



TRANSCRIPT OF PROCEEDINGS

Workplace Relations Act 1996

18962-1

**JUSTICE GIUDICE, PRESIDENT
VICE PRESIDENT WATSON
DEPUTY PRESIDENT HAMILTON
COMMISSIONER FOGGO
COMMISSIONER WHELAN**

**C2008/114 C2008/115 C2008/116 C2008/117 C2008/118 C2008/119 C2008/120
C2008/121 C2008/2627 C2008/2628 C2008/2629 C2008/2630 C2008/2631
C2008/2632 C2008/2636 C2008/2637 C2008/2638 C2008/2646 C2008/2660
C2008/2661 C2008/2662 C2008/2663 C2008/2664 C2008/2665**

**s.553(1) - Appl'n for variation of award (maintain min. safety net entitlements)
Application by Liquor, Hospitality and Miscellaneous Union
(C2008/114)**

**cl.29 Sch. 6 - Variation of transitional awards - general
s.553(1) - Appl'n for variation of award (maintain min. safety net entitlements)
s.553(1) - Appl'n for variation of award (maintain min. safety net entitlements)
cl.29 Sch. 6 - Variation of transitional awards - general
s.553(1) - Appl'n for variation of award (maintain min. safety net entitlements)
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s.553(1) - Appl'n for variation of award (maintain min. safety net entitlements)

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**Application by Liquor, Hospitality and Miscellaneous Union
(C2008/115)**

**Application by Liquor, Hospitality and Miscellaneous Union
(C2008/116)**

**Application by Liquor, Hospitality and Miscellaneous Union
(C2008/117)**

**Application by Liquor, Hospitality and Miscellaneous Union
(C2008/118)**

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(C2008/119)**

**Application by Liquor, Hospitality and Miscellaneous Union
(C2008/120)**

**Application by Liquor, Hospitality and Miscellaneous Union
(C2008/121)**

**Application by Australian Municipal, Administrative, Clerical and Services
Union
(C2008/2627)**

**Application by Australian Municipal, Administrative, Clerical and Services
Union
(C2008/2628)**

**Application by Australian Municipal, Administrative, Clerical and Services
Union
(C2008/2629)**

**Application by Australian Municipal, Administrative, Clerical and Services
Union
(C2008/2630)**

**Application by Australian Municipal, Administrative, Clerical and Services Union
(C2008/2631)**

**Application by Australian Municipal, Administrative, Clerical and Services Union
(C2008/2632)**

**Application by Construction, Forestry, Mining and Energy Union
(C2008/2636)**

**Application by Construction, Forestry, Mining and Energy Union
(C2008/2637)**

**Application by Finance Sector Union of Australia
(C2008/2638)**

**Application by Association of Professional Engineers, Scientists and Managers, Australia, The
(C2008/2646)**

**Application by The Australian Workers' Union
(C2008/2660)**

**Application by The Australian Workers' Union
(C2008/2661)**

**Application by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union
(C2008/2662)**

**Application by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union
(C2008/2663)**

**Application by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union
(C2008/2664)**

**Application by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union
(C2008/2665)**

MELBOURNE

10.02AM, THURSDAY, 14 AUGUST 2008

PN1

MR B LAWRENCE: If your Honour please, a change of appearance. Appearing with me, the Australian Catholic Council for Employment Relations, is FATHER J CADDY and MS S O'CONNOR. Father Caddy is the chairman of the Catholic Social Services Australia which is an agency of the Australian Catholic Bishops' Conference and Ms O'Connor is director of the Office of Employment Relations of the Australian Catholics Bishops' Conference. And I appear in my capacity as chairman of the Australian Catholic Council for Employment Relations.

PN2

JUSTICE GIUDICE: Thank you, Mr Lawrence. We'll start at your end, Mr Belchamber.

PN3

MR G BELCHAMBER: Thank you, your Honour. We would seek to formally tender our submission in this matter dated 6 August 2008.

PN4

JUSTICE GIUDICE: Yes, thanks Mr Belchamber.

EXHIBIT #ACTU2 SUBMISSIONS OF ACTU

PN5

MR BELCHAMBER: Thank you.

PN6

MR T COLE: Your Honour, just before Mr Belchamber gets underway, I'm sorry I was inclining to announce an appearance on behalf of the Minister. I appear with MS T SMITH, the minister of Employment Workplace Relations on behalf of the commonwealth, intervening in this matter. Thank you.

PN7

MS E WATT: I appear for the Timber Merchants Association. Also entering an appearance on behalf of the Tender Trade Industrial Association.

PN8

JUSTICE GIUDICE: I'm sorry, Ms Watt, where are you from?

PN9

MS WATT: The Timber Merchants Association Victoria.

PN10

JUSTICE GIUDICE: Thank you.

PN11

MR M MEAD: I appear on behalf of the Australian Industry and Engineering Employers' Association of South Australia.

PN12

MR D MAMMONE: I appear with MR C HARRIS continuing our appearances for ACCI and a number of respondents in this matter.

PN13

MR HENNINGS: I appear for the National Farmers' Federation seeking leave to appear for our member organisations respondent to the Horticultural Industry Award.

PN14

MR J HARGRAVE: I appear on behalf of the Printing Industries Association of Australia.

PN15

MR P CLARK: I appear on behalf of Victoria Hospitals Industrial Association.

PN16

MR SMITH: I appear on behalf of the Transport Workers' Union of Australia. There might be a change of appearance, your Honour.

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JUSTICE GIUDICE: I'm sorry, Mr Smith, on behalf of whom?

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MR SMITH: Transport Workers' Union of Australia.

PN19

JUSTICE GIUDICE: Thank you very much, yes. Is there any objections to any of those applications to intervene? I thin there might have been a few. No? Yes, Mr Belchamber.

PN20

MR BELCHAMBER: Your Honours, Commissioners, the third general wage decision of the Australian Fair Pay Commission, decision 2/2008 made on 16 June and announced on 8 July 2008, increased the federal minimum wage and other adult minimum wages in Australian pay and classification scales by 57 cents per hour, or \$21.66 per week operative from the first full pay period to comment on or after 1 October this year. The applications before this Commission seek variation of minimum wage rates in transitional awards to reflect the decision of the AFPC. The applications also seek to adjust wage related allowances and expense related allowances in transitional awards and pre-reform awards in accordance with the Commission's usual principals for the adjustment of allowances.

PN21

As the Commission noted in its decision in the Wages and Allowances Review 2007 the main statutory provisions governing the exercise of this Commission's powers to vary transitional awards and pre reform awards are clause 8 of schedule 6 to the Workplace Relations Act 1996 and sections 510 and 511 of the Act. With regard to those provisions we believe the material we have submitted to the Commission in ACTU2 supports the variation of the awards in accordance with the applications before the Commission. Those applications depart from the AFPC decision in that they seek to round to the nearest 10 cents the weekly equivalent of the AFPC decision, in this case to \$21.70 per week.

PN22

This approach is consistent with the decisions of this Commission in the Wages and Allowances Reviews of 2006 and 2007. The applications before the Commission seek commensurate increases in wage rates for juniors and trainees and in casual rates and peace rates. The applications also seek that the Industrial

Relations Commission increase the minimum payment under the supported wage system as provided in transitional awards to \$69. The 2008 decision of the Australian Fair Pay Commission notes that the deferment of the 2007 increase for exceptional circumstances employees, that's employees employed by farm businesses granted exceptional circumstances interest rate subsidy relief, ceases to have effect from 1 October 2008.

PN23

These employees covered by pay scales will receive the 2007 and 2008 increases on and from the first pay period after 1 October 2008. The ACTU requests that the Industrial Relations Commission give effect to this part of the Fair Pay Commission decision for employees covered by transitional awards. Save for the Catholic Commission for Employment Relations submission in relation to the level of the federal minimum wage, no party in written submissions filed by the Commission has opposed the quantum of increase, the rounding of the increase or the date of effect. Regarding the Commission's statement of principals the ACTU notes that principle 8A is met given the 12 month period since the 2007 increase operative date.

PN24

The ACTU requests the Commission to again weigh the need for an absorption clause and union commitment to absorption otherwise required by principal 8 consistent with the Full Bench decision of last year. On operative date consistent with principal 8 orders made in respect of applications to vary pre reform awards and transitional awards after the date sought of 1 October 2008 should generally have effect from the date on which the order is made. The ACTU submits that consistent with principal 10 of the Commission's statement of principals this is subject to the general proviso that where an applicant can satisfy the Commission that there are exceptional circumstances the Commission should be able to exercise its discretion to grant retrospectivity.

PN25

This is also consistent with the statutory provisions in subsection 572(2) and clause 66(2) of schedule 6 of the Act and with the Full Bench decision in PR002007. Anticipating the date of the Full Bench decision applicants will have approximately six weeks to file and serve applications and draft orders before 1 October 2008. The ACTU has kept unions informed of the progress in this matter to ensure applications seeking to flow the decision of this Full Bench are filed in a timely and orderly manner with a view to achieving an operative date of 1 October. If everything the applicant unions are required to do has been done in advance of 1 October we would be hopeful that there would not be any delay in achieving that operative date.

PN26

Finally the ACTU is seeking that applications to flow the Full Bench decision in this matter where made and served in an appropriate form and where there is no agreement or objection be dealt with by the AIRC panel system on the papers. If the Commission pleases that concludes our submissions.

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JUSTICE GIUDICE: Thanks, Mr Belchamber.

PN28

DEPUTY PRESIDENT HAMILTON: Mr Belchamber, if I could. Sorry to bring you to your feet again, sir. I've got one or two questions, only one of which is possibly hard, I hope. The Reserve Bank statement on monetary policy released on 11 August 2008 is of course not canvassed by anybody because it wasn't released at the time the submissions were drafted. Page 61 it seems to predict a softening in the outlook for the domestic economy as a weak GDP growth outcome. Does that in any way change the nature of your submissions?

PN29

MR BELCHAMBER: Well the short answer, Deputy President, is no it does not. The developments with respect to changes in monetary policy have been a long time coming and the Reserve Bank has signalled clearly its intention to have inflation return to the Reserve Bank target band over the medium term. It has expressed concerns about the pace of economic growth a year ago, earlier this year, and most recently has given clear indications that it believes the pace of economic growth is slowing in the domestic and international context. And that is the intention of the policy adjustments it's made over the past 12 months or so.

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There is, in our submission, no economic consequence of significance for inflation consequent on the granting of our claim in this matter.

PN31

DEPUTY PRESIDENT HAMILTON: Thanks. My last question if I could. Pages 46 and 47 of the July 2008 Fair Pay Commission decision, some attempt is made to deal with the issue of direct and indirect costs. It's somewhat uncertain in the way it approaches it. Does this mean that there really is no generally accepted or satisfactory way of, at present, of assessing the direct and indirect costs of any wage increase? In fact we're probably where we were some decade ago in the 1990s on those sorts of issues, differences of opinion

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MR BELCHAMBER: Thank you, Vice President. And I do remember those issues a decade or so ago.

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DEPUTY PRESIDENT HAMILTON: Yes.

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MR BELCHAMBER: I think it is the case that there is no agreed scientific formula for reckoning with any precision the indirect costs in particular associated with any administered wage rise. There are a range of estimates and they depend on different assumptions about flow on and other effects. I think it's generally agreed in principle that there can be indirect effects. Our submission is that the indirect effects, the direct and indirect effects, associated with the increases sought here are negligible.

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DEPUTY PRESIDENT HAMILTON: Thanks.

PN36

MR BELCHAMBER: If the Commission pleases.

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JUSTICE GIUDICE: Mr Belchamber. Yes, Mr Lawrence.

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MR LAWRENCE: It might be convenient if I go next, your Honour.

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JUSTICE GIUDICE: Yes.

PN40

MR LAWRENCE: First of all could I tender the submission by the Australian Catholic Council for Employment Relations dated 6 August 2008.

PN41

JUSTICE GIUDICE: Yes.

EXHIBIT #ACCER1 SUBMISSIONS OF ACCER

PN42

MR LAWRENCE: If your Honour pleases. If the Commission pleases, the particular part of this case that we're concerned about is that part of the case that deals with the neediest of working families. Those working families who are at the very needy end of the spectrum of working families. It's a matter that we have been particularly concerned about over a period of time and the Commission and certainly some members of the Commission as presently constituted would be aware of past cases in which we have participated, perhaps not starting but in particular in 2003 in the safety net review case where Mr Costigan and Mr O'Grady appeared on behalf of the ACCER to raise a number of issues in relation to what we said then was a manifestly inadequate federal minimum wage.

PN43

Manifestly inadequate to supply for the reasonable needs of low paid working families. So this submission is really a development of that and it's a development of some matters that have been put to the Fair Pay Commission over the last three years. And as the Commission would have seen from a reading of the submission and as I intend to develop today, the Fair Pay Commission's position on this very important issue of working families, low paid working families, has moved and it's moved quite decisively and in our submission has moved in a very worrying way.

PN44

We put to the Fair Pay Commission this year that there should be an extra amount granted to the federal minimum wage over and above the amount that would apply across the board for the classification rates. And we argued that the classification rates should be increased by 4.2 per cent, that is there should be a maintenance of real wages but there should be an extra amount of \$9.30 at the federal minimum wage level. We said to the Fair Pay Commission if it was minded to grant a money amount, then we would ask that there be an extra \$9.30 added to that money amount at the federal minimum wage level only. And I will explain later how we got to that \$9.30.

PN45

But we said that, consistent with what we've said in previous cases, that should be treated as the first step in a process that would have a close look at the needs of

low paid working families, their safety net needs, the safety net wage appropriate for those families and that that would require the undertaking of further research. And the Commission will be aware that particularly in the 2004 safety net review case there was some detailed discussion and submissions of course in relation to the ascertainment of the needs of working families and low paid workers generally. There was material from the Social Policy Research Centre that was made available to the Commission and in the end the Commission didn't accept that material as the basis for providing a bench mark or even in more general guidance on the issue of the federal minimum wage rates of both the lower end of the spectrum.

PN46

And one of the reasons why it rejected that material is one of the main reasons that was put forward in opposition to it, was housing costs were unrealistically high. What happened in that particular piece of research was that the housing costs were estimated on the basis of the housing costs in the suburb of Hurstville, Sydney and there was some attempt in the material which was actually tendered by the ACTU by Professor Saunders from the Social Policy Research Centre to explain that away and to indicate that you could still use the material and deal with the housing costs in a certain way. It still would make it useful. And perhaps it's ironical that our major attack here on what the Fair Pay Commission has done this year is on the question of housing costs.

PN47

So we make it clear at the outset that we're only concerned about the federal minimum wage, not about the other rates of pay. And we propose that the increase in the federal minimum wage in the transitional awards under schedule 6 of the Act move to \$552.70 for the week. Now, that is \$8.90 more than decided by the Fair Pay Commission after some rounding, not \$9.30 as we claimed. And that figure of \$552.70 is the minimum wage in New South Wales. Now, we've set out some reasons for why this Commission shouldn't follow the Fair Pay Commission decision in relation to the federal minimum wage and we've divided them into the standard appeal grounds knowing full well of course that this is not an appeal.

