



18 February 2004

The Honourable Justice G Giudice
President
Australian Industrial Relations Commission
Nauru House
80 Collins Street
Melbourne VIC 3000

Your Honour

Re: C No. 2508 of 2003 and Others re: Safety Net Review – Wages - 2004

The Australian Catholic Commission for Employment Relations (ACCER) seeks leave to intervene under section 43 (1) of the *Workplace Relations Act* 1996 (Cth) in the proceedings of the Safety Net Review – Wages - 2004 (C No. 2508 of 2003 and Others).

The ACCER advises also that it will seek to be represented by counsel at the hearings to be convened in the week beginning 22 March 2004. Counsel will seek leave to appear at that time.

Please find enclosed a copy of the ACCER written submission. The submission is provided as directed by the Australian Industrial Relations Commission on 16 December 2003.

Copies of this submission are being provided to the other parties and interveners.

Yours sincerely

A handwritten signature in blue ink that reads 'John Ryan'.

John Ryan
Executive Officer

Enc.

cc Vice President Ross
Vice President Lawler
Senior Deputy President Marsh
Senior Deputy President Lacy
Commissioner Larkin
Commissioner Grainger
Other Parties and Intervenors



AUSTRALIAN
CATHOLIC
COMMISSION FOR
EMPLOYMENT
RELATIONS

Australian Industrial Relations Commission

Safety Net Review - 2004



18 FEBRUARY 2004

SUBMISSION

Introduction

1. The Australian Catholic Commission for Employment Relations (“ACCER”) is a body established by the Australian Catholic Bishops’ Conference (“the Conference”).
2. Under its Terms of Reference, ACCER acts with the delegated authority of, and is accountable to, the Conference through the Bishops’ Committee for Employment Relations. Its responsibilities include representing the Catholic Church in employment matters of national significance in relevant forums.
3. ACCER provides the Conference and Catholic Church organisations with advice, research and advocacy on matters affecting employment in the Australian workplace, within the context of the Church’s social teachings.
4. For some years ACCER has participated in Safety Net Review hearings in the Australian Industrial Relations Commission (“the Commission”) with a view to, amongst other matters, giving emphasis to Catholic teaching on employment relations. In doing so, its primary concern has been for the needs of low paid employees.
5. In past Safety Net Review hearings ACCER and other organisations have submitted that the Commission should:
 - (a) conduct an investigation or inquiry into the needs of the low paid and review the Federal Minimum Wage; and
 - (b) establish a benchmark against which the Federal Minimum Wage should be set.
6. In 2003 ACCER pressed for an inquiry through which an appropriate benchmark could be established for the fixing of a fair and equitable Federal Minimum Wage under Federal awards. It submitted that the Federal Minimum Wage was manifestly inadequate and that it must be reviewed as a matter of urgency.

7. In its 2003 Decision, the Commission rejected the claims by ACCER and the Australian Council of Social Services (“ACOSS”) for an inquiry to be conducted into these wage-fixing issues; see **Safety Net Review – Wages, May 2003**, Print PR002003, at paragraph [222]. However, the Commission indicated its preparedness to consider further material:

“Our rejection of the proposals for an inquiry should not be taken as a rejection of the utility of empirically determined “benchmarks” such as the poverty line. Indeed, it seems to us that the use of such measures is relevant to an assessment of the needs of the low paid.”

8. The Commission referred to a series of questions raised by ACCER:

“In this context we also note that in their oral submissions ACCER argued that the Commission must ensure the minimum rates it sets (and in particular the federal minimum wage) do not fall below the poverty line. It was put that this task involved determining questions such as “what are needs, who are the low paid, what is the poverty line, what is living in poverty and how does the federal minimum wage compare to the poverty line?” We acknowledge the relevance of the questions posed by ACCER and would be assisted by submissions and material directed to them. As we have already noted empirical studies dealing with these matters would be of more assistance to the Commission in addressing the specific matters mentioned in the Act than the type of illustrative evidence adduced by the ACTU in these proceedings.”

9. The Commission concluded:

“There is no impediment to ACOSS and ACCER, or any other party, bringing forward such material in any future

safety net review. It is not, however, desirable for the Commission to establish a separate inquiry for that purpose particularly in view of the absence of any support for the proposal from any other party or intervener.”

