given the secretive nature of the deliberations of the AFPC on this matter it is unclear if the practical implications of their decision to defer increases were considered fully or at all.

123. The ACTU's primary position is that the AIRC should not flow-on wage-setting decision 2/2007, despite arguing throughout their submission that it supports a consistent flow-on of the quantum to pre-reform and transitional awards, including a common operative date.
124. All the ACTU offers in support of this proposition is that the AFPC had some other hidden agenda or that it would result in confusion or uncertainty.
125. The ACTU even goes so far as to infer a conspiracy may have taken place (p.35):

The process of varying transitional awards involves the open and transparent submission of evidence and an opportunity for that evidence and submissions to be challenged. A very different process is followed by the AFPC.

126. Indeed, the fact that the AWU made submissions against the NFF proposal, indicates that procedural fairness and an open fair go to all was indeed accorded by the AFPC. The AFPC deals with the various submissions, including those of the ACTU, AWU, NFF and ACCI at pp.74-81 of **Attachment A** of its reasons for decision.
127. Section 23 of the Act requires the AFPC to consider a range of criteria when exercising its wage-setting functions and powers. There is no suggestion that that the AFPC did not give proper consideration to its statutory charter when exercising its powers. The fact is, the AFPC considered the material before it within the confines of its own statutory charter, made its decision accordingly and issued reasons for that decision. The fact that the ACTU or any other union does not agree with those conclusions, does provide a rationale to justify disturbing the decision.
128. It is helpful to recall that s.24 of the Act provides that the AFPC can undertake and commission research, and consult with any person, body or organisation.
129. To ACCI's knowledge, it appears that the 2007 AFPC Wages Review was no different to the preceding 2006 review , with the way and manner in which the AFPC asked for written submissions, engaged in consultations with a wide range of individuals and organisations and published reasons for its decision.
130. The AFPC own reasons for the granting the 12 month deferral indicates the extent to which it considered all submissions and evidence, stating (at p.80):

The Commission has assessed evidence relating to the economic impact of the drought on the agricultural sector. It has considered data relating to the economic impact of the drought on farm businesses, the potential impact of granting a deferral of any wage increase on the agricultural sector, information obtained from site visits to the declared Exceptional Circumstances areas of Wagga Wagga and Roma and the information and arguments advanced in submissions to the Commission's 2007 minimum wage review.

131. The ACTU makes accusations against an independent statutory body which cannot defend its integrity in these proceedings. This is opportunistic, without merit and unhelpful to the considerations that this Commission must take into account in this matter.

132. It is worth recalling that parties of all complexions have failed to secure their desired positions from this body over the years at various times, and whilst disappointed have shown appropriate caution and deference in their reactions. It would be prudent for all of us to maintain a similar caution, particularly in attributing motives, in relation to all bodies charged by our Parliament with the determination of employment entitlements.

3.3.4 Evidence of ECIRS

133. The ACTU's second proposition should also be rejected. The ACTU states that farm businesses granted the ECIRS should show evidence of their eligibility. At p.34 of the ACTU submissions:

The ACTU submits that in the event of a dispute the AIRC should be capable of readily investigating the eligibility of a farm business to defer the increase. The ACTU proposes that those supporting a deferral who represent affected respondents supply to the Commission a list of respondents who are eligible for and receiving the Exceptional Circumstances Interest Rate Subsidy (ECIS). The ACTU does not believe that it is acceptable that employees should take the word of their employer that wage adjustments will not apply to them. The onus on these matters rests with those seeking the relief and can only be met by those in possession of the relevant information. It is submitted that there are no known privacy or other legislative barriers to the supply and application of this information.

134. While it may be open for this Commission to not follow a decision of the AFPC, the proper construction of the Act and failure of the ACTU to provide substantial reasons does not justify a departure in any way or form from the deferral granted by the AFPC.

Legal Enforcement

135. It is a fact that employers have many legal obligations and should it be proven that a breach has occurred within the meaning of the Act, enforcement proceedings can be taken by an aggrieved party. Not only has this always been the case, but an employee can, without the help of a union, initiate their own inquiries with the Workplace Ombudsman for compliance and enforcement issues for both pre-reform awards and transitional awards (see cl.106 and 107 of Schedule 6).
136. If an employer did not pass on the 2007 increase to an employee in circumstances where the employer did not meet the criteria specified in the pay scales, this would, prima facie, be a breach of the pay scale and enforceable as

such. The ACTU cannot maintain that a weaker compliance system exists for pre-reform or transitional awards.