PN48

But it's useful to do it in that way because it does highlight our particular concerns about what the Fair Pay Commission did. And we say first of all that the Fair Pay Commission failed to properly consider and take into account housing costs for low paid workers and their dependents, but acted on estimates of housing costs of low paid workers that were not based on any or any proper evidence and in particular we refer to the fact that they use the figure, the weekly rental figure or the weekly housing cost figure, of \$158.74 for a family of four. We say that failed to take into account relevant material regarding housing costs, and that's really related to this whole issue of housing stress which was put to the Fair Pay Commission.

PN49

We say they failed to take into account the consequence that having regard to housing costs some federal minimum wage dependent workers and their families would be living below the poverty line that the AFPC used for the purposes of identifying the living costs of low paid workers and their families. So that's the

factual basis, the evidentiary basis, upon which we say this Commission shouldn't follow the Fair Pay Commission decision. We say in addition to that the Fair Pay Commission made errors of law and/or principal by deciding that it should set the federal minimum wage on the basis of the needs of a single person without dependents.

PN50

They found that a wage that provides a reasonable margin above the Henderson Poverty Line for a single person, which margin had found to be 25 per cent, should be the appropriate wage rate for a person earning the lowest adult full-time wage in the regulated market sector. I'll come back to that particular matter later. We say they failed to set a wage that would permit adequate support for workers and their dependents. We say that they set wages at a level, that is a single person level, that would require that the cost of supporting the families of low paid FMW dependent workers would pass to the commonwealth without any commitment from the commonwealth that it would do so.

PN51

We say the Fair Pay Commission adopted the policy of setting the federal minimum wage that was not supported by and was inconsistent with established principles of wage setting in Australia and inconsistent with the Minimum Wage Fixing Convention 1997. And we say the Fair Pay Commission failed to have proper regard to the anti-discrimination provisions of section 222 of the Act by doing two things - one, setting the federal minimum wage at a rate and for reasons that do not take account and are contrary to the principles of Family Responsibility Convention and secondly, by failing to ensure that its decision does not contain provision that discriminate because of or for reasons including family responsibilities.

PN52

So we say - and I'm at paragraph 6 of the submission - that the Commission should vary the safety net FMW in the transitional awards covered by schedule 6 on the basis of the living costs including housing costs of low paid workers and their families and with regard to the ability of low paid workers to support their dependents and without limiting that assessment to the needs of a single worker who does not have dependents. As I said, the figure that we are seeking is \$552.70. It would be a rate that the FMW, in our submission it should be the rate, rather than the figure of \$543.78 or if rounded \$543.80. And we ask that the Industrial Relations Commission does this and reserve with directions the question of any further adjustments to the federal minimum wage.

PN53

Now, as I indicated in the opening remarks the ACCER has argued that the federal minimum wage together with transfer payments is manifestly inadequate to provide an acceptable standard living for federal minimum wage dependent workers and their families. The Fair Pay Commission has now treated the federal minimum wage as an appropriate wage for a single person without responsibly, thereby confirming what ACCER has contended over the years. It doesn't give us any comfort though. We say this is a matter of major consequence, especially because government family assistance payments are not intended to and do not cover the extra cost of dependents in low paid working families.

PN54

Now, the Commission would be well aware there has been a debate over the years about the basis upon which minimum wages might be set, the lowest minimum wage might be said. And there are things people have argued that the minimum wage should be set by reference to the needs of the single person and it should be left to government to look after the extra needs of family members. That's a position taken by different people, different groups. The point we would make is that the Act as it stands now, by referring to a safety net for workers and so on, must necessarily involve the needs of dependents. But if we were to move, the legislation were to permit a tribunal to move to a single person test, then a precondition for the single person test would be the satisfaction on the part of the tribunal that the transfer payments are sufficient to support the needs of the dependents.

PN55

Now as I say, this is an issue that's agitated a number of people over a period of time and we have put it in various places that there should not be the adoption of a single person test even if permitted by the law as it stands unless and until that situation comes about. But you can say, the tribunal can say, that the needs or the reasonable needs of the dependents will be supplied by the commonwealth by way of transfer payments. And some people would argue that it would be a very good economic decision if there was a minimum rate that was set on the basis of the needs of the single person, but that's not a point that we're at. And we say that there needs to be a satisfaction on the part of the tribunal that the needs are being met before the single person test should be adopted.

PN56

Now, if the conditions were such that you could accept the single person test, then that would be a very fundamental change from the first wage fixing decision was made by a predecessor in this court, or perhaps - sorry - predecessor of the Commission, the court of conciliation and arbitration in Harvester which was of course a decision made under the excise legislation rather than the Conciliation and Arbitration Act. The concern there was to set a reasonable rate that would enable the support of dependents, that is the wage rate was not a single person rate, it was sufficient to support a family. And of course it carried with it the over compensation of a wage earner who didn't have those responsibilities, over compensation in a sense it provided for more than the needs of that single wage earner. But that was a price and a consequence that the community was prepared to - - -

PN57

JUSTICE GIUDICE: Well, it was to eliminate discrimination. The possibility of discrimination against wage earners with families.

PN58

MR LAWRENCE: Yes, that's right. So that they would be entitled to a reasonable living. And that's precisely, your Honour, the point that we come to today. That if you don't take it into account, if you don't take into account the needs of the dependents and if you adopt a policy or something akin to a policy that identifies a single person as the yard stick for criteria, then you do discriminate against the workers who have family responsibly.

PN59

DEPUTY PRESIDENT HAMILTON: Where abouts in the decision does the Fair Pay Commission adopt the single person test? There's page 51 where they refer to it, but on the previous page they also refer to families. Page 51, last paragraph. They do refer to the single person test.

PN60

MR LAWRENCE: It's not, it's actually page 54.

PN61

DEPUTY PRESIDENT HAMILTON: Sorry, 61 sorry. 61, my apologies.

PN62

MR LAWRENCE: Yes. I think there's a problem with the pagination in some of them.

PN63

JUSTICE GIUDICE: Yes, there is.

PN64

DEPUTY PRESIDENT HAMILTON: It's the paragraph before section 5.

PN65

MR LAWRENCE: Yes.

PN66

DEPUTY PRESIDENT HAMILTON: It refers to the single person test.

PN67

MR LAWRENCE: Yes. I've noticed when looking at the PDF version that the pagination was different to the hard copy. In the hard copy it is page 54. Yes, I'll come to that in a moment.

PN68

DEPUTY PRESIDENT HAMILTON: All right, sorry.

PN69

MR LAWRENCE: Because it's considered an important passage, but in my submission it would be better if I deal with the set up.

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DEPUTY PRESIDENT HAMILTON: Of course.

PN71

MR LAWRENCE: Because that needs to be seen in context.

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DEPUTY PRESIDENT HAMILTON: Thank you.

PN73

MR LAWRENCE: As you pointed out, they do deal with families prior to that.

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JUSTICE GIUDICE: Yes. Your references page numbers in your submission are to the hard copy, are they?

PN75

MR LAWRENCE: To the hard copy, yes.

PN76

JUSTICE GIUDICE: Is that the equivalent to a Word version on the web? Look, don't worry. I'm actually looking at a web version of it. I'm having a bit of trouble finding the references, but somebody has handed me a hard copy.

PN77

MR LAWRENCE: No. The Word version on the web has that concluding paragraph that we were just talking about at page 63.

PN78

JUSTICE GIUDICE: I see, yes.

PN79

MR LAWRENCE: Or at least in my print.

PN80

JUSTICE GIUDICE: Yes, that's okay. Somebody has handed me a hard copy so that problem has been resolved.

PN81

MR LAWRENCE: But in any event the critical paragraph is the last one of section 4 dealing with the safety net. We point out, and this is in paragraph 9, we make reference to the safety net review case 2004 and this followed the discussion about the Social Policy Research Centre material and the needs that should be taken into account and the debate about whether there should be a family wage or the needs of the dependents should be taken into account. The Commission may recall that, or at least the President may recall, that there were submissions from ACOSS, the Australian Council of Social Services, to the effect that there should be a single person test. Although when you looked at their submissions it was quite clear they weren't quite ready for that because they pointed out that the transfer payments were insufficient.

PN82

But as I understand their objective is to move towards a single person test with sufficient transfer payments to cover the needs of dependents. So the debate was there in 2004 in the context of this particular research, and the Commission said this:

PN83

Whilst a significant proportion of Australian families continue to rely on a single wage as their sole source of income, the needs of single income families will continue to be relevant in connection with the needs of the low paid.

PN84

Will continue to be relevant in connection with the needs of the low paid. Now of course, that was at I should say paragraph 275. The Commission wasn't saying that it would adopt a family test or a family benchmark. It didn't go so far as to adopt any particular way. It was simply saying that when looking at the setting of the federal minimum wage the needs of family members would be taken into account. And looking at the decision as a whole the Commission - and I'm not being critical in this - the Commission was keeping its options open on that, on a number of issues, because in those circumstances, in the circumstances of that case, there wasn't sufficient material or material that satisfied the Commission as to how it should deal with this issue.

PN85

We had argued it in 2003 and again in 2004 that there should be bench marks developed, not because they would be applied automatically, but because they would guide the Commission as to perhaps the range in which decisions might be made and better inform the Commission on these issues. So we say that the adoption of the Fair Pay Commission's decision in 2008 regarding the federal minimum wage would be contrary to this established position in these circumstances. The Commission should invite submissions from the commonwealth and other relevant parties on the legal, social and budgetary consequences and any decisions to set wages on the basis of the needs of the single person without family responsibilities.

PN86

We say legal because the matter that I referred to before, that is there's a question of whether or not you can adopt a policy consistent with the legislation to fix rates on the basis of the single person, social because it does have social implications. There are a number of issues. For example, one of the important things about the sense of responsibility that comes from working, the esteem that you get from working, is the knowledge that you have that what you earn helps to support your family in a regime where a state - or I should say a commonwealth in this particular case - supports the needs of a family then you reduce the capacity of the wage to fulfil that function.

PN87

Now, that's a view that can be expressed. It's a view that people differ on that. But there are social implications and of course there are budgetary implications. What there hasn't been, and we've made this point time and time again, there hasn't been any debate in this country, either in we say in a wage setting forum or elsewhere, on the balance between the public person, a wage packet, in the support of a family. And I know this is beyond the scope of this Commission's responsibility. Perhaps it will come up in the taxation review. But it's a very important issue and we have very different views at the moment about the balance between the two.

PN88

As I have said, we are open to the possibility that you might have a single person test on the basis that these other things can be, that these transfer payments can be achieved. But we point out that there are some social questions associated with that which would need to be considered by the appropriate authorities. If the Commission pleases, I won't go into the constitution and statutory framework dealing with the schedule 6 jurisdiction. The point of it is that, and it's at paragraph 15 of the submissions, that clause 8 of schedule 6 does not mandate the application of the AFPC decision in this 2008 review. And we are very keen in the previous paragraphs to point out the constitutionally protected independents that this Commission has when exercising this traditional jurisdiction under schedule 6.

PN89

Now, obviously the legislation has directed the Commission to take into account particular matters, have regard to particular matters and obviously consistency with the decision of the Fair Pay Commission was one that the legislature has made clear needs to be considered. But our submission is that that is just one of

the factors. The underlying obligation of the Commission is to ensure minimum safety net entitlements. In fact clause 8 is introduced with the words:

PN90

The Commission must ensure that minimum safety net entitlements are maintained for wages.

PN91

And that's the overriding obligation. Now, if the Commission comes to a point where it believes that there were some errors made and there were factors not taken into account by the Fair Pay Commission or taken into account by the Fair Pay Commission that affects the outcome of the matter, it should affect the way in which the Commission would approach this particular matter, then in our submission it would be duty bound to do so. That is to adopt another approach. Because after all, there is a statutory obligation on the Commission to fix the safety net and as we have set out in the subsequent paragraph, the safety net carries certain requirements, certain features of a safety net that are important.

PN92

At page 7 of the submission we set out the obligation on the Commission. Actually it's at the foot of page 6 over to page 7. The obligation on the Commission to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal points. This is the historical obligation that has been on the Commission and we do rely on that. But there's a more recent obligation on the Commission. This is the anti-discrimination considerations. And we have set out what clause 9(1) says about that and also the relevant parts of the Family Responsibilities Convention. And we say that to set a wage rate without regard to family responsibilities is discriminatory and under the Family Responsibilities Convention there needs to be consideration given to the needs of the family, the needs of workers, to raise and support a family.

PN93

That's right at the bottom of the page. Article 4 of the convention provides, and this is (b):

PN94

To take account of their needs -

PN95

That is the workers' needs:

PN96

- in terms and conditions of employment and social security.

PN97

Can I just give an illustration of how we put this in another context. If the Commission was determining or an employer was determining conditions of employment in relation to leave, rostering, time off work and so on and set those provisions without any regard to the fact that some workers have family responsibilities or set them on the basis that they would be standards appropriate for a single worker, then so setting the leave provisions or the rostering provisions there would be a breach of these provisions. Because they would have the effect, have the intention as well, but have the effect of impacting on the way in which people go about exercising their family responsibilities.

PN98

It makes no difference whether you're talking about setting a wage rate or setting leave conditions in an industrial instrument. The same considerations apply. So if you say we're going to set the wage rate by reason on the basis of a single person, that's just the same and saying the leave and rostering provisions be on the basis that people are single people, workers are single people without any family responsibilities. And if you don't take into account family responsibilities when setting a wage rate then you've done the same kind of thing as if saying as if you set the leave provisions without any regard to family responsibilities.

PN99

We say currently it can't be intended that wages are somehow immune from or separate from or untouched by these family responsibilities issues and the discrimination that can occur in treating workers without proper regard to their family responsibilities. I will go now to a brief reference to family wage. This is at the foot of - sorry. Before I go to that could I just point out in paragraph 18 I deal with a safety net matter. This was the issue that I touched on a short time ago. The safety net is a term that's not defined in the Act, but we submit it's one that is commonly understood. Wages safety net provides incomes that are sufficient to meet the basic needs of workers having regard to general living standards in the community and basic needs of workers must include the needs of their dependents.

PN100

And the wages safety net obviously has to take into account the tax paid by workers and government transfer paid to them and to their families. Now, we say in relation to Harvester, in making a very general comment about it, Harvester recognised the importance of setting a wage that was fair and reasonable and capable of supporting families. The wage that is fair and reasonable is more than a poverty wage and is one that rewards work with at least an appropriate minimum standard of living for workers and their families in the context of the living conditions generally prevailing in the community. I won't read the next paragraph, but there's what is really the Catholic basis, if I can put it that way, the Catholic basis for our involvement in these cases over recent years.