10. It is submitted that, for the reasons which follow, the material now placed before the Commission by the ACTU provides the Commission with empirical evidence to address the matters raised in 2003; in particular, the needs of the low paid.
11. The payment for a just wage is not only important in maintaining the dignity of the individual person, but also in maintaining a just socio-economic system. Pope John Paul II, in **Laborem Exercens** stated:

“In every system, ... wages, that is to say remuneration for work, are still a practical means whereby the vast majority of people can have access to those goods which are intended for common use.... Hence, in every case, a just wage is the concrete means of verifying the justice of the whole socio-economic system and, in any case, of checking that it is functioning justly.” (Paragraph 19)

12. The central issue for the Commission is whether the Federal Minimum Wage is a *fair* minimum standard in the context of living standards generally prevailing in the Australian community. Is it a living wage?

The ACTU Claim

13. This case arises out of the Minimum Wages Claim made by the Australian Council of Trade Unions (“the ACTU”) on behalf of its affiliates. The claim is for a \$26.60 per week increase in all award rates. If granted, the ACTU claim would increase the Federal Minimum Wage from \$448.40 to \$475.00 per week or from \$11.80 to \$12.50 per hour.

The Federal Minimum Wage

14. ACCER's major concern in these submissions is to address the level and operation of the Federal Minimum Wage.
15. The Federal Minimum Wage was introduced into Federal awards by the Commission in 1997; see **Safety Net Review-Wages, April 1997** (1997) 71 IR 1, 59-60 ("the **SNR Case 1997**"). The amount of the Federal Minimum Wage was derived from the lowest classification rate in the **Metal, Engineering and Associated Industries Award, 1998-Part 1**; i.e. the C14 classification. Although it has been adjusted by successive decisions of the Commission, there has never been any review to determine whether it is fixed at an appropriate level.
16. The Commission's obligation to establish minimum rates of pay is set out in legislation. The **SNR Case 1997** contains an extensive review of the operation of a number of provisions of the **Workplace Relations Act 1996** ("the Act"). These provisions were introduced into the Act in 1996 for the purpose of establishing fair "safety net" terms and conditions of employment and encouraging bargaining between employers and employees. In particular, section 3(d)(ii) provides that it is an object of the Act "to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment." Other relevant objects are also found in section 3 and are set out in section 88A. Requirements for the performance of the Commission's award-making functions are set out in section 88B. The Commission is required to have regard to "the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community", a range of economic factors and "the needs of the low paid". Further reference is made to these aspects later.
17. One of the functions of the Commission in fixing award rates of pay and other terms and conditions is to provide a safety net above which employers and employees are free to bargain. Many employees do not have the ability to engage in this process. The wages of these employees will only increase as a

result of safety net decisions by the Commission. Employees who are most likely to remain on safety net award rates are at the lower end of the award classification rates.

18. Two aspects of the **SNR Case 1997** decision should be noted. First, the Commission and a number of parties have been attracted to the “single person” test for the determination of wages. This is evident in both the majority decision in 1997 (71 IR at page 52) and in the minority decision (71 IR at page 135). In the former, the majority expressed the opinion that “it is not desirable for the Commission to identify any family unit as appropriate for a benchmark” (71 IR at page 52).
19. The second relevant aspect of the **SNR Case 1997** concerns the material presented to the Commission regarding the establishment of an appropriate benchmark in respect of low paid employees. ACOSS, in particular, advanced material on this aspect. The majority found that the adoption of a benchmark approach was not practical at that time (71 IR at pages 52-3). Vice-President Ross, however, was prepared to accept material presented about the “consensual poverty line” and that employees in receipt of less than that rate were low paid. The consensual poverty line in 1997 was \$530 per week (71 IR at pages 135-6).
20. The Commission has not ruled out a reconsideration of the Federal Minimum Wage. In the **Safety Net Review – April 1998** (1998) 79 IR 37, 76 the Commission said:

“In deciding in this case to continue to relate the level of the federal minimum wage to that of the C14 classification rate, the Commission is not precluded from taking into account different considerations, unrelated to the C14 rate, in deciding the level of the federal minimum wage in the future.”