No Unique Circumstances

137. Finally, ACCI rejects the ACTU's contention that "unique circumstances" exist which would move the AIRC to either rejecting an equivalently drafted 12 month deferral or require further evidence of employers to prove their eligibility. The ACTU does not offer any substantial reasons which go towards this Commission's statutory considerations.

3.4 PRINCIPLES

138. The Full Bench in PR02006 considered the status of the Commission's general principle making powers, within the context of the *WorkChoices* amendments.
139. The Full Bench concluded that it did not appear to have the power to make principles in relation to safety net variations to pre-reform awards, and as far as transitional awards were concerned, it did have the power under cl.40 of Schedule 6 to establish principles, commenting:

Principles – Transitional Awards

[59] Subject to the question of operative date this decision will have general effect in relation to applications to vary wage rates and wage-related allowances in transitional awards based on the AFPC's October 2006 wage-setting decision. The powers in cl.40 of Schedule 6 to the WR Act to establish principles about varying transitional awards underpin our decision in that respect.

[60] The ACTU submitted that applications to vary transitional awards filed after the date of our decision should operate from the date on which the order is made, although it submitted that it was open to the Commission to award an earlier operative date. Almost without exception the employers objected to any retrospectivity. The Commonwealth submitted that any variation should operate from as close to 1 December 2006 as possible. We have decided that increases in minimum wages and allowances in transitional awards in accordance with this decision (other than the applications before this Full Bench) will operate from the date on which the order for variation is made.

Principles – Pre-reform Awards

[61] We note that there is no power to establish Full Bench principles for the variation of pre-reform awards where the variation is necessary to maintain the safety net. This may be because the legislation is already very prescriptive in relation to variations of that kind. Whatever the reason, it follows that this decision cannot have general effect in relation to applications to vary wage-related allowances in pre-reform awards based on the AFPC's October 2006 wage-setting decision. However, we have no doubt the conclusions we have reached will carry persuasive weight when similar applications come before the Commission.

140. The Full Bench indicated that the President would convene a conference with major participants in February 2007, given its comments at para [62] that the *“Statement of Principles would require review in light of the changes in the Commission’s powers and functions”* .
141. In it’s submission to last year’s AIRC W&A Review ACCI had this to say on the Commission’s principles:
- ...
- 4.1 ACCI supports the retention of the Commission’s statement of wage fixing principles, most recently issued as Attachment A to the 2005 Safety Net Review decision¹.
- 4.2 The principles provide an important source of continuity, clarity, and order across the period of transition between the pre and post *WorkChoices* legislation. They continue to be relevant to both the discharge of the Commission’s responsibilities, and how users approach the Commission seeking particular outcomes. Such guiding principles continue to offer scope to materially contribute to the Commission furthering its aims under both the objects of the *Workplace Relations Act 1996*, and Part 3 of the Act.
142. ACCI maintains that the principles are an important legacy and feature of the Commission and reserves our rights and the rights of our members to put before the Commission further submissions regarding the status and content of the principles as they apply to both pre-reform and transitional awards.

ACTU Contentions

143. The ACTU in its submissions on the operative date (at pp.25-32) argues in the first instance that the principles allow the Commission to grant retrospective orders in all matters arising from a flow-on AIRC determination.
144. Alternatively, the ACTU submits that the principles should be varied to allow for common dates of effect for increases in the FMW and pay scales set by the AFPC and adjustments in wages in transitional awards.
145. These two positions should be rejected by the Commission based on last year’s determination of PR002006 and the statutory constraints imposed upon the Commission.
146. It should be recalled that in the 2006 AIRC W&A Review, the Full Bench ruled that only the applications that were before it and that were lodged by 1

December 2006, should receive a retrospective date of effect. All other applications were to operate prospectively.

147. The principles have always operated subject to the provisions of the Act. This was the case pre-*WorkChoices* and remains so today.
148. If the Commission made a general application principle for transitional awards, it would result in a potential inconsistency between some pre-reform awards and transitional awards where a different date of effect is given, as the Full Bench ruled (at para [61] in PR002006) that it did not have the power to issue principles with respect to pre-reform awards.

Practicalities

149. In addition, if the ACTU's submissions are accepted, unions would be allowed to sit on their hands for an indefinite period of time before it lodged applications to vary awards, which may be 1 month, 6 months, or x months, all backdated to 1 October 2007.
150. This clearly does not facilitate certainty and would result in the Commission and Registry constantly generating orders of retrospective orders.
151. The ACTU must accept that although pay scales may be varied carte blanche by a decision of the AFPC, awards of the Commission cannot be so varied. This is a result of the Act and the constitutional limitations on the AIRC. It has nothing to do with employers not wanting to pass an increase onto transitional employees.
152. As pointed out elsewhere, the 2007 timetable also provides ample opportunity for ACTU affiliated unions to lodge award variation applications appropriately prior to 1 October.