PN101

There's another Catholic basis too and that is the Catholic church in Australia is one of the largest employers in the country, employing over 100,000 people. And we're very conscious of that when we make these submissions. But we emphasise that there's a fundamental basis in Catholic social teaching in the social doctrine of the church that supports what we say. But we make it clear that we don't see this as a Catholic kind of thing or uniquely Catholic, it's something that's supported widely in the community, it's been supported historically in Australia, as Harvester evidences, and it's supported in, for example, the ILO's convention on minimum wage fixing where they say, the Bench said rather, that the minimum wages shall take into account the needs of workers and their families.

PN102

We go to paragraph 26 where we refer to the major economic and social changes that have impacted on the family, particularly recently where there's less reliance on a single wage. That comes about in two ways. One, more frequently - in fact much more frequently - both parents work often with one working part-time, and

the second reason for the less reliance on a single wage is that there have been increasing government transfer payments to families and it means that low income families receive a significant part of their incomes from the public purse. These changes do not affect the fundamental points of providing parents with a choice about how they care for children.

PN103

And we refer to a passage from the commonwealth's Commission of Inquiry into Poverty published in paper in 1975. This is the Henderson Poverty Inquiry, as some people call it, and it was a very critical point in the development of social policy in this country and not without relevance to the way in which wage fixing developed subsequently. And this particular passage we think is terribly important. It's still important. It's important now as it was then and we think it's a proper aspiration. The Commission said this about the extent of poverty among families:

PN104

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, ...(reads)...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.

PN105

Now, we make the comment that that passage was written in the context of a high proportion of stay at home mothers that was presently the case and they were still talking very much about mothers staying at home. We would probably use different jargon now. We would say whether the changes since that time in workforce participation by mothers at the result of free choice or economic pressure is a matter of debate, which we don't have to answer in our submission. We say the substantive point made in the passage remains true. Parents should have the ability to choose that one of them will stay at home and care for the children and not engage in employment.

PN106

An effective choice by parents as to how they will exercise their responsibilities requires a family wage. That is a wage which after allowing for income tax and government transfers is sufficient to support the family at the minimum acceptable standard of living without the need for the second parent to undertake paid employment. And we emphasise that's not gender specific. We quote from what we put to the Fair Pay Commission and we think it's important to stress this because the position that we take on the family wage could be unfairly characterised as gender specific. We're not saying that. The point we make, three points to the Fair Pay Commission:

PN107

One, parents should have the effective right to choose that one of them will stay out of the employed workforce in order to care for their children. A corollary of this principle is ...(reads)... training programs and other educational support to assist them to return to the workforce when they choose to do so.

PN108

Now, that's the position that we take on these matters. We say it's not gender specific, but it emphasises the proper exercise of family responsibilities and the achievement of an effective choice on the matter. As I said before, what was said in the poverty Commission we regard as still relevant today. Now, we have covered a little bit of the history of the Fair Pay Commission. We are conscious of the difficulties regurgitating history, but could I just make the point that in 2006 the Fair Pay Commission said:

PN109

The income support and family assistance safety net and its continued improvement over recent years allows people with family responsibilities to rely solely on a single wage to support their families.

PN110

Now, that's the objective that I've just been talking about. It's the objective that we perused. And if it was true, if it was correct, then it would be the achievement of what we have been seeking and other people have been seeking. But there was an error in the arithmetic that was used by the Fair Pay Commission. The conclusion was essentially based on a comparison that disposable incomes after taxes and transfer payments of nine kinds of household groups relevant with the relevant Henderson Poverty Lines, or HPLs, for those groups. The comparison in 2006 showed, for example, that the disposable income of a single bread winner family of four with two children in the eight to 12 age group, that is school aged children, where the bread winner was paid the federal minimum wage was 31 per cent above the Henderson Poverty Line.

PN111

It was the same percentage as that which applied to the single federal minimum wage worker. So this implied that the transfers received by the family equated to the extra needs of the dependents, that is they were both on 31 per cent above their respective Henderson Poverty Line. The simple average for the nine households in the group showed that they were 32 per cent above the HPL. And the Fair Pay Commission in that decision accepted that a safety net for the low paid should be fixed by reference to fairness which it's embodied the attributes of adequacy, equity and incentive. It's said within apparent approval that there was general agreement in the submissions put to it that minimum wages should, in combination with cash transfers, provided income well above poverty.

PN112

That is they were not saying that fairness required a poverty wage or something near poverty, they were saying well above poverty and because of the apparent identity or equation between the margin above poverty for the family of four and the single person, the question of whether you needed to apply a single person test or some other test was mute because the figures showed that they were on the same level so far as the Henderson Poverty Line would test it. And we make that point in paragraph 33 that they didn't adopt any household group as a reference point. But it was clear that the Fair Pay Commission regarded the margin of about 30 per cent above the Henderson Poverty Line as fair and appropriate and the fact that they awarded a \$27.36 per week increase demonstrates they didn't regard the margin at less than 30 per cent above poverty as appropriate.

PN113

JUSTICE GIUDICE: But Mr Lawrence, is it right to put so much weight on that particular consideration? Surely the decision was based on a range of considerations of which this was one. It seems to me your submission elevates the importance of the conclusion on this particular point to a perhaps more important role than it actually had in the decision. One can never tell exactly what's in the mind of decision makers, but looking at the decision they obviously had regard to a whole range of issues.

PN114

MR LAWRENCE: There are really two questions, your Honour. What the federal minimum wage should be and what the general increases should be across the board. Certainly in regard to whether the figures should have been 27, 36 or \$20.36 or some other figure in that year is an across the board figure, or at least for those up to \$700 a week. There would be a range of factors taken into account. Economic factors would obviously enter into that because that required under the Act to look at those matters.

PN115

But they are also required to look at the safety net for the individuals and that is good, that's why the federal minimum wage is separate to those other issues. You need to concentrate on the establishment of the safety net. It may be that in the end there may be circumstances in which a Commission might say a fair safety net would be X dollars, but there are just such bad economic conditions at the moment that it would not be appropriate to grant that amount. Then you take in the economic factors. But here they are focussing on the needs of the low paid and coming to this conclusion. They are not relying on the general economic conditions or factors that would apply more generally, they are looking at what the circumstances are at the bottom and that's why we submit it is fair and proper to look at how they deal with the safety net, putting a dollar value on the safety net.

PN116

We say that the Fair Pay Commission and this Commission has a statutory obligation to fix the safety net, and fixing a safety net involves ascertaining what the needs are and giving a dollar value to it and that's a clear step in the process. If I could go onto the 2007 minimum wages review. ACCER are sent to the Fair Pay Commission in 2007, the position of the family of four, that is two adults, two children was erroneous, that is there was an arithmetical error made. It is said that the New Start Allowance, which was in 2006, as the income of the non-working parent should not have been included because the stay at home parent is not entitled to it. At that stage the value of the New Start Allowance was \$107.79 per week.

PN117

The ACCER argued that the New Start Allowance is not relevant to the calculation of the disposal income because there was no entitlement to the payment and to have the entitlement the non breadwinner parent must be prepared to abandon his or her choice to stay at home to care for the children. The Commission rejected that argument, produced a table similar to the one the previous year, again included the New Start Allowance in the calculation of the disposal income of a family of four and stated that it was the basis upon which it

did that. We have set out at paragraph 33 a quote from that decision which concludes with this sentence:

PN118

The table indicates that for all family types the level of disposal income is well in excess of the relevant HPL.

PN119

In reference to the New Start Allowance in particular and the inclusion of the maximum amount of rental assistance, which ACCER had questioned, that the Fair Pay Commission said that:

PN120

The table assumes that any entitlement to income support is taken up. Rent assistance is also included since the HPL's include housing costs and it is likely that many low paid employees live in private rental accommodation, to the extent that individuals with similar characteristics are either ineligible for particular benefits or choose not to take up those entitlements, their disposable incomes will of course be lower.

PN121

The Fair Pay Commission added a conclusion that was in substance a reaffirmation of its 2006 decision that the federal minimum wage plus transfer payments would provide an income that would allow workers with family responsibilities to rely solely upon a single wage to support their families. They said that:

PN122

The Commission remains satisfied that the combination of minimum wages and available income transfers provide families with at least one full time wage earner on the standard FMW with incomes well above the HPL's.

PN123

ACCER's view on these two passages was that they failed to recognise that the only way in which this standard of living could be achieved and the minimum wage dependent family was by the second parent being entitled to a New Start Allowance. It is pointed out in that paragraph, paragraph 39, that if you excluded the New Start Allowance, the margin that that family had above the Henderson Poverty Line was 11.6 per cent, not 27.5, and could not be said that it was well above poverty or well in excess of the relevant Henderson Poverty Line.

PN124

So by the Fair Pay Commission's own test well above poverty and its preferred measure of living standards, that is the HPL's, the way it was set was inadequate for families to rely on a single federal minimum wage. The Commission will recall or at least Your Honour the President will that we raised some issues in relation to the 2007 decision by the Fair Pay Commission in the 2008 Wages and Allowances Review. The decision of the Commission last year in the Wages and Allowances Review includes the following sentence at paragraph 6:

PN125

ACCER submitted that the AFP decision is wrong, that we should not follow it and that we should instead award an increase in minimum award rates of \$27 per week.

PN126

At paragraph 8:

PN127

In our view it would not be appropriate to accept ACCER's submission and to substitute the amount of \$27 per week for the wage increases set by the AFPC.

PN128

The reasons for rejecting that are given in these paragraphs and one of the points that is made by the Commission in that decision is that the Fair Pay Commission would have looked at a variety of factors and this was the position of the federal minimum wage and people who might be dependent on the federal minimum wage was just one of the matters taken into account. But the argument that was rejected by the Commission last year was not the argument that ACCER advanced last year. Because contrary to what those sentences say, we didn't challenge all of the rates of pay, we didn't jumble everything together, and in fact in our written submissions of 8 August last year, paragraph 2 reads:

PN129

ACCER submits that it is appropriate to now flow on the increase of \$10.26 per week in the federal minimum wage granted by the Australian Fair Pay Commission in its wage setting decision. However the AIRC should go further and increase the FMW by \$27 per week inclusive of the \$10.26 per week granted by the AFPC for the reasons set out below.

PN130

So we were quite ad idem on the matter and I have read the transcript of last year's proceedings to see how this might have come about and I suppose all you can say is, and I have been around long enough to be able to say this, I think the cases have a life of their own and sometimes what might be construed from the discussion or the set of oral submissions might be read differently if read in the light of the written submissions. That is some time ago, I think looking back on it perhaps the content of the written submissions didn't come through sufficiently in the questions and answers from the Bench. But we say that the sort of concerns that are in the Commission's decision last year about a whole lot of factors being taken into account really fall away or to a large extent fall away when you look at the particular issues concerning the federal minimum wage and the safety net.

PN131

We calculated that at the end of 2007 that this family of four where there are two school aged children, the sole bread winner is dependent on the federal minimum wage and the New Start Allowance is not payable resulted in a family disposable income of \$754.75 per week and we submitted to the Fair Pay Commission that that couldn't be regarded as well above poverty, wouldn't allow the family to rely solely on a single wage and we submitted that the worker cannot support a family and educate children on this income, that was \$754.75 per week. We put it that there was a real question about the utility of the Henderson Poverty Line to measure costs and provide a guide to living standards and we had questions about the estimates of transfer payments.

PN132

The two particular matters that we put to the Fair Pay Commission this year which are very relevant to this case are these. First of all we said that the Henderson

Poverty Lines equivalence scales as a basis for calculating relative living standards between various income household units should be questioned, and we said that the level of costs incurred by households, in particular the housing costs that were included in the Henderson Poverty Lines and childcare costs that were not included were also relevant to take into account. We argue that the circumstances of the family where one parent stays at home and doesn't seek paid employment outside the home should be specifically identified in the Fair Pay Commission's calculations.

PN133

The central part of the Fair Pay Commission's decision in 2008 is really found in table 4.4 of the decision, this is the central part of their discussion on the safety net, the safety net that is provided by the federal minimum wage. We have reproduced that - - -

PN134

DEPUTY PRESIDENT HAMILTON: This is the table I referred to before.

PN135

MR LAWRENCE: Yes, it is Your Honour. We have reproduced the table with the addition of numbers for the rows so that we can see - if I can just highlight these matters. The single adult, no children has a disposable income on the federal minimum wage of \$467.70 which is 25 per cent above the Henderson Poverty Line. The Henderson Poverty Line is in a separate column. The single parent, one child is 40 per cent above. Single parent, two children is 30 per cent above. That is, according to this table, single parents having one or two children have a higher standard of living than a single person without dependents, that is for the same salary, federal minimum wage they have a higher standard of living.

PN136

This has really repeated the kind of information that was in the previous years, and in the previous year we said that can't be right, our experience tells us that the single parents have it very tough, and one of the requests that we made was for the Fair Pay Commission to commission research into the needs of families including single parents, because we just didn't accept what they were saying about the living costs and their standard of living. Then if you go down to row 6 we have the single earning couple, two children, this is the one that has been used previously with the New Start Allowance, and the Commission will see there it's 1.22 times the Henderson Poverty Line, 22 per cent above. I make the point this is as transitional household because if one parent is seeking employment these finances will only continue until such time as employment is achieved.

PN137

Then the next family is the single bread winner family, this is the one that we are particularly concerned about. Only 8 per cent above the Henderson Poverty Line, and then down to row 10 this is the dual earner couple and the Henderson Poverty Line figure is given: disposable income under 100 per cent FMW is \$852.66. The footnotes make it clear that what they have done there is assumed that the work is split two thirds, one third. That is one parent works two thirds of the week, another parent works one third of the week, both on a federal minimum wage and they look at the disposable income there, including of course transfer

payments. That figure is 10 per cent above the Henderson Poverty Line. So if they job share they're only 10 per cent above the Henderson Poverty Line.

PN138

If the second parent gets a half time job then their income will be 150 per cent of the FMW, so if the Commission looks at the row under 150 per cent FMW it appears that the income there will be \$968.79. That is one and a half FMW jobs yields \$968.79. Then if you are on that you are at 25 per cent above the Henderson Poverty Line. So the second parent working half time gets the family to the same standard of living as measured by the Henderson Poverty Line as the single person who is just on the federal minimum wage but they're still a long way behind the single parent, one child who is 40 per cent above and the single parent, two children 30 per cent above. They are the stand outs, those two, for single parents, according to this table. We make the point in there that - well perhaps I will come back to that point, I won't make it just yet but it is to do with comparisons between family units.

PN139

Could I, just to flesh out this matter, tender to the Commission the actual Henderson Poverty Line document that the Commission worked on. This is the December quarter 2007.

EXHIBIT #ACCR 2 - HENDERSON POVERTY LINE DOCUMENT

PN140

If the Commission pleases, this kind of document is produced every quarter and it updates the Henderson Poverty Lines. The methodology is explained on the first page. Could I take the Commission to table 1 and the Commission will see that the top half of the table deals with families in which the head of the family or the household is in the workforce. The bottom half deals with the position where the head is not in the workforce. There are three columns. The second column shows what the poverty line would be, including housing. The third column shows what the line would be excluding housing. So for the couple, plus two in December, the Henderson Poverty Line, 70268, which of course was a figure in total 4.4. But if you exclude housing it's 53394, the difference being \$158.74.