21. ACCER recognises that the Commission has given emphasis to lower paid employees, even at the cost of compressed relativities between the various

classifications within the awards. A large part of the capacity of the economy to deliver wage increases has been directed towards those who are most in need. In safety net cases from 1997 the weekly Federal Minimum Wage has increased by \$10.00 (1997), \$14.00 (1998), \$12.00 (1999), \$15.00 (2000), \$13.00 (2001), \$18.00 (2002) and \$17.00 (2003).

22. The Commission has flexibility in its adjustment of the various award rates. In the **Safety Net Review – Wages May 2001** the Commission observed:

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

23. ACCER accepts that fairness (with its necessary elements of equity and justice) may require that the Commission exercise its powers in different ways from time to time. However, a major priority must be the determination of a fair and just Federal Minimum Wage. It would be manifestly unfair to ignore the plight of the lowest of the low paid.

ACCER’s Response to the ACTU Claim

24. ACCER supports the ACTU claim for an increase in the Federal Minimum Wage by \$26.60 per week. Beyond that, its support of the ACTU claim is qualified. It does not support a uniform increase across all classifications because it believes that the increases should be directed to those who are most in need. The primary beneficiaries should be those at the lower paid classifications.
25. ACCER believes that the proposed increase of \$26.60 in the Federal Minimum Wage would still be insufficient to provide a fair minimum rate of pay for

award-only employees. However, it sees the proper adjustment of the rate as being an ongoing process.

The Case in Support

26. During its oral submissions to the Commission in 2003 ACCER submitted that the proposed inquiry would enable the Commission to establish a benchmark against which the Federal Minimum Wage should be set. The benchmark was not proposed as one that would involve a particular formula, a formula to be applied in an arithmetical way as an index, but, rather, as one that would provide the Commission with appropriate guidelines within which to judge “needs”.
27. As noted earlier, in 2003 ACCER posed a series of questions to highlight the issues appropriate to the proper discharge of the Commission’s statutory function. They concerned “needs”, the identification of the low paid and the existence of poverty and the present and appropriate relationship between the Federal Minimum Wage and the poverty line. The ACTU submissions have addressed these questions. They are important questions, but ultimately, their utility depends upon an ability to identify the kind of evidence needed, the compilation of that material and the preparedness of the Commission to discharge its statutory function on the basis of the evidence.

Who are the low paid?

28. The term “low paid” has to be understood in the context of the prevailing wage rates within Australia. The ACTU has referred to this aspect in paragraphs 7.65 and 7.66 of its submission. ACCER submits that, at the least, it extends to those employees on a rate of pay equal to the C10 rate in the **Metal, Engineering and Associated Industries Award, 1998-Part 1**. At present this rate is \$542.20.

What are the needs of the low paid?

29. There are two questions relating to the identification of the needs of the low paid. First, are the needs to be construed as the personal needs of the

employee alone, or do they extend to the needs of the employee's dependants? Second, what standard of living is implied in the term?

30. On the question of the needs to be taken into account, ACCER submits that the minimum wage rates fixed for low paid workers must be fixed on the basis of the needs of the worker and his or her family. In particular, it is submitted that the appropriate family unit for those purposes is the wage earner, a dependent spouse and, at the least, two dependent children.
31. The adoption of the single person test would involve a significant departure from the principle established by Justice Higgins in the **Harvester** judgment, a decision that explicitly or implicitly underpinned nearly a century of wage adjustments (see **Ex parte HV McKay** (1907) 2 CAR 1). It was based on a family of five being supported by a single wage earner. However, it is apparent that for many years there has been a drift away from this particular family-based test. This drift has been accompanied by increased reliance on governmental payments and benefits. The combination has not been sufficient.
32. ACCER's submissions are motivated by the view that the needs of low paid workers and their families are not being met through the wage system (after taking into account government assistance) and the conclusion that corrective action is needed to avoid them and their families living in poverty. The consideration of the needs of the family and its dependence on wages is a matter of particular concern in the social teaching of the Catholic Church.
33. The position ACCER takes is that wages should be fixed by reference to the needs of families and not merely by reference to the personal needs of the single wage earner. The statutory provisions do not identify a "single person" test as the basis for defining "needs".
34. It may be that the interest by some in the single person test arises from recognition of the government benefits available to families. There will be different views on the question of whether total government support of dependants is desirable. To state the obvious, the taxation rates and family benefits that have been fixed by Parliament have not been fixed on the basis

that they are to cover the full living costs of the dependants of low paid workers. The adoption of the single person test would cause substantial harm and prejudice to low paid workers and their families and would exacerbate the social deprivations that they already suffer.