Transitional Award Principles – Cannot Override Act

153. ACCI's submissions to the 2006 AIRC W&A Review considered the issue of retrospectivity within the pre and post-*WorkChoices* statutory framework. It appropriate to repeat this here, as the ACTU has raised similar arguments in their submissions to those advanced in last year's case.

154. For the sake of brevity, Part 2 of our 2006 AIRC W&A Review submissions appears at **Attachment C**. It amply rebuts the contentions advanced by the ACTU it's written submissions in this matter (at Part 12).
155. In addition, and with respect to transitional awards, cl.40(5) of Schedule 6 states that if principles are established under that clause (and we are not presuming they have been as per PR002006), then:
- ... they must be consistent with, and cannot be such as to override, a provision of this Act that relates to the variation of transitional awards.
156. To adopt the course that the ACTU proposes would be to contravene cl.40(5) as the proposed principle would override cl.66 of Schedule 6. In effect, the ACTU wants to re-write the *Workplace Relations Act 1996*.

Twilight Zone Argument

157. In its written submissions, the ACTU contends the AIRC should accept a common operative date in all instances because it is desirable "*particularly for employers that are in the twilight zone between a trading corporation and a non-trading corporation*" (p.31).
158. The ACTU raised this during last year's proceedings.
159. This is not a reason for granting a principle which would allow the Commission to grant retrospective orders in all cases and without a cut-off point.
160. Employers are not in a "*twilight zone*" – simply, they are either a constitutional corporation or they are not. There may be issues on the margins for certain sectors, such as local government, but there is certainly no twilight zone.
161. As ACCI pointed out last year – after 18 months of WorkChoices employers should be in a position to have accessed advice on their coverage by *WorkChoices*.

Construction of the Act

162. Finally, ACCI submits that on a proper construction of the Act, it must be presumed that Parliament contemplated this Commission would vary awards

as a result of a decision of the AFPC. This is made clear in Part 2 where we outline the emphasis placed in the Act on maintaining consistency.

163. The ACTU ignores this point and does not address the fact that Parliament had the opportunity to amend the prohibition on granting retrospective orders in passing the *WorkChoices* amendments and chose not to do so. It could have exempted the requirement for exceptional circumstances to apply in these circumstances (ie. where the AIRC varies awards to give effect to AFPC decisions), but chose not to.
164. The ACTU cannot claim that the very process contemplated by the Act of the AFPC issuing a decision and the AIRC giving consideration to grant a flow-on is somehow an exceptional circumstance for the entire 5 years that the transitional system is to operate. If this was the case, it would render cl.66 of Schedule 6 nugatory.
165. It is for the above reasons that the AIRC should not adopt the ACTU's submissions regarding a standard assumption of exceptionality nor the principle it seeks.

3.5 ACCER

3.5.1 Standing

166. ACCI did not object to the granting of leave for ACCER to appear in the directions hearing to this matter. This does not mean that ACCI cannot make submissions on the veracity and weight this Commission should place on ACCER's submissions as an intervener.
167. The ACTU, unions and employer representatives are in agreement on the quantum that the AIRC should flow-on to these awards. Where the key parties differ is on aspects of date of effect and drought relief.
168. Whilst ACCER has taken part in National Wage matters for some years, it stands in fundamentally different shoes to the other parties in this matter. The ACTU represents payees in their millions. ACCI and others represent payers in their hundreds of thousands, employing millions. Other parties such as the Commonwealth are responsible for the macro economy.

169. ACCER is different – whilst it represents employing entities, its primary interventions in these matters do not appear advanced from that perspective (hence the submission to more than double the AFPC increase). Its submissions should therefore be seen in such light and should not be able to carry such force as to outweigh the submissions of the major parties that represent actual employees and employers.

3.5.2 ACCI Position

170. The AIRC should not adopt the submissions in whole or in part of ACCER for the following reasons:

- a. ACCER seeks to re-visit the AFPC's 2007 Decision and re-examine the reasons for its decision. This is not consistent with the statutory considerations that the AIRC must consider.
- b. ACCER fundamentally misconstrues the role of the *Family Responsibilities Convention* under the Act, and as such, there is no ostensible error on part of the AFPC that the AIRC is required to redress in these proceedings.