PN141

You can see the housing costs that are calculated for the others simply by doing the arithmetic. In the case of the single parent, plus one child the housing costs are \$134.49 a week and for the single parent, plus two children \$147.58 per week. Again the single person, the figure there for housing is \$124.34, that is the difference between the two columns. So that is the basic information, that is what the Fair Pay Commission has been looking at over the last couple of years. Just while we are on this document could I draw the Commission's attention to the last page, p.3 of the document. This compares the Henderson Poverty Line with incomes of adults who receive maximum welfare payments and have no other income as at December 2007.

PN142

The Commission will see that under the heading "Couple" there is a reference to pensioners, this is married or couple pensioners, and the last two columns indicate that their total income is \$498.80 per week for most pensions and the poverty line

for them is \$422.69. You do the calculations. The pensioners are 16.1 per cent above the Henderson Poverty Line, that is if you're on an Aged Pension or Aged Pension you are 16.1 per cent above the Henderson Poverty Line. You can do the same kind of calculation with regard to the single pensioner down the page and it shows that the total income is 321.55, poverty line 303.35 which is six per cent above the poverty line. The Commission would be well aware, I should imagine, that there has been a lot of debate recently about pensioner rates and particularly the single pensioner rate and there have been a number of signs that this issue would be addressed, but the point is the single pensioner rate is already six per cent above the poverty line and there seems to be what appears to be a terribly obvious case for something for an addition to that.

PN143

The 16.1 per cent has, in the case of the couple pensioner, problematic use as a yardstick for any discussion about what the figure should be in a family where there is a worker, because one has questions about whether or not the pension is a reward for past working or whether the needs of pensioners are really less than those of families who are raising children and who are working and should have a reward for working. But it does indicate that even in Australia the position of pensioners at 16.1 per cent above the Henderson Poverty Line is better than the family with two school age children dependent on one income. It's an important statistic and while it may not be the end of any argument or prove one point conclusively without further debate, it is a very significant figure and we draw attention to that.

PN144

That is the table 4.4 and all I want to say about it at the moment. Paragraph 45 has table 4.5 reproduced and this is where the 60 per cent median income poverty line is used. The Commission will see again that the single parents, one or two children is still way ahead of the others. Sorry, perhaps I shouldn't say way ahead because clearly the highest is single parent, one child. Single parent, two children is the next highest but only just above the single adult, no children. But what stands out is in row seven, this is the family without the New Start Allowance, seven per cent below this measure of poverty. This is a distributional kind of measure of poverty that's used in many places as a guide to how well the lowest paid are doing relative to the society as a whole and some people give preference to this as a measure, and if one wants to rely on that or give weight to it what stands out is that this family, the single income family, is certainly not well above poverty or dealt with in any special way because they are seven per cent below the poverty line.

PN145

We come now to the concluding paragraph, this is the concluding paragraph of the section. The Fair Pay Commission's conclusion to its consideration of the federal minimum wage safety net - and I emphasise safety net - and it's adoption of what we say is the single person test for the setting of the federal minimum wage appears after these tables. This is what they say:

PN146

Of the household types whose disposable incomes the Commission has modelled, a single person without children is the only one whose disposable income does not depend on income transfers. These wage earners have

disposable income that is 25 per cent above the relevant HPL and 21 per cent above a poverty line based on 60 per cent of median equivalent disposable income. In the Commission's view this is a reasonable margin above poverty for a person earning the lowest adult full time wage in the regulated labour market.

PN147

So this is the Fair Pay Commission declaring that what is the case by reference to the position of a single person is satisfactory or the benchmark for determining what should be the lowest adult full time rate in the regulated labour market. It is clear from this that less than 25 per cent above the Henderson Poverty Line would be regarded as less than reasonable, and it's the basis upon which the decision was made in relation to the federal minimum wage, why the Fair Pay Commission rejected the claim that we made that there should be an increase in the federal minimum wage. It is not the product of an assessment of a range of factors. That is, you can't defend this decision by saying that the Fair Pay Commission had reference to a range of matters, including economic matters and so on.

PN148

This is the test they adopted. They are quite clear about it, it comes at the end of a chapter dealing with these issues, and they say we are satisfied that 25 per cent is the appropriate. That is the crux of it and we say that what they have done is to declare that the federal minimum wage is appropriate in the case of a single person, at the level that it is at the moment and they have made it quite clear that that is the basis upon which they will make their future decisions. They say:

PN149

This is a reasonable margin above poverty for a person earning the lowest adult full time wage in the regulated labour market.

PN150

JUSTICE GIUDICE: Mr Lawrence, there is something I don't quite understand about the paragraph. The reference to income transfers, what is that supposed to signify? I'm assuming that the 60 per cent median income column in the table includes government transfers.

PN151

MR LAWRENCE: Yes.

PN152

JUSTICE GIUDICE: If that is the case what is the significance of that reference, do you know?

PN153

MR LAWRENCE: This is the first sentence of that quote?

PN154

JUSTICE GIUDICE: Yes.

PN155

MR LAWRENCE: I think all they're saying, Your Honour, is that in the case of the single person there are transfers, transfers don't enter into it and that's a fact. Taxation comes out of the pay packet of course, but there are not transfer payments.

PN156

DEPUTY PRESIDENT HAMILTON: Child support allowance, that sort of thing?

PN157

MR LAWRENCE: Sorry?

PN158

DEPUTY PRESIDENT HAMILTON: Child support allowance, that sort of thing?

PN159

MR LAWRENCE: Yes, there's none of that and that's an observation but it doesn't seem to qualify or set up or add to what comes later, it's simply stating the obvious, we have always known that - - -

PN160

JUSTICE GIUDICE: I wondered if it was stating something more than the obvious, but anyway.

PN161

MR LAWRENCE: In my submission, it doesn't qualify the position that they adopt.

PN162

JUSTICE GIUDICE: Yes.

PN163

MR LAWRENCE: The decision is clear and they are saying in that situation 25 per cent above the Henderson Poverty Line is the yardstick.

PN164

COMMISSIONER WHELAN: 25 per cent above the level comes out of table 4.4 doesn't it?

PN165

MR LAWRENCE: Yes, and the 21 per cent comes from 4.5.

PN166

DEPUTY PRESIDENT HAMILTON: Is another interpretation of those words that they have had regard to a variety of family types in table 4.4 and 4.5 and then in the final paragraph they make an observation about one aspect of it only rather than using that as the test for the federal minimum wage, is that one possible interpretation of that paragraph?

PN167

MR LAWRENCE: I would submit not, Your Honour, but in answer to or in elaboration on that, there are at least three ways in which you might fix a federal minimum wage. One would be the single person, the other would be say the benchmark family, just use the Henderson benchmark family as the benchmark. The other would be you would do it on an averaging basis or some kind of broad assessment where you look at the highs and the lows and you work out where you can draw a reasonable line through all those situations because after all, transfer payments give different patterns or can give different levels relative to the Henderson Poverty Line.

PN168

They don't say they're averaging and in my submission it is not an average process and there was no evidence as I am aware which would support the view that you could average, well this was justified on an averaging basis. If they had said we are going to look at all of the households and we'll weigh them and we'll have a weighted average and this is what we think is an appropriate figure. They didn't do that. They just went for the simple, single person test.

PN169

JUSTICE GIUDICE: They can have regard to all the families they have discussed without imposing some sort of formula as you suggest.

PN170

MR LAWRENCE: I'm sorry?

PN171

JUSTICE GIUDICE: They can have regard to all the different types of family without using some sort of rigid formula.

PN172

MR LAWRENCE: You could do that.

PN173

JUSTICE GIUDICE: Which is what they may have done.

PN174

MR LAWRENCE: In my submission they didn't do that, they were quite clear in what they did. But if the way in which they went about it was to make some broad assessment and draw a line through a number of figures, mid point or whatever, then what is the evidence to support it? If the Commission were being asked to do it here on what basis would you do it? If it's going to be done in any sensible way it needs to be a weighted average, there needs to be an attempt to weight it and even if that would be permissible, having regard to the obligation to ensure that the wage rate takes into account family responsibilities, just leave that apart for the moment. You need to have an evidentiary basis to do the averaging.

PN175

JUSTICE GIUDICE: But Mr Lawrence, if they were adopting a formula, as it were, wouldn't they have reflected that in the increase they determined?

PN176

MR LAWRENCE: They have adopted the single person test and they say well it's adequate at the moment. As a safety net the federal minimum wage is adequate. In fact that sounds pretty close to spot on. Then in those circumstances there is no reason to give special consideration to the amount of increase that would apply to the federal minimum wage and they just lump the federal minimum wage in with all the pay rates and they take all sorts of matters into consideration, economic, et cetera and they came up with \$21.66 a week. So having got to the point of being satisfied that it was an appropriate safety net wage, they simply lumped it in with the rest and dealt with it in general terms.

PN177

In paragraph 47 we make some comments about how there has been a movement from July 2006 to December 2007. These are significant changes that have taken place in the Henderson Poverty Line and the treatment of it over a period of time.

As we point out in paragraph 48 that really the figures of July 2006 might be regarded as appropriate for the figure of March 2006, but we see a decline, even the single adult, no children has dropped from 31 per cent over the Henderson Poverty Line to 25; the single earner couple, two children which was 13 per cent above the Henderson Poverty Line, we calculated that ourselves, has dropped to eight per cent above; and the dual earner couples with two children has gone from 20 per cent above to 10 per cent above.

PN178

We say the spread of margins in July 2006 provided the basis for the AFPC's conclusion that wages were well above poverty and that has gone. The simple average of the nine households in the 2006 decision was 1.32 - that is 32 per cent above - the simple average of the nine households in table 4.4 is 1.23. The decline of nine percentage point reflects the loss of more than one quarter of the margin that ...(reads)..., the latter uses the widely accepted equivalence scales used by the OECD. By comparison to the OECD scales, the Henderson Poverty Line scales underestimate the costs of families relative to the single person. ACCER argued in 2008 for the use of the OECD equivalence scales which are also used by the Australian Bureau of Statistics.

PN179

Then there is a reference there to just a matter that arose recently in New York City where they have got new poverty scales and they have moved away from the old poverty scales that were used. Then in paragraph 51:

PN180

In reference to the estimation that some families are nine per cent below the relative poverty line, the Fair Pay Commission says the relative poverty lines that represent 60 ...(reads)... when available income support entitlements are included. Results for single people with an without children are comfortably above both measures, with couples fairing less well by comparison, especially under the relative poverty line"

PN181

We will come back to the single parents. The quote continues:

PN182

The only family type with income below the relative poverty line when receiving the standard FMW is a single earner couple with two children that chooses to forego access to New Start Allowance.

PN183

We have emphasised those words:

PN184

Chooses to forego access to New Start Allowance. As we have stressed a single earner couple is not entitled to the benefit of the New Start Allowance if the second parent wishes to stay at home to care for the children and not seek paid employment. ...(reads)... As a result the family at row 7 would be 3.4 per cent below poverty, not eight per cent above as shown in table 4.4, and the family at row seven in receipt of the New Start Allowance -

PN185

Sorry, that should be row 6, not row 7:

PN186

- row six in receipt of the New Start Allowance would be nine per cent above poverty, not 22 per cent above poverty as shown in table 4.4.

PN187

The point is that if the Fair Pay Commission thought that the figure they were setting for the single person, or as the minimum rate, the lowest minimum rate, was appropriate and it would give the single person a standard of living 25 per cent above poverty, then you are entitled to say well what does this mean, using the ECD equivalent scales, not the HPL equivalent scales, of the family dependent upon the single income. And that shows that they are actually below poverty, 3.5 per cent below.

PN188

As we say, these are important matters, they show the position of families as table 4.4 would suggest. They demonstrate that the FMW is not a wage that allows people with family responsibilities to rely solely on a single wage to support third family.

PN189

Then we go on to row 10 of table 4.4, this is the one that deals with both parents working full time. They are shown to be only 10 per cent above their HPL if they job-share, but again if you apply the OECD rate they will also be in a very different position to that which is shown by table 4.4. Again in row 10 if the couple do work one and a half jobs between them at the federal minimum wage they get 25 per cent above the poverty line. Again using the HPL equivalent scales it will be less if you use the OECD equivalent scales.

PN190

This means that a couple working time and a half are only able to achieve the reasonable living standard identified by the Fair Pay Commission, that is 25 per cent margin above the poverty line and again using ...(reads)... earlier on the importance of families having an effective right to choose how they will exercise their family responsibilities. We say that these are legitimate and relevant considerations.

PN191

Now we turn to the position of single parent which I have already made some reference to:

PN192

The rate that the Fair Pay Commission set was not a rate of some kind of average across households. It did not say or it did not have the relevant statistics. It may, however, have been affected by the apparent living standards of ...(reads)... ACCER's submission at p.65 but did not deal with it. But the simple point which ACCER has made is that Henderson Poverty Lines do not include any amount for childcare.

PN193

Now we turn to the position of the benchmark single worker at row 21, this is 25 per cent margin:

PN194

The Fair Pay Commission's view that the single worker's 25 per cent margin above the Henderson Poverty Line was a reasonable rate used for setting the FMW did not involve any contemporary evidence as to that person's cost of living, other than the adjusted HPL's. The setting of a rate for the federal minimum wage must, in our submission, involve the need to make provision for the future needs of the worker ...(reads)... In the space of less than a working life the single person's margin over the poverty line has dropped from 61.7 per cent to 25 per cent. This is a very significant statistic with important social consequences, especially for the capacity of low paid workers to prepare for family life.

PN195

The point is that back in 1973 the lowest rate, on average, was \$60 a week, the Poverty Commission estimated that from the different male rates that applied around the country. \$60 a week was the minimum wage then. Henderson Poverty Line \$33.40. There was capacity to save to prepare for family life, to prepare for the future. There may be some argument that they were over-compensated, they didn't need to, in a needs based safety they didn't need that. We would reject that because it's just so important in the life of young workers that they have the capacity to save and to prepare for the future, otherwise they will live a hand to mouth existence if they can't gain skills and move away from the unskilled level of employment.

PN196

We say the social consequences of reducing the value of the wage, the minimum wage, are enormous and we just can't find any discussion of this. Where is, we ask rhetorically, where is the discussion about the impact upon family life that has been caused by this decline in the relative value of the minimum wage. It is important to look at what the Henderson Poverty Commission did. One of our criticisms of the Fair Pay Commission is that they use the Henderson Poverty Line and what the Poverty Commission did in a spasmodic way or in an incomplete way, and if you are going to use the Henderson Poverty Lines and draw some conclusion, particularly if you are going to use it for wage setting, you need to appreciate the origins of it and the purpose of the measure and the way in which it was used.

PN197

We draw attention to two passages of the Fair Pay Commission, one is in 2006, the passage that I have referred to before saying that:

PN198

The income support and family assistance safety net's continued improvement of the years allows people with family responsibilities to rely solely on a single wage to support their families.