35. The substantial, but insufficient, contribution that the public purse makes to low-income families is not a reason for avoiding the obligation to fix wages partly by reason of the needs of the wage earner's dependants. The wages should be based on the prevailing tax provisions and relevant government payments.

What is living in Poverty?

36. ACCER draws attention to the simple and clear definition of poverty given by ACOSS, quoted at paragraph 7.72 of the ACTU submission:

“Poverty is an enforced lack of socially perceived necessities.

This definition, and most others in poverty research, has three core elements:

- *a lack of necessities;*
- *that necessities are socially defined;*
- *that the lack of necessities is caused by limited material resources.”*

The Commission's Legal Obligations

37. The Commission's task is to fix wages that enable the low paid to avoid poverty and to provide them with a standard of living above the poverty level. The task of identifying an appropriate standard of living is enlightened by the provisions of section 88B of the Act.
38. Section 88B(2) is introduced by a *command*: in performing its award making role “the Commission must ensure that a safety net of fair minimum wages are maintained ...”. The Commission is required to have regard to three matters.

Section 88(2)(c) introduces an element of preference in this process: the Commission is required “when adjusting the safety net, [to have regard to] the needs of the low paid.” Under section 88(2)(a), the Commission is to have regard to the need to provide fair minimum standards in the context of living standards generally prevailing in the Australian community. It is the *need*, not the *desirability*. Importantly, the relevant standard is “*fair* minimum standards”, not “*bare* minimum standards”. The Commission should not fix a poverty wage. It would be failing to carry out its statutory duty if it merely had regard to bare minimum standards in setting the Federal Minimum Wage. Something more is required.

Fair Treatment of Award-only Employees

39. Section 88B(2)(b) introduces an obligation to have regard to “economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment.” It is concerned with macroeconomic factors.
40. What are the implications of the obligation in section 88B(2)(b) in the adjustment of minimum wages? In order to consider the question it is important to recognise that award-only employees have that status because they do not have the industrial strength or particular personal circumstances or attributes to negotiate or to receive the benefits of the bargaining system. Bargaining leads to various kinds of agreements based on the particular circumstances of the employers and employees, including the ability of an employer to pass on cost increases.
41. The bargaining sector is not concerned with some of the economic factors about which the Commission is to have regard to. For example, the inflationary impact of a bargain is not ordinarily a factor to be taken into account. The Commission may be mindful of any potential impact that the adjustment of award rates will have on the bargaining sector. However, it should be very conscious to ensure that award-only employees do not bear the burden of macroeconomic goals. They should not be disadvantaged.

The Budget Standards Evidence

42. The ACTU has relied on budget standards research conducted by the Social Policy Research Centre (“the SPRC”). The nature of the data and the research methodology is referred to in Professor Saunders’ Witness Statement and is summarised at 7.5 and following of the ACTU submission.
43. This research comprises the best empirical material available to the Commission in its task of identifying the needs of the low paid. The transparency of the material enhances its ability to guide the Commission in the exercise of its statutory duty. As Professor Saunders notes, the transparency of the assumptions and judgments provides the basis for an informed debate:

“The most important strength of the budget standards approach is that the method confronts directly the many difficult issues that have to be faced when developing any kind of adequacy standard. The method involves identifying what needs have to be met in order to maintain a given standard of living, what items will meet those needs, and at what cost. This is a complex and formidable task, but one that has to be confronted in order to put a monetary figure on a particular standard of living. The fact that this requires judgements to be made which many will dispute reflects the inherent difficulties associated with obtaining quantitative measures of the standard of living, rather than any fundamental objection to the notion of a budget standard itself.” (page 9)

44. The budget standards identify two standards for the compilation of baskets of goods for various family (and single) groupings. In each standard normative and behavioural factors are taken into account. The SPRC “low cost budget” is a budget to guide the setting of income support payments and emphasises the frugal and careful management of resources. It is not a budget based on the

circumstances of the household of a wage earner. Clearly, the costs associated with work and the material benefits that reflect a reward for work (and which provide an incentive to work) have not been taken into account. It is not a standard that rewards or recognises the fact of employment. The second budget standard for various households is “modest but adequate”. It seeks to identify a living standard that approximates to the median standard of living experienced in the Australian community. Saunders writes:

“Thus, while the arguments are by no means clear-cut, the SPRC low cost standard is too low for use in setting minimum wages and the modest but adequate standard is probably too high. However, in general which precise point to choose on the continuum that separates the two standards is a complex decision that involves judgment.”