171. If the AIRC accepts ACCER's submissions in that regard, ACCI would argue that it would, nonetheless be inconsistent to award anything other than an equivalent amount as awarded by the AFPC.

3.6 RE-OPENING AFPC REVIEW

172. Whilst the AIRC must exercise its own discretion as whether to grant a flow-on of the AFPC decision to awards and on what terms, it must exercise this discretion within the confines of the statutory criteria as outlined in Part 2.

173. As ACCI sought to illustrate, there is a strong presumption that this Commission will flow-on a decision of the AFPC in a manner which is not inconsistent.

3.6.1 Misconstruing Role of Conventions

174. ACCER argues that the AFPC did not have proper regard to the *Family Responsibilities Convention* under s.222 of the Act. It therefore requests this Commission not make the same apparent error when it considers this

Convention and directs that a higher quantum of \$27 apply across all award classification.

175. It's supplementary submission to the AFPC's 2006 Wages Review, ACCI outlined briefly the role of s.222 and we believe that the arguments made by ACCI there are relevant to the submissions ACCER is asking this Commission to adopt.
176. Clause 9(1)(d) and (e) of Schedule 6 and s.222(1)(e) of the Act existed in the pre-*WorkChoices* as former s.93A. They were therefore part of the AIRC's considerations during the National Wage Cases.
177. As stated in ACCI's 2006 AFPC Supplementary Submission (at p.34):

Therefore the AIRC was required to "take account" those various principles when deciding National Wage Cases. The decisions of the AIRC did not detail how it discharged the requirements in s.93. There was no compulsion for it to do so. Similarly, s.222(1)(c) and (d) requires the AFPC to "take account" those principles enunciated in the listed anti-discrimination legislation and Conventions. It is solely up to the AFPC to determine how it will do so in regard to its wage-setting functions. The fact that the AIRC did not explicitly deal with s.93 supports the notion that s.93 (and for that matter former s.93A) did not play a central or determinative role in wage fixing in the National Wage Cases.

The use of the phrase "take account of the principles embodied" does not connote the importation of the exact sections or provisions in those Acts or Conventions. Again, it is up to the AFPC to determine what those principles are and how it takes them into account.

178. Therefore, it is clear that just as it is for the AFPC to determine what those principles are and how it takes them into account; it is clearly up to this Commission in conjunction with its other statutory considerations to likewise do the same.

3.6.2 AFPC Considered Convention

179. To avoid doubt, the AFPC in its reasons for decision at p.103 state that it had proper regard to the range of obligations under s.222 of the Act, stating:

The Commission considers the low paid and recognises that vulnerable groups are over-represented among the low paid. The Commission has also had regard to the requirements of the federal anti-discrimination legislation including the Racial Discrimination Act 1975; the Sex Discrimination Act 1984; the Disability Discrimination Act 1992; the Age Discrimination Act 2004; and the ratified Family Responsibilities Convention. (Emphasis added).

3.6.3 AFPC Considered ACCER Submissions

180. There is no reasons to suggest that the AFPC did not consider a range of submissions from ACCER or any other person or organisation that wished to take part in the 2007 Wages Review. ACCER was an organisation that participated and provided the AFPC with a written submission.
181. Indeed, the AFPC in its reasons for decision at p.69 of **Attachment A** considered the very same issues which ACCER is asking this Commission to consider afresh.
182. However, ACCER has not raised any further substantial reasons for the AIRC to grant something different to what the AFPC has granted or what the other parties in these proceedings are asking.
183. The AIRC must not, in the absence of jurisdictional error on part of the AFPC or a fundamental change of circumstances:
- a. Consider whether to disturb the AFPC's findings, reasons or decisions unless substantial reasons are offered.
 - b. And even if the AIRC were to traverse the AFPC's decisions, the desire for consistency outweighs any omission or error on part of the AFPC or fundamental changes in circumstances.
184. If ACCER disagrees with this, it has the opportunity to raise this with the AFPC in the next review.
185. This is not the forum to re-open the 2007 AFPC Review and re-visit these matters. ACCI does not support ACCER's request that these proceedings be lengthened in order for ACCER to more fully inform this Commission (see ACCER Submissions p.18, para 43). This would delay the determination of these proceedings and for the reasons outlined above, there is no basis to do so. All points about comity, practicality, consent and co-operation will need to be re-visited.

3.6.4 Why \$27?

186. All other points aside, even if ACCER could progress its claim (which it cannot) where has its quantum come from? Precisely why would this bench be persuaded to award an increase more than 2½ times higher than that awarded by the AFPC following a substantial independent review? Where has this ambit claim come from – why would it be accepted?