PN199

Then the next one which I have again referred to concludes - I am not sure I have referred to that one. No, I haven't. I reads:

PN200

It is worth noting that the original Henderson Poverty benchmark for a couple family with one earner and two dependent children was equal to the combined

value of a then-basic wage and child endowment. In other words at that time a family with one earner on the basic wage had an income equal to the HPL. Continued improvements over many years in the extent and coverage of income transfers for working families have resulted in families now having disposable incomes of well in excess of relevant HPL's.

PN201

Then there is a reference to how the Poverty Inquiry was established. It was established by the McMahon government, extended by the Whitlam government and at page 65 we put in a quote which appears in every quarterly issue of the Poverty Lines and it reads in part:

PN202

The Poverty Lines are based on a benchmark income of 62.70 for the September quarter 1973 established by the Henderson Poverty Inquiry. The benchmark income was the disposable income required to support the basic needs for a family of two adults and two children.

PN203

I won't go any further in the quote. Then the next paragraph:

PN204

It should be emphasised that the HPL benchmark household was and remains the benchmark family of two adults and two children, with one or neither of the parents being employed. It is the reference point for each of the other nine types of households ...(reads)... provided by one of the parents in the benchmark family, childcare costs are not included. For example, the costs of working are the same for a single person as they are for a single parent with two children.

PN205

In the latest Henderson Poverty Lines, and this is for the March quarter 2008, they are \$71.51 each. So what Henderson says is that the costs of working are exactly the same for the single person, without the responsibility for providing childcare as they are for the single parent with the responsibility of providing childcare. We put this in our written submissions to the Fair Pay Commission, we said the Henderson Poverty Line doesn't take into account childcare and all these equivalent scales don't take into account childcare.

PN206

This is an important point, too, the Poverty Commission Henderson Poverty Line fixed the poverty lines at an austere low level, it is said that it did this so that:

PN207

It cannot seriously be argued that those below this austere line, who we describe as very poor are not so.

PN208

That's at page 13 of the first main report in April 1975. What we have done in the next paragraph is to look at some of the figures that were in that report. The Poverty Commission's calculations at August 1973 were this: single person, poverty line, minimum wage after tax and that equated to \$6 a week tax because they used a figure of \$60 per week. The couple were still above the poverty line and the couple with two children, the poverty line for them was \$62.70. The

minimum wage after tax was \$57 per week and child endowment was \$1.50. That was in the days of 50 cents for the first child and \$1 for the second child. The minimum wage after tax for the couple included rebates which were equalled at three pounds. So when we grew up, all of us baby boomers, our parents or father most likely would claim tax rebates for the dependent spouse and the children and would get a child endowment which was so minor it was sometimes the pocket money given to the children.

PN209

So that is the way it worked then, and what concerned the government, this is the McMahon government and the Whitlam government in setting up the Poverty Inquiry was to look at poverty in families. What it showed in August 1973 was that there was a poverty gap of \$4.20 or seven per cent for that family of four. As I said they received tax rebates of \$3 and child endowment \$1.50, that was equal to 7.7 per cent of disposable income. By comparison the proportion of tax benefits for transfer payments to the family in December 2007, which is shown at row 7 of table 4.4, was 38.3 per cent. So there has been an enormous change in the proportion coming from the public purse and a very different relationship between the wage packet and the public purse in providing household income.

PN210

We say the decline in the margin that the single person has over the poverty line demonstrates that the underlying wages contribution to family incomes has been falling and increased contributions from the public purse are offsetting that trend.

PN211

Whether that has resulted in a net improvement to these families and if so to what extent depends to a large extent on the consideration of changing housing costs to which we will return. But the important point to make is that the Poverty Commission took no account of any potential entitlement to an unemployment benefit in the nature of New Start because the intention was to consider and provide support for the single breadwinner family. The policy objective was to have an acceptable disposable income for families, without the need for the second parent to undertake or apply for paid employment. The HPL benchmark family was and remains the family where the second parent stays at home in order to look after the children. It is represented by row 7 in table 4.4.

PN212

On housing costs they have been separately included in the HPL since their inception. Each quarterly update contains estimate of housing costs. I have already taken the Commission to the December quarter 2007 and to the figures for the single parent with one child. Paragraph 73:

PN213

Housing costs in the HPL's are adjusted in the same way as other costs. Their proportion of total costs remains constant over time. Housing costs for the single person are 32.7 per cent, for a family of four 22.6, and for a single parent with one child 28 per cent. These proportions were set more than a generation ago.

PN214

It is an important point to make. Various parties raised the issues in their submissions to the Minimum Wages Review 2008 and the Fair Pay Commission referred to what is commonly known as the housing crisis and housing stress. The difficulties are confronted by both home owners and home renters. Low income families are more likely to be rented. The Fair Pay Commission responded to these submissions in the context of rising costs and financial stress and I won't read all of the quote but in the middle of page 27 the Fair Pay Commission refers to submissions from the ACTUA costs and the Australian government which assert that:

PN215

One outcome of increased cost pressures on families is high levels of financial stress.

PN216

Then in the next quote within this larger quote they quote the Australian government:

PN217

In determining the level of minimum wages, the government submits that the Commission should take into consideration the degree of financial stress reported by the low paid. At a time of rising prices and with recent increases in interest rates it is important to consider the number of low paid households experiencing financial stress.

PN218

That is the end of the quote within the quote, and the Australian government cites recent research by the Australian Housing and Urban Institute which finds:

PN219

Significant levels of reported financial stress amongst low income earners who were paying more than 30 per cent of their income on rent, the common definition of housing stress. The ACTU draws attention to other research commissioned by the government which concludes that housing stress is a particularly serious problem for low and middle income earners, those in the bottom 40 per cent of all income earners in Australia.

PN220

Then the Commission as a counterpoint to that says:

PN221

On the other hand the Australian government also cites research which shows that only six per cent of households containing low paid adults consider themselves poor or very poor, despite the fact that around one third of such households report one or more episodes of financial hardship during the previous year.

PN222

That might be put in as a counterpoint but it is a matter of minor importance in our submission. But in any event the Fair Pay Commission goes on to say:

PN223

In order to improve the understanding of the living standards and financial pressures facing low paid workers the Commission has contracted external

research into the household incomes, assets and consumption patterns of low paid employees. This research which is due to be completed in the latter part of 2008 will also analyse longitudinal data to determine the extent to which low paid households face persistently low living standards over time.

PN224

This is, in my submission, they don't need all of that research before they should make a move on the housing issue, and after all the ACCER did point out to them that for the family of four the figure was \$158. On all of the material that is an unrealistically low estimate. We say in paragraph 76 that:

PN225

Our submissions on housing costs emphasises substantial divergence between the HPL estimates of housing costs and the levels of housing costs that have given rise to housing stress in the housing prices. It argued that the HPL estimates on the costs of housing are manifestly inadequate and do not reflect the high cost of housing in contemporary Australia and that the high cost of housing of itself has the capacity to reduce families to poverty and undermine the Fair Pay Commission's early conclusion that low paid single breadwinner families can live well above poverty and workers on a federal minimum wage are able to rely solely on a single wage to support their families.

PN226

The Fair Pay Commission noted ACCER's submissions at p.65 of the hard copy but didn't respond to them. In our submission this is something they had to respond to and we put it to this Commission that it is something that this Commission will have to respond to in order to determine it's decision in this matter.

PN227

The importance of scrutinising the HPL estimates of housing costs is apparent from table 4.4. In the case of the family at row seven the margin above poverty is only \$55.58 per week, that is above the Henderson Poverty Line, based on the unrealistic housing estimate of \$158.78 per week. If the real cost of the family's housing was ... (reads)... on 3 March 2008 in which he referred to research by the Centre for Social and Economic Modelling on the extent of housing stress on low income earners. It included -

PN228

This is the Prime Minister speaking:

PN229

The Real Estate Institute of Australia reports that rental vacancy rates have now slipped below three per cent in every capital city. It is no wonder that average rents for three bedroom homes have risen by 82 per cent since 1996. The research shows ...(reads)... more than 2004. The number of older Australian's in housing stress has doubled since 2004. When you look at this data it is clear that the housing affordability problem has been one that has emerged over time and is now at a critical point.

PN230

That is the end of the quote from the Prime Minister. ACCER also referred the Fair Pay Commission to a survey by the Real Estate Institute of Australia and that

was a survey of median weekly rents for the September quarter 2007 and the rents are set out there and I won't read them. We have a more recent survey by the Australian Property Monitors entitled "Quarterly APM Rental Series June" which shows that in June 2008 the median rental asking rents in capital city houses were - and they are set out there and I won't read them. But they do have houses and asking rents. But when the Commission sees those figures it will be obvious that these are very, very much greater than the figures that are used by the HPL's and it shows the disparity in the two sets of figures.

PN231

I thought I had the document from Australian Property Monitors here to tender, I appear not to have it but if the Commission would allow me I will make it available later on.

PN232

JUSTICE GIUDICE: Yes, very well.

PN233

MR LAWRENCE: The Commonwealth has taken some major initiatives to address the housing crisis. The reasons for those initiatives are summarised in a document called "Making housing affordable again", published by the Department of Families, Housing, Community Services and Indigenous Affairs in March 2008. I will tender those in a minute but the point we make about that is these initiatives would not be needed if the real costs of housing are or are near to the levels shown in the HPL's. Could I tender that document if the Commission please.

EXHIBIT #ACCER3 - MAKING HOUSES AFFORDABLE AGAIN - DOCUMENT

PN234

At page 2 there is a heading on the right hand side, "Buying a first home has never been harder." That basically sets out the difficulties that people have in buying a home, and then over the next page there is a heading "Rental properties less affordable", and under that heading:

PN235

Private rental accommodation is both a stepping stone to home ownership and the long term reality for many Australians, yet rental properties are now less affordable than ever. Average rents of three bedroom homes have risen by 82 per cent since 1996.

PN236

This was the point made by the Prime Minister in his speech.

PN237

Rental vacancy rates are at critically low levels and below two per cent in all capital cities. Many young families that would have previously been buying their own home are forced to stay in rental accommodation longer. This has exacerbated the shortage of rental properties contributing to increased rents across the board.

PN238

Second last paragraph on the page:

PN239

These low and middle income families are spending more than 30 per cent of their earnings on rent alone. This is having a serious financial impact on those Australians and their families who are finding it tough to pay the rent, let alone save enough money for a deposit to buy their own home.

PN240

Then over the page under the heading "More people in housing stress."

PN241

With higher house costs, rising rents and increases in the home loan repayments, housing stress is also increasing.

PN242

Then in a box on that page there are the kind of figures that the Prime Minister referred to in his speech that I have already read and I won't read them again. Under the heading "The housing affordability challenge", fourth paragraph down:

PN243

Over the last four years that gap has widened and today housing demand exceeds housing supply by over 30,000 homes.

PN244

So this is a crisis, it has been described as a crisis, it is a crisis, there is no end in sight and it's having a very major impact on workers and their families, particularly low paid workers, of course not limited to low paid workers, right across the board there is pressure in low and middle income families. But it's particularly onerous for those low income families who have to find rents to pay. If I might also while I am dealing with the importance of this matter is that it is a social issue. Could I tender to the Commission an extract from the Catholic Weekly which is a publication of the Archdiocese of Sydney. It's the last one, that is published last Sunday and the heading there is, front page heading, "Families forced to live in cars, rent crisis hits." I tender that if the Commission pleases.

EXHIBIT #ACCER 4 - CATHOLIC WEEKLY

PN245

I won't go to the detail of it but it is basically concerned with the increasing amount of rent that is having to be paid and it also evidences the concern that the church has about this particular development in Australian society. I now tender another front page, this is from the Catholic Leader, also published last Sunday, that is August 10th. This is a publication from Brisbane and this is - the main article on the front is, "Waiting in hope, rising poverty tests schools." I tender that if the Commission pleases.

EXHIBIT #ACCER 3 - CATHOLIC LEADER

PN246

Again I don't want to go through the detail of this article, but this is a report that the impact that rising poverty levels are having on the ability of children to attend Catholic schools. It is a matter that is particularly important to the Catholic church because it puts a high value on being able to provide an education for Catholics and others, particularly in the poorer groups in society. Yet despite that

objective it is the rising poverty that is seen by the research that they have conducted to be the reason for falling enrolments.

PN247

Could I move onto the maximum rentals just briefly. This is paragraph 84 of the submission. The Fair Pay Commission used maximum amount of rental assistance in the calculation of disposable incomes. ACCER has questioned the use of the maximum and submitted that if rental assistance is to be included it should be an average figure and set in 2007. In effect where is the evidence for using the maximum rental? The Commission didn't say there was any evidence, it just said we would assume the maximum is used. So in the table 4.4 and the previous tables they have assumed the maximum rental assistance has been received.

PN248

We say there are policy implications of having rental assistance used in that way, it has the effect of depressing wages, that is the federal minimum wage for the low paid and making it harder for them to move into home ownership. We accept that rental assistance should be taken into account but it must be done in the process ... (reads)... The maximum is achieved when you hit \$176.73 a week and at that point you get \$62.96 per week. At the moment the amount is on a sliding scale over the rental range. The rate of rental assistance is \$3 for every \$4 over the range.

PN249

So you get \$3 back for every \$4 you pay over that range.

PN250

A family paying the HPL estimate of rent, that is \$158.78, does not qualify for maximum rental assistance. It is inconsistent to include the maximum rental assistance and limit housing costs to \$158.78, the rental assistance at the present time is \$49.47 which is \$13.49 per week less than the maximum. This is a substantial amount.

PN251

So we say if the Fair Pay Commission wants to be consistent and use the maximum rental assistance then it should at least accept that the HPL's are insufficient as a reflection of housing costs. You can do the calculations, what is the effect of this on the margin above poverty because the Fair Pay Commission has wrongly included an amount of rental assistance that is not payable, or in another way you can do it is you can increase the notional rent, and if you do that the margin, if you increase the notional rent then the margin drops to about five per cent above poverty, using the HPL equivalent scales, or if you delete the excess, that is take off the \$13 or thereabouts then the margin over poverty drops to about six per cent. The point is the eight per cent is based on an error and an inconsistency and if you take into account that real situation then the margin drops to, depending which way you measure it, either six per cent above or five per cent above the poverty line.

PN252

This is a very significant amount of money. When you keep in mind that the tax cut for people on the federal minimum wage on 1 July this year was \$8.65 a week. That is the error that the Fair Pay Commission has made in this regard is worth

more than the tax cut that these federal minimum wage workers got on 1 July this year. In fact if you aggregate the tax cut that will go to the people who receive less than \$30,000 a year over the three year program, the figure is \$8.65 a week, \$2.88 a week, \$2.89 a week tax cut in the three year period, it's about \$13. So the mistake that they have made in this regard is equal to the tax cuts over the three year life of this tax policy that the federal government has got. That in itself is sufficient, we would say, for this modest increase that we have proposed of \$8.90 per week.

PN253

If I can come to childcare costs, I have already adverted to this, that is it's not taken into account in the HPL's because of the origin of the HPL's. What we did was to go to research by the Australian Bureau of Statistics and have a look at estimates of childcare costs. Now there is a document which sets out the cost of childcare in before school and after school care. They look at what the net cost is after government support. Could I tender a document which is entitled "Australian Social Trends 2007 article: before and, or after school care."