(page 5)

45. The difference between the two kinds of budgets is apparent from the table at paragraph 7.1 of the ACTU’s submissions. Five different household types are identified. In a household with a couple with two children the respective figures are \$867.90 and \$708.70, a difference of \$159.20. They are after tax figures.
46. The transparency and utility of the SPRC material is demonstrated by Appendix A to Professor Saunders’ report. The appendix presents a detailed low cost budget for a couple with two children (a 6 year-old girl and a 14 year-old boy) and assumes that the husband (aged 40) is unemployed, the wife (aged 35) is not in the labour force and that the household is renting privately. It does not include work-related costs. The Commission is asked to give close attention to the composition of the budget. ACCER submits that it is a realistic assessment of the kinds of expenses associated with a minimally acceptable standard of living for the identified family unit. It is a “bare” minimum for the family described in present day Australia. It falls short of a fair minimum for a

working family. The cost of this budget at September 2003 is calculated at \$708.70.

47. The ACTU submissions at paragraph 7.29 contain a calculation of the disposable income of the four person household described in the budget standards where there is a single wage earner in receipt of the Federal Minimum Wage. Taking into account relevant taxation provisions, the Family Tax Benefit and rent assistance, the household disposable income is \$687.64. The working family's disposable income is, therefore, \$21.06 less than the figure identified as appropriate for the family without a wage-earner. A fair minimum standard of living for a working family would yield a figure that is substantially higher. The ACTU estimates that this kind of household would need a wage of \$561.20 per week to afford the low cost budget standard. When having regard to fair minimum standards (as required by section 88B(2)(a) of the Act), the Commission must have regard to something more than the low cost budget.
48. ACCER believes that, despite its acknowledged limitations, the SPRC material is the best guide that the Commission now has in regard to the needs of the low paid. It is the best evidence in the identification of appropriate guidelines for the judging of needs. ACCER anticipates criticism of the SPRC material along the lines referred to by Professor Saunders in his statement. This will require debate between the parties and appropriate responses from the Commission. Any party that is opposed to this material should indicate its proposed method of establishing the needs of the low paid. For example, if it is said that the reference to a six year-old girl and a fourteen-year old boy is not representative or appropriate for the identification of the costs in a two-child family, it is incumbent upon the critic to identify more representative or appropriate pairs of siblings.
49. ACCER submits that the anticipated debate will raise a number of matters that will require the Commission's response. That response would necessarily include guidance, based on the arguments advanced in this case, for the

compilation of data for presentation in future cases. ACCER believes it is incumbent on any of the parties who seek to criticise the material to do so in a constructive manner. ACCER requests that the Commission indicates a way forward.

What is the Poverty Line and how does it compare to the Federal Minimum Wage?

50. We now turn to the two remaining questions from last year's case. The answers to these questions are to be found in the SPRC material that is now before the Commission. It identifies and quantifies a relevant poverty line. The SPRC low cost budget is clearly the best empirical material available to the Commission for the purpose of identifying a bare minimum standard of socially perceived necessities. However, the bare minimum standard is not a sufficient standard for the purposes of wage-fixing. A fair minimum standard for workers and working families must be something in excess of that identified standard. It must recognise and reward the work performed by providing a higher standard. The material demonstrates a considerable gap between the current Federal Minimum Wage and its appropriate level. It supports the claim made by ACCER last year that the Federal Minimum Wage is manifestly inadequate. The claimed increase of \$26.60 is a modest first step in the transition to a fair minimum wage as required by the Act.

Summary

51. The Federal Minimum Wage must provide a standard of living to enable a worker and his or her family to live with dignity.
52. The SPRC material provides the Commission with the empirical evidence to identify the needs of the low paid for the purposes of the present ACTU claim.
53. ACCER supports an increase in the Federal Minimum Wage of \$26.60 per week.
54. In any adjustment of other award rates of pay the primary beneficiaries should be those at the lower paid levels of the award system.