**EXHIBIT #ACCER 6 - AUSTRALIAN SOCIAL TRENDS 2007
ARTICLE BEFORE AND/OR AFTER SCHOOL CARE**

PN254

I will just give the Commission a moment to skim that document. I don't want to take the Commission to any part of it other than the quote that appears in paragraph 86 of our submissions and that is that in - this is 2005 so these figures would have increased, one would expect.

PN255

The average weekly cost of before and, or after school care, after the childcare benefit was taken into account, was \$26. This ranged from \$9 for school children using the service one week day to \$41 for those using it five week days per year.

PN256

We haven't got information on the costs of full time care or longer care, this is just before and after, and of course the costs are considerable with full time care, that is pre-school childcare for which there is government support of course.

PN257

ACCER submits that the absence of any consideration of childcare costs means that table 4.4 represents an erroneous assessment of the living cost of single parent families and their standard of living. As is apparent from the previous quotation childcare costs can be substantial, not only for single parents but for other parents such as those at row 10 of the table who take up part time employment.

PN258

I'll just stop there. It may be that the half time parent, that is the parent who works half time could drop the kids at school and pick them up afterwards or make some other arrangements, but even that person may have to pay some amount for before or after school care. But for the full time single parent with school age children it is almost inevitable there will be a very substantial amount of expense. If the children are pre-school then again some more. We know from our own

experience just how substantial this is. What we can do just with this limited information is to say, let's take the position of the single parent with one child who we are told is 40 per cent above the poverty line.

PN259

If you just take the figure of \$41 a week in that extract, as the cost of five day a week care. Then add something in for extra rent. Assume the rent for a single parent and child is \$200 a week. Then that brings the margin, I haven't set out the calculations but I can give them to the Commission, that brings the margin over the Henderson Poverty Line to \$95.93 per week, that is 20 per cent over. So instead of it being the kind of figure that's in 4.4, 40 per cent above Henderson Poverty Line, it's actually 20 per cent below. You can do other calculations. You can do calculations, you can make informed guesses that are quite acceptable in these circumstances when you are dealing with this kind of information and you can say that the single parents are not above the level of 25 per cent that the Commission has identified, they are below.

PN260

If the Fair Pay Commission was influenced by the fact that some were higher, the single parents were higher and it was trying to run a line through, contrary to the words that are used, it was running a line through all of these households, then it's got it wrong because the real position in the household is much different. If you are going to run a line through a variety of households, you need to have the correct figures and of course you need the information that would allow proper weighting. That is not what they did and they have fallen into error and we submit it is not the sort of error that this Commission should make.

PN261

We submit that this Commission in looking at this issue and effects question, should not be satisfied with the way in which the Fair Pay Commission went about setting the safety net wage for the minimum wage. We think that the sort of issues that I have touched on today and the need for contemporaneous research really shows that this is a fairly substantial matter that can't be dealt with in one particular case or this case in particular. There needs to be some sort of process to address it. We have put the point to the Fair Pay Commission, as I've said before, that the federal minimum wage is manifestly inadequate and we have regularly called for the undertaking of research on living costs for the purpose of setting a properly informed minimum wage.

PN262

We made the requests to the Fair Pay Commission in 2006 and 2007, nothing has happened and we are not sure what is being undertaken at the moment. There is a reference in the decision to a variety of research being undertaken in regard to living costs but we're not aware of what that is, but in any event we haven't been consulted about the shape and content of it. We don't know anything about it, but if it's going to be sensible research it's going to take some time.

PN263

We see this case as being just a step in a process. We draw attention in paragraph 89 to the different rates of pay around the country. The 2008 round hasn't finished, Queensland and South Australia are still to announce the decisions on the wage rates, but in Western Australia there is the highest minimum rate, that is

557.40, New South Wales 552.70, and Tasmania 546.10. So even Tasmania will be ahead of the federal minimum wage. South Australia has currently got the federal minimum wage. If they awarded 21.66 then it would stay at the same as the Fair Pay Commission decision, but Queensland is already \$6.35 above the federal minimum wage and it may be that - well I don't know, I can't say anything about what they might do, but there is a very real prospect that the federal minimum wage will be at the bottom end of the range by the end of the year.

PN264

It doesn't mean to say if you're looking at weighted averages that it would be unimportant because the federal minimum wage obviously applies to a larger number of people than the other jurisdictions, but we have pointed to the New South Wales rate as the rate to move to. The \$9.30 that we mentioned in the Fair Pay Commission was actually based on the then difference between the federal minimum wage and the New South Wales rate. The New South Wales rate was increased - the lowest rate, the award classification review rate was increased by \$7 a week more than the other rates in 2007.

PN265

The reason why the Commission gave an extra \$7 a week to that rate in 2007 was that a Catholic employer organisation in New South Wales, a Catholic Commission for Employment Relations actually made an application based in part on the Henderson Poverty Line for an extra amount to be awarded, and that is the main reason why the New South Wales rate is above the federal minimum wage rate. That is it was only because of the Catholic Commission for Employment Relations that the increase came in.

PN266

COMMISSIONER FOGGO: Mr Lawrence, the Queensland rate is 552 as of 7 August this year.

PN267

MR LAWRENCE: Thank you, Commissioner, I was unaware that the decision had been handed down.

PN268

COMMISSIONER FOGGO: But your point remains.

PN269

MR LAWRENCE: Yes. We put to the Fair Pay Commission it was the New South Wales rate. We said it's not based on comparative wage justice but it represents a reasonable and modest first step in working towards a fair and reasonable safety net for low paid working families and we made the point that it was not for the purposes of removing jurisdictional inconsistencies.

PN270

Because ACCER has said that on a proper evaluation of the evidence the federal minimum wage should be increased by substantially more than that amount but at a later date. ACCER submits that this should be done by the Commission in this review by way of an interim increase to the federal minimum wage with the matters adjourned for consideration and further determination under schedule 6. That is the Commission should not exhaust itself of what's before it. We accept, however, that the Commission may take

the view that the proceedings under schedule 6 are not the best way to consider some of the issues in this case.

PN271

Some of the matters that I have referred to.

PN272

We also accept that the Commission if it were minded to increase the federal minimum wage in the way that we've proposed may prefer to make it a final decision and not an interim one. The referral of the unresolved issues might be to the award modernisation process. That may give the Commission more flexibility to deal with the range of issues raised in these submissions.

PN273

We have put in submissions in the modernisation process and we have set out what we would propose in relation to a national minimum wage if the Commission were to have a look at these issues. What we put to the Fair Pay Commission could be the sort of issues that the Commission either wearing its schedule 6 hat or its award modernisation hat might deal with. We put this to the Fair Pay Commission.

PN274

In each of its submissions to the AFPC in 2006 and 2007 ACCER has raised a number of issues about the way in which a safety net should be formulated and applied. These issues include the needs of workers and their dependents, the relevance and averaging of transfer payments and other benefits, including parenting payments and rental assistance and the provisions of the family responsibilities convention. A proper understanding of these issues is essential to the future operations of the wages system that is underpinned by safety net minimum wages. ACCER calls on the AFPC to conduct an inquiry into the way in which the safety net should be formulated and applied, having regard to the Commonwealth's proposal that the AFPC be abolished by the end of 2009. ACCER proposes that the AFPC consult and work with the AIRC and State Industrial Tribunals in this task.

PN275

JUSTICE GIUDICE: On current proposals it is not only the AFPC that's going to be abolished.

PN276

MR LAWRENCE: Sorry, Your Honour?

PN277

JUSTICE GIUDICE: On current proposals it is not only the AFPC that's going to be abolished.

PN278

MR LAWRENCE: Yes, that's true and between now and then, the abolition date, this Commission has got a fundamentally important task.

PN279

JUSTICE GIUDICE: Isn't one of the practical issues that arises, no matter how persuasive your submissions might be that the pre-eminent wage fixing tribunal from a Commonwealth point of view is the AFPC and the resources and the

submissions and the expenditure of funds, I suppose, in relation to these questions I really centred there and this Commission's role - well as the High Court has pointed out we have a discretion, it has to be said that the limitations on that discretion are fairly significant. Primarily that the resources which the parties put into this case, for example, most of them, I am not including ACCER in that, are not the same. So you don't get the range of debate, input, the quality of debate that presumably takes place in the AFPC deliberations. Speaking only for myself that seems to create a bit of a difficulty for us in, as it were, branching out in another direction of our own.

PN280

MR LAWRENCE: A few comments, Your Honour. The ventilation of these issues and the discussion within the Fair Pay Commission is an unknown quantity in one sense. There are written submissions but there are private meetings with the members of the Commission. So for example, we, ACCER, met in Canberra with the Fair Pay Commission on 29 April, there were four of us. We were with the Fair Pay Commission. We put a number of matters. No one else would know what we put or what we didn't put, so it's a bit hard to ventilate that.

PN281

JUSTICE GIUDICE: I understand the process but it's difficult to - I mean there is a whole research secretariat of the Fair Pay Commission which is presumably researching these issues and which in some way informs the outcome of the decision.

PN282

MR LAWRENCE: We would submit that very well oiled machine hasn't done a very good job in this respect.

PN283

JUSTICE GIUDICE: I understand that.

PN284

MR LAWRENCE: It has produced an outcome which has got a number of fundamental problems.

PN285

JUSTICE GIUDICE: Yes.

PN286

MR LAWRENCE: The second point is it is a matter of regret to us, Your Honour, that there has been no response from the other parties in this case to the substantive matters that we have raised, and it is really only ACCI that has addressed the issues and that's on statutory matters, which I won't go to because I think I have already covered them in that, but there is a difference between us, but no one else has got up to say you've got it wrong, ACC, you've got it wrong. No one has come here to defend the reasoning of the Fair Pay Commission on the safety net, the most fundamental thing.

PN287

Nobody has come along to say that housing costs, well they're pretty close to what the mark is or they might - no one has come along to say the housing costs that are estimated in the HPL for the single person are okay, but they're just a little bit off the mark with the family. Nobody has come along to say don't worry about

childcare costs because of some reason. Nobody has dealt with these matters that I have spent a long time on and these are fundamentally important, in our submission, to this wage fixing system in Australia. The question is, if someone asks the question of the APFC or any commentator on minimum wages in Australia, if somebody asks the question how is the minimum wage set in Australia, how is the federal minimum wage set in Australia, there wouldn't be a satisfactory answer.

PN288

We know it's been set by reference to a single person, based on some research that was done in the 1960s and accepted in the 1975 report of the Henderson Poverty Commission. There is nothing there that enables us to have an idea of these major issues which 101 years ago prompted an enormous amount of discussion. Not unanimous support, there was a difference of opinion but the basis upon which the decision was made was the subject of discussion. Students study it in the emergence of Australian policy but what have we got here? There's nothing. And the parties, the other parties, haven't addressed it. Repeat of last year, they came along last year and didn't address it.

PN289

Well we are a bit like a voice crying in the wilderness, but we have been on about this for a long time. We believe that the position of the working poor, the neediest of the working family spectrum is desperate and it's not improving. We have tried to put the material on the arguments to the Fair Pay Commission and the Industrial Relations Commission earlier, and more recently in these cases to get somebody to focus on the issues and to have a debate. But the hardest thing is when you meet with silence. We met with silence from the ACTU and the government. The state governments don't come along. The employers don't engage in a debate. Not one employer organisation has put an argument in writing at any stage to say we think that the single person test should be used and we think that the federal government should take the responsibility for these issues.

PN290

There are many issues that should be debated in these cases and we are met with silence and no cooperation. But we are not giving up, we come back and we come back each time and say it, but they are fundamentally important matters and they impact on the Commonwealth budget, they impact on social policy, they impact on social inclusion. We have got the Commonwealth setting up a social inclusion board at the moment dealing with, if you look at the terms of reference a whole range of things, but if families can't make ends meet as a result of low wages, what is the point in talking about all of the other aspects of social inclusion.

PN291

We understand the Commission's position, it is not being helped by the parties here. We have tried to help them, we've done about as much as we reasonably can. We think that the position is serious and as we said in the submissions, one option for the Commission is to actually say to the Commonwealth, tell us what you think about these issues. But we don't think it's appropriate for the Commission just to follow the Fair Pay Commission decision. We think it's appropriate to grant an amount of money, that modest amount that we referred to, but then how the substantive issues are dealt with we think it could either be by

this Commission under schedule 6 or under the award modernisation process. If the Commission pleases, they are the submissions on behalf of the Australian Catholic Council for Employment Relations.

PN292

JUSTICE GIUDICE: Thank you, Mr Lawrence. I take it that there are submissions that are going to take more than half an hour or so in aggregate from the other parties. Yes, we will adjourn now until two o'clock.

<LUNCHEON ADJOURNMENT [12.50PM]

<RESUMED [1.56PM]

PN293

JUSTICE GIUDICE: Mr Cole.

PN294

MR COLE: If the Commission pleases. There's been some discussion at the bar table and it seems I am to proceed next. The Commonwealth did file a short written submission, as the Commission is aware, dated 7 August. Could that be marked as an exhibit, your Honour?

EXHIBIT #COLE1 WRITTEN SUBMISSION OF THE COMMONWEALTH, DATED 07/08/2008

PN295

MR COLE: Thank you, your Honour. The Commission will be aware then from that exhibit that the Commonwealth is supporting the flow on of the Fair Pay Commission decision of 8 July 2008 to the wage rates and wage related allowances in the transitional awards of this Commission and also to the wage related allowances of the other awards of the Commission. Our position is that the Fair Pay Commission decision provides minimum wage increases for the majority of employees who are reliant on minimum rates of pay and that it's only fair that the residual group of employees who are also reliant on minimum rates of pay in transitional awards of this Commission should receive the same pay increases.

PN296

So as our written submission makes clear, we encourage the Full Bench to flow on the Fair Pay Commission decision. We also encourage the Full Bench to cease the deferral of the wage increase for employees of employers in the agricultural receiving the exceptional circumstances interest rate subsidy and to cease that with effect from 1 October 2008. If the Commission pleases, the main legislative provisions applicable to the variation of the transitional awards is set out on page 2 of our written submission in paragraph 8 and paragraph 8 itself refers to clause 8 of schedule 6 and I don't take the Commission to the terms of that clause except to make a point with respect to subclause (1) of clause 8 which enjoins the Commission to perform its functions under this schedule in a way that furthers the objects of this schedule.

PN297

Although we don't set out the objects of the schedule, they are found in clause 7 of schedule 6 and of course in this part of the Act the function of the Commission is

to prevent and settle industrial disputes. Now, the reason we refer to that is essentially this, that in respect of the claims that have been made to the Commission for variation of transitional awards the dispute in effect has been near enough to settled by the fact that the respondent employers are not offering any objection to all intents and purposes to the variations that are sought. So this, with respect, is an important consideration for the Commission to have regard to in its decision on the matters before it.

PN298

JUSTICE GIUDICE: There must be one employer who doesn't agree but I'm not sure whether it's covered by the transitional provisions.

PN299

MR COLE: Yes, well, the representatives of the employers in the proceedings are yet to be heard from, but in terms of the written submissions that have been provided to the Commission, as far as I can see there is no objection from the respondents to the relevant awards. So it is relevant, with respect, for the Commission to have regard to, consistent with the terms of clause 8, to the objects set out in clause 7. I did say we would be brief and those are the submissions on behalf of the Commonwealth.

PN300

JUSTICE GIUDICE: Yes. Mr Cole, there's one thing that I would ask you about, do you know whether there's any material which would indicate in quantitative terms the number of employees covered by the transitional provisions as against say the number covered by the federal system generally?

PN301

MR COLE: I'm not aware, your Honour, of any definitive estimate. The ACTU I think has provided an estimate in its written submission. If I may, I might ask for the indulgence of the Full Bench to respond briefly in writing tomorrow if I made aware of any alternative estimate to the one that the ACTU has provided.

PN302

JUSTICE GIUDICE: Thank you.

PN303

MR COLE: If the Commission pleases.

PN304

JUSTICE GIUDICE: Mr Mammone.

PN305

MR MAMMONE: If it please the Commission. In accordance with the Commission's directions ACCI has provided a submission to this Commission and other parties on 11 August. We ask that the submission be marked as an exhibit.

**EXHIBIT #ACCI WRITTEN SUBMISSIONS OF ACCI, DATED
11/08/2008**

PN306

MR MAMMONE: Thank you. I intend to only amplify a number of discrete matters raised in our submission and don't intend to take too much of the Commission's time in this matter today. ACCI does not oppose a flow on to pre

reform and transitional awards of an equivalent quantum as determined by the AFPC in its 2008 wages review. We therefore do not oppose the quantum increases sought by the ACTU and union applicants on this occasion. As the AFPC can only grant increases on an hourly basis to pay scales, we accept that a consistent equivalent increase to flow on to transitional pre reform awards is the AFPC awarded quantum converted to a weekly rate and rounded to the nearest 10 cents. This is consistent with the Commission's previous approaches flowing on decisions of the AFPC.

PN307

To be clear, we do not oppose a quantum increase of \$21.70 for all rates of pay. We also do not oppose commensurate increases to allowances in accordance with established practice in the furnishing and glass industries allowance decision. As ACCI stated in previous submissions to this Commission, we say that a proper construction of the Act leads to a strong presumption that this Commission must exercise its powers in a way that is not inconsistent with wage setting decisions of the AFPC. Whilst the Commission must exercise its own discretion as to whether to grant a flow on we say that overall the legislation creates a presumption that this Commission would flow on decisions of the AFPC in a consistent manner.

PN308

We note that the ACTU and major employer parties as well as the Commonwealth appear to be in agreement on this aspect. However, with respect with ACCER once again we have a fundamental objection to the submissions advanced and do not agree that this Commission should adopt their arguments in whole or in part. ACCER is asking this Commission to reopen the AFPC findings and grant a higher increase than that award by the AFPC. Last year ACCER asked the Commission to grant an increase two and a half times that of the amount awarded by the AFPC. This time ACCER is asking the Commission to grant an extra \$9.30 onto the AFPC increase which equates to \$30.96 per week.

PN309

This is not an insubstantial amount. Indeed, paragraph 7 and again at pages 32 and 33 of the ACCERs written submissions ACCER asked the Commission to consider granting at some later stage of a higher increase potentially. Whilst ACCI does not oppose the ACTUs application to flow on an equivalent quantum of the AFPC increase to transitional and pre reform awards, for the record, ACCI did not welcome the AFPCs decision. We however have engaged with the statutory requirements that this Commission faces and as such do not on this occasion ask the Commission to not give effect. ACCI provided submissions to the AFPC that highlighted how Australian employers face uncertain economic times in an uncertain global economic environment. We continue to maintain that position.

PN310

We did however support the AFPC considering to grant a moderate increase commensurate to increases it awarded in 2007. It declined to do so and whilst we don't agree with the decision, ACCI accepts that the AFPC has discharged its functions. The AFPC received a total of 95 submissions in the 2008 wages review, 47 from employer/employee community, professional and educational organisations, 12 from government and government agencies and 36 from individuals and private businesses. It received a submission from ACCER.

Indeed ACCER took time today to say what those submissions or the most pertinent submissions were to the AFPC.

PN311

Section 4 of the AFPCs decision deals primarily with the safety net consideration under section 23 of the Act and the AFPC indeed considered ACCERs submissions and went at some length to explain how it interprets the safety net consideration under section 23. The AFPC also takes into account extensive research when it performs its wages setting functions. There is no cogent reason to suggest that the AFPC did not exercise its powers in accordance with section 23 of the Act. It must consider diversity of submissions against the balance of statutory considerations. ACCER appears to assert that the AFPC must give primacy to only one statutory criteria, that being the safety net of the low paid and if the AFPC does not give due consideration to it in the manner they propound this will taint the entire decision.

PN312

The arguments raised by ACCER are akin to those raised in last year's proceedings. ACCER again asserts that the AFPC fundamentally misconstrued the Act and the role of the family responsibilities convention. Once again is asking this Commission to reopen the AFPC determination and whilst ACCER contends that this is not an appeal of the AFPC decision it is difficult to see how it is not of the same character albeit in another jurisdiction. In short, ACCER implies that this Commission should not make the same apparent jurisdictional error that the AFPC strayed into and therefore requests this Commission to order an increase higher to the federal minimum wage for transitional employers. We believe that the propositions put forth by ACCER are contrary to what this Commission determined last year's wages and allowance decision and contrary to the statutory considerations this Commission must have regard to when varying transitional awards.

PN313

We say at page 6 of our written submission the onus is on those parties or interveners arguing not to give effect to the AFPC decision to provide cogent and substantial reasons which would attempt to disturb the AFPCs determination. We say ACCER has not done so. Secondly, even if substantial reasons are provided the Commission should exercise caution from providing an equivalent increase as the Act creates a presumption of consistency between outcomes. For reasons articulated at pages 12 and 13 of our written submission, to grant a high increase for transitional award employers would be inconsistent with clause 8 of schedule 6 of the Act. Finally, to grant an increase of the kind asked by ACCER would have implications for the award modernisation process as the Commission has to take into account rates of pay in transitional awards and pay scales as well as minimum wage decisions of the AFPC, as per part 10A and the Minister's Award Modernisation Request.

PN314

To grant ACCERs claim would create a tier decision and distort existing relativities in transitional awards where none exist in equivalent pay scales. We respectfully submit that this Commission should not grant ACCERs claim for the reasons outlined today in our written submission. If I could just briefly - I haven't addressed this in written submissions but it might assist the Commission to

provide our take on the AFPCs decision with respect to the Henderson Poverty Lines and I will be referring to the wage setting decision in hard copy format. If I could take the Commission to page 68 which is the glass section, section 4 where ACCER took the Commission.

PN315

ACCER spent some time discussing the last paragraph of page 68 with respect to a test that the AFPC set. It's our interpretation that that paragraph does not set a test. It's merely an observation. That is our interpretation consistent with the rest of the paragraphs in the preceding section. The paragraph above that states, and I quote:

PN316

In the Commission's opinion it is not possible to reach a single right answer as to how much income a wage earning household needs to achieve a minimum acceptable standard of living. It will continue to monitor relevant Australian and international research including that published by the OECD.

PN317

Preceding that paragraph, if I may, page 65, second last paragraph, still in section 4 the Commission states:

PN318

Unfortunately there are no such ideal benchmarks of low income. The different kinds of poverty line in existence all have advantages ...(reads)... costs have changed since relevant data were originally collected.

PN319

The Commission has considered ACCERs submissions and the submissions of other parties. The Commission has taken time to explain in its - I should say the AFPC has taken time to consider how it weighed up the statutory considerations in section 23 when it came to its ultimate determination. It's probably worth lastly reciting page 12 of the AFPCs decision in its executive summary where talks about providing a safety net for the low paid. I quote:

PN320

The Commission does not favour a formulaic approach to balancing the respective contributions of tax, transfer changes and wage increase to disposable income, nor does it believe that tax transfer changes should be completely ignored since their effect on disposable income can be significant.

PN321

On the following page, page 13:

PN322

In considering the impact of movements in consumer prices on the living standards of low income households the Commission acknowledges that it is appropriate to use a variety of benchmarks where it refers to its benchmarks in modelling.

PN323

It's for these reasons that we say that the AFPC has taken into consideration safety net for the low paid. Whilst ACCER doesn't agree that the AFPC has taken sufficient consideration of that, we say that it has. On the issue of date of effect,

ACCI opposes any retrospectivity for an application to vary an award if an award is lodged after 1 October 2008 or when the date appearing is on or after 1 October 2008. Once again to amplify ACCI's consistent submission in respect to retrospectivity, we say that the unions have been given ample opportunity to lodge applications that will give effect to this decision to vary awards and retrospectivity should only be granted where exceptional circumstances are demonstrated as per the statement of principles and clause 66 of schedule with respect to transitional awards and sections 572 of the Act with respect to pre reform awards.

PN324

This is also consistent with the Commission's 2007 decision at paragraphs 18 to 20. On subsidiary wage matters, ACCI does not oppose an increase to the supported wage system model clause of \$69 which is also consistent with the AFPC decision and whilst we do not specifically deal with this in our written submission we continue to support the gap filling process of school based traineeships - trainee rates I should say and supported wage system provisions in transitional awards which was commenced as a result of the Commission's 2006 wages and allowances review.

PN325

On the issue of process which is raised by the ACTU at page 6 of their submissions, ACCI welcomes the use of a panel system which provides an orderly manner to list, hear and determine other flow on applications arising from a decision of this Full Bench. With respect to processing applications on the papers however, ACCI supports applications implemented on the papers only after relevant parties have been notified in the usual manner and have consented to dispensing with a hearing. In that case there must still be adequate time for the parties to check draft orders for accuracy before the Commission issues any orders. If it please the Commission, unless I can be of further assistance that concludes the submission of ACCI.

PN326

DEPUTY PRESIDENT HAMILTON: I've just got one question if I could, a question I asked Mr Belchamber. He indicated essentially, and these are my words, not his, that there was some degree of uncertainty about calculation of direct and indirect costs and impact flowing from safety net adjustments. There's no accepted methodology or formula I think he used, said formula. Do you agree with that assessment?

PN327

MR MAMMONE: I think it's safe to say that there is no agreed approach to calculating that, from the AFPC's most recent decision.

PN328

DEPUTY PRESIDENT HAMILTON: Right. So that hasn't been an issue addressed in the last several years in terms of improving the economic material available to assist wage fixing?

PN329

MR MAMMONE: It's not my understanding that the AFPC has gone in to any considered detail as to how it has considered that material. That's all I can probably assist the Full Bench with on that.

PN330

DEPUTY PRESIDENT HAMILTON: Thank you.

PN331

JUSTICE GIUDICE: Yes, Mr Mead.

PN332

MR MEAD: Thank you, your Honour. Your Honour, AI Group has filed a submission on 11 August with the Commission and we'd seek to have that marked.

**EXHIBIT #AIG1 WRITTEN SUBMISSION OF AIG, DATED
11/08/2008**

PN333

MR MEAD: Thank you, your Honour. Your Honour, having had the benefit of hearing Mr Mammone's submissions I fear I'm going to be traversing some very similar grounds so I don't intend to labour any of the points within our submissions. It would be evident to the Full Bench from the content of our outline of submissions and the submissions advanced by the ACTU, ACCI and the Commonwealth. But broadly speaking to the big ticket items as it were in relation to the flow on the AFPC decision the parties are largely in agreement in relation to those matters of quantum, timing and also of process.

PN334

My intention is to just briefly touch on some of the substantial aspects within our submissions but as I've said, given the fact that the parties are broadly in agreement I didn't intend to labour any of the points I had already foreshadowed in our submission. In terms of the process that we say the Full Bench should undertake or outline in its decision, as identified by the ACTU and ACCI, we believe that the panel system is an appropriate mechanism for dealing with these applications for any of the awards that aren't a vehicle to the application by this process. In our submission at point 5 we outline a range of reasons why we say utilising the panel system is an appropriate mechanism and a sensible one to be adopted. In particular, one of the matters that we identify in relation to matters of familiarity with the particular awards that can be enhanced by utilising the panel system having relevant parties who are familiar with the awards involved in the applications and so too in the context of the members of the Commission that will provide over the applications we seek a familiarity with the award that is before the Commission is of some benefit in administering the flow on of these increases.

PN335

In the context of the process and whether in fact a public hearing is required, as identified by ACCI, our position also is that it's appropriate that where consent can be reached between the parties that matters can be dealt with on the papers and no requirement for a formal hearing should be required to allow the increases to flow through. The issue of rounding is one that the ACTU and the ACCI have already made submissions on and in the regard in relation to the wage component of the decision we have agreement in terms of the methodology by which that should be rounded insofar as the weekly figure of \$21.70 should be added to the current rates of pay.

PN336

On the question of allowances though, I did not hear either the ACTU or ACCI make submissions in relation to rounding in that regard. It's AI Group's position that on the question of rounding for allowances that should be best left on a case by case basis and that no general principle in relation to rounding of allowances should be articulated by this Full Bench in handing down its decision. The reason we make that submission is that in our experience there are a range of different methodologies that can be used not only across awards but also within individual awards as to how particular allowances are rounded. There is a history in relation to the methodology realised for many of these roundings and a history that we feel should continue and is appropriate to continue and the parties to the relevant awards are well aware of the historical methodology that's been utilised. So we would see that there's no requirement for this Full Bench to make a decision in that regard.

PN337

Your Honours, at chapter 3 of our submission we briefly touch on the relevant legislative provisions and I don't intend to traverse those in any great detail, chapter 4 of our submission we make a summary of the wages decision of the Fair Pay Commission and I just need to deal with that somewhat briefly so that I can engage in some of the propositions that ACCER have advanced in relation to their application for an additional increase to the federal minimum wage. Your Honours, it's our submission that in the context of the matters that the Fair Pay Commission had regard to in arriving at its decision and what is evident from the Fair Pay Commissioner's decision is that they had regard to a broad range of matters in arriving at the figure that they ultimately did in relation to wage rates and also the federal minimum wage.

PN338

Those wide range of matters are evident from the terms of the decision. In particular as we outline in our submission, they had regard to the financial pressures on low income households, consumer price and consumer price movements, inflationary pressures and the possible effects of employment and unemployment that their decision may have. In the context of those considerations we say that they gave regard properly to the statutory provisions that guide their function. Those statutory provisions are found at section 23 of the Act. In the context then of the submission that ACCER has put to this Commission or at least the construction that we understand they have advanced is that we would reject any assertion that in arriving at the appropriate increase for the federal minimum wage the Fair Pay Commission applied a new mathematical formula, either by reference to the Henderson Poverty Line or another poverty line measure.

PN339

But rather, what they did do and what is evident from the decision in our submission is that they had regard to a broad range of factors. As I said, such a reckoning is one that accords with their responsibilities in accordance with the terms of the Act. Now, Mr Mammone took you to a number of paragraphs in the actual decision and in the context of my submissions those same paragraphs from the Fair Pay Commission's decision we would contend are relevant. Not only do we say that the Fair Pay Commission arriving at its decision didn't utilise a formulaic method or a single test in relation to questions of the safety net for the

lower paid because that would have been erroneous in the context of their broader responsibilities as prescribed by the Act, but also if you look at the terms of the decision and specifically I'll take the Bench to page 65 first, what we say is evident, particularly in the context of looking at poverty line benchmarks, is the Fair Pay Commission's conclusion that these poverty line benchmarks are not an exact science, that they have elements of imperfections to them and that they weren't able to identify a perfect instrument or a benchmark by which to compare any possible they might ultimately arrive at.

PN340

The quoted passage that Mr Mammone took you to I'll take the Bench to as well where they say at page 65:

PN341

Unfortunately there are no ideal benchmarks of low income. The different kinds of poverty lines in existence all have advantages and disadvantages ... (reads)... have changed since relevant data were originally collected.

PN342

And then in the context of the second section of the decision which is at page 68 which we say is also relevant and it supports this construction that the Fair Pay Commission were not seeking as ACCER articulated to prescribe some type of formulaic rationale between their decision and any poverty line the quote passage that:

PN343

In the Commission's opinion it is not possible to reach a single right answer as to how much income a wage earning household needs to achieve a minimum acceptable standard of living.

PN344

So the construction we put on that is that in arriving at its ultimate decision what the Fair Pay Commission is saying is it's not an exact science. There are a range of factors that will inform us ultimately with the view that we arrive at but there is no formulaic approach but rather a broad spectrum of issues that the Bench - or that the Commission rather needed to turn its mind to and we say that it did in arriving at the ultimate figure that it did in the context of the increased federal minimum wage and also in the context of the wages and the pay scales. Those are the only submissions I seek to make in relation to the Fair Pay Commission's decision and ACCERs submissions.

PN345

Just moving through the remainder of our submissions, your Honours, chapter 5 deals with economic conditions and outlook and there's nothing within that chapter and we've provided that really to the Commission for completeness, but there's nothing in that section that diminishes our primary submission that the wages decision of the Fair Pay Commission should be flowed on by this Bench, so I don't intend to labour anything within that chapter. The final issue that I'd just like to touch on in the context of matters of substance is in relation to operative date. Within the ACTUs submissions and I think broadly there's agreement in the context of the way in which the operative date should apply for applications that are filed with the Commission and agreements reached between

the parties prior to 1 October and also broad agreement in relation to the notion of exceptional circumstances that might warrant a retrospective operative date.

PN346

The only matter that I just seek to clarify in terms of AI Group's position and I'm not sure if that accords also with ACCIs or the ACTUs, is that in the context of the ACTUs submissions the phrase - or rather, reference to a pay period in the context of flowing through and increases I didn't see reference to, the Fair Pay Commission's decision does reference obviously a pay period in the context of the operative date of 1 October 2008. AI Group's submission is that in any decision issued by this Full Bench regard should be had to the operation of a pay period in providing an operative date for any increases, be that on 1 October or some later date ultimately. If the Bench has any questions I'm happy to respond but other than that, those are our submissions. May it please the Commission.

PN347

JUSTICE GIUDICE: Thanks, Mr Mead. Yes, Mr Hennings.

PN348

MR HENNINGS: Thank you, your Honour. Likewise with the other parties today the National Farmers Federation seeks in essence one thing from the Commission and that's consistency. The two previous decisions of this Commission have established sound principles in terms of the interrelationship in between the Australian Fair Pay Commission's decision and the decision of this Commission in relation to their wage setting functions. Similarly the legislation and in particular the provisions of schedule 6 that have had some attention today create a very limited scope for deviation in this Commission from the AFPCs decision. On that note I anticipate my submissions will be fairly brief and intend to focus on the deferred rates of pay that were awarded by both the AFPC and this Commission on the last occasion and which expire with the commencement of the wage determinations we're dealing with today.

PN349

The NFFs written submissions were provided to the Commission and parties on Friday, 8 August and I would now formally tender those for marking as an exhibit.

**EXHIBIT #NFF1 WRITTEN SUBMISSIONS OF THE NFF,
DATED 08/08/2008**

PN350

MR HENNINGS: Thank you, your Honour. The NFF has asked the Commission to adopt a process, procedure and principles which it's has applied in the two former wages and allowances reviews under the current legislative arrangements. To refer to a specific points that other parties have raised with the Commission today, these include the operative date, again falling with the first pay period on or after 1 October, the practice of rounding that this Commission has applied to the AFPCs decision and the process consistent with furnishings and glass of adjusting allowances including incentive based allowances. We submit the scope for this Commission as I've mentioned is fairly limited in terms of its ability to depart from the AFPCs decision and it's on that note I guess I can briefly respond to some of the submissions of ACCER.

PN351

The NFF, and without wanting to speak for other parties here, would no doubt have liked at times to depart from the decision of the AFPC but purely because of the legislative constraints that I referred to in my initial remarks and indeed the clear decisions of this Commission on two occasions now have not necessarily done so. We do raise one important point from the perspective of agriculture and it ties certainly with my comments to then follow on the deferral. The transitional employers the subject of the decision of this Commission are particularly likely in the view of the NFF to fall within the category of sole trader, partnership and certainly the smaller forms of farm enterprise.

PN352

We've raised with the Commission that the Fair Pay Commission's decision has been silent on the disparity between impact that would result from a difference in the nature generally speaking of employers falling under the pre reform system and the transitional system purely to point out the concern for the small number of farmers that did in fact adopt the deferred rates of pay being right at the more marginal end of our industry. However, we are not pressing this as a reason for the Commission today to depart from the Fair Pay Commission's decision, instead favouring the importance of consistency. Our industry is certainly one where confusion and complexity are things that more and more, or less and less should I say fit into what farmers ultimately need to contend with through ongoing difficulties.

PN353

Turning to the deferred rates of pay awarded in both the Fair Pay Commission's decision and the AIRC last year, it's important - the NFF wishes, should I say, to note that our initial request of the Fair Pay Commission was to set any centralised minimum wage in a fashion where all industries would have the capacity to pay with the option to defer any increase being a secondary submission to the Fair Pay Commission. In putting the submissions to the Fair Pay Commission about how a deferral might operate, the NFF was mindful that it would need to target only the most severely affected by drought within agriculture. The NFF submits that the option was adopted by a small and highly targeted group of exactly such employers and further, that we're unaware of any misuse of the option when it was granted, in fact quite the contrary.

PN354

The NFF conducted a survey of its membership regarding the deferred rates. Although the survey had a fairly small sample space of the 13,000 potentially eligible employers in the sector, less than 5000 of these on the modelling opted to defer the increase. Many in fact who did defer the increase volunteered alternative benefits and ways to compensate their staff. The NFF submits the process of this Commission and indeed of the Fair Pay Commission were in all respects effective to ensure there wasn't any misuse and that only the most severely affected employers within agriculture adopted the deferred rates of pay. It's further submitted that with many respondents to the NFF survey resorting to terminating staff the adoption to defer rates as small as the increase was in 2007 did make a notable benefit to those most severely on the edge as a result of persistent drought.

PN355

In terms of scope of departure from the AFPCs decision I've touched on clause 8 of schedule 6, as have a number of the other parties today. In particular, subsection 2 requires employers not to be placed at a competitive disadvantage and employees in terms of their monetary entitlements. Whilst we believe there could be some scope for this to justify departure I have to return to our focus on the importance of consistency. Once again other parties today have referred to the modernisation process, a process complex enough as it is, and we believe that from an industry perspective it's important that obligations are clear, but we say this knowing that the small number that benefited from the deferred rates of pay will have a particularly difficult time paying both increases.

PN356

That's not to say that this wasn't in the mind of the NFF at the time we sought the option to defer and it certainly would have been in the contemplation of individual employers who were considering and ultimately did opt for the deferred rates. I think I'd like to just conclude on a bit of a point I guess which relates particularly those very farmers, the smaller farmers, the ones that we believe statistically and certainly that we'd submit adopted the deferred rates. Many of these farmers are, as I've said, families and I note on the ACCER exhibit 4 the article about support for farm families. This is something that we have been particularly mindful of in terms of how we saw the deferred rates fitting in, but ultimately the NFF has decided that it's in the best interests of industry not to oppose a flow on and not to oppose a flow on to both the 2007 and 2008 wage decisions of AFPC and this Commission.

PN357

Unless there's anything I can assist further with, if it please the Commission, those are the submissions of the NFF.

PN358

JUSTICE GIUDICE: Thank you, Mr Hennings. Yes, Mr Hargrave.

PN359

MR HARGRAVE: If your Honour pleases, the printing industry doesn't oppose the flow on as suggested and in short we support the submissions as made by ACCI in the matter.

PN360

JUSTICE GIUDICE: Thanks, Mr Hargrave. I should indicate that there was a submission received yesterday, or a letter more properly, from the Victorian Hospitals Industrial Association stating its position in relation to the matters before the Commission. That's been posted on the website under other parties. I don't think it contains any surprises but I thought I should draw it to people's attention anyway. Mr Belchamber, is there anything you wish to say in response to the submissions?

PN361

MR LAWRENCE: Your Honour, just before Mr Belchamber gets to his feet, your Honour.

PN362

JUSTICE GIUDICE: Yes, Mr Lawrence.

PN363

MR LAWRENCE: You might recall I couldn't put my hands on an exhibit.

PN364

JUSTICE GIUDICE: Yes.

PN365

MR LAWRENCE: The reason for that was that I didn't have it but I now have it. Could I tender the document that's referred to at paragraph 82 of the submissions, it's the details of rental costs?

EXHIBIT #ACCR7 DETAILS OF RENTAL COSTS

PN366

MR LAWRENCE: If your Honour pleases. Could I just say, in relation to that passage from the Poverty Commission Report, the passage reads:

PN367

Some fathers compensate for their low wages by working long hours or working on two jobs.

PN368

I apologise for the error - - -

PN369

COMMISSIONER WHELAN: I thought I had it in my copy in yours.

PN370

MR LAWRENCE: They're better thumbed than mine, yes. If the Commission pleases.

PN371

JUSTICE GIUDICE: Very well. Mr Belchamber.

PN372

MR BELCHAMBER: Thank you, your Honour. Just three things quickly. Deputy President Hamilton asked a question about direct and indirect costs and I may have confused things. We do in annexure A to exhibit ACTU2, which is our submission to the Fair Pay Commission, in section 9 at paragraph 9.1 to 9.19 go in some detail to costing the impact of the claim and these are essentially estimates of the direct cost of granting the claim and there is indeed a mathematical formula set out in paragraph 9.11 which we hope has some precision to it and which we believe has some precision. The imprecision I referred to was with respect to estimates of indirect costs and we do make reference to the in paragraph 9.5.

PN373

The overestimate in assuming a similar date of effect for all employees across all jurisdictions we say more than outweighs anything that would arise from indirect costs and that is consistent with our submission that the indirect costs are negligible for all intents and purposes. The second issue is that raised just recently by the AIG. I refer to paragraph 3.1 of exhibit ACTU2 and the first sentence says:

PN374

The ACTU is seeking to flow on the 2008 wage setting decision of the AFPC which comes into effect from the first pay period on or after 1 October 2008.

PN375

And just finally, with respect to the submissions from the Australian Catholic Council for Employee Relations, these submissions go in some detail to the needs of workers on the federal minimum wage, on federal minimum wage reliant working families. Now, we say needs are relevant considerations in fixing minimum wages and we support freedom of speech and we support the ACCER in raising these issues and in ventilating them in this forum. The submissions that deal are focused on the federal minimum wage only, in annexure A to exhibit ACTU2, in section 2, it's about paragraphs 2.15 and 2.18, there's some material which is relevant we say to the submissions from ACCER.

PN376

In our submission, and this is in paragraph 2.18, the federal minimum wage, or in some awards it's the closest classification rate, applies pursuant to classification definitions and typically or often these operate for a short period of time, for an induction or a trainee period. Workers soon move to the next level of award minimum rate or they may commence above that level in many cases and we say in 2.15 that the great proportion of minimum wage workers are on minimum wages at a level above the federal minimum wage. These are considerations relevant to the weight in these proceedings to be given to the specific submissions from the Australian Catholic Council for Employee Relations. If the Commission please, we have nothing further to add.

PN377

JUSTICE GIUDICE: Thanks, Mr Belchamber. Any other submissions? Thank you all for your submissions. It will be necessary to reserve our decision but before adjourning I should say word has reached us, Mr Cole, that you are shortly to retire after a long career in industrial relations, including in particular advocacy with the Commonwealth Government and on behalf of the many Commission members currently and some retired and many retired for a very long time who have had the benefit of your assistance in major cases we would like to express our appreciation for that assistance. I would also like to acknowledge your professionalism, hard work and good humour under fire, in difficult circumstances, and wish you well in your retirement. Thank you for all of your assistance over the years.

PN378

MR COLE: Than you very much, President, and members of the Full Bench and I do thank the long suffering members current and past of the Commission for putting up with my idiosyncrasies for all that time.

PN379

JUSTICE GIUDICE: It's been our pleasure.

PN380

MR COLE: It's very much appreciated, thank you.

PN381

JUSTICE GIUDICE: We'll now adjourn.

<ADJOURNED INDEFINITELY

[2.47PM]

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| LIST OF WITNESSES, EXHIBITS AND MFIs |
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| EXHIBIT #ACTU2 SUBMISSIONS OF ACTU | PN4 |
| EXHIBIT #ACCER1 SUBMISSIONS OF ACCER | PN41 |
| EXHIBIT #ACCER 2 - HENDERSON POVERTY LINE DOCUMENT | PN139 |
| EXHIBIT #ACCER3 - MAKING HOUSES AFFORDABLE AGAIN - DOCUMENT..... | PN233 |
| EXHIBIT #ACCER 4 - CATHOLIC WEEKLY | PN244 |
| EXHIBIT #ACCER 3 - CATHOLIC LEADER | PN245 |
| EXHIBIT #ACCER 6 - AUSTRALIAN SOCIAL TRENDS 2007 ARTICLE BEFORE AND/OR AFTER SCHOOL CARE | PN253 |
| EXHIBIT #COLE1 WRITTEN SUBMISSION OF THE COMMONWEALTH, DATED 07/08/2008..... | PN294 |
| EXHIBIT #ACCI WRITTEN SUBMISSIONS OF ACCI, DATED 11/08/2008 | PN305 |
| EXHIBIT #AIG1 WRITTEN SUBMISSION OF AIG, DATED 11/08/2008 | PN332 |
| EXHIBIT #NFF1 WRITTEN SUBMISSIONS OF THE NFF, DATED 08/08/2008 | PN349 |
| EXHIBIT #ACCER7 DETAILS OF RENTAL COSTS | PN365 |