

FAIR WORK COMMISSION

Fair Work Act 2009

ANNUAL WAGE REVIEW 2017-18

REPLY SUBMISSION BY THE AUSTRALIAN CATHOLIC COUNCIL FOR
EMPLOYMENT RELATIONS

regarding

BUDGET STANDARDS RESEARCH BY
THE SOCIAL POLICY RESEARCH CENTRE

15 SEPTEMBER 2017

1. This Reply submission by the Australian Catholic Council for Employment Relations (ACCER) is made in reply to submissions by various parties responding to a Statement by the Fair Work Commission (FWC) on 25 August 2017, [2017] FWC 4403, concerning research published by the Social Policy Research Centre (SPRC) of the University of New South Wales on 23 August 2017. The SPRC's Budget Standards research reviews and updates Budget Standards research by the SPRC in the mid-1990s regarding the needs and the living standards of low income individuals and families. Relevantly, it covers wage-dependent individuals and families.
2. The FWC's Statement invited interested parties to make submissions as to how the research might be considered in the current annual wage review; in particular the utility of a preliminary hearing on the research and the issues to be considered in such a hearing.
3. ACCER's submission of 8 September 2017 supported the holding of a preliminary hearing, giving reasons for its utility and the way in which the hearing might be conducted.
4. Submissions have also been filed on behalf of United Voice, the Australian Council of Trade Unions (ACTU), the Australian Industry Group (Ai Group) and the Australian Chamber of Commerce and Industry (ACCI). All those submissions oppose the holding of a preliminary hearing and propose that the Budget Standards research material be raised, responded to and brought before the Panel within the timetable already set for the current annual wage review.
5. The timetable for the filing of submissions and consultations has been released. The closing date for the lodging of submissions is 15 March 2018, with Reply submissions to be lodged by 9 April 2018. The Easter break will be from 30 March to 3 April. Submissions

limited to the Budget are to be lodged by 11 May 2018. Final consultations will be held on 15 and 16 May 2018.

6. Ai Group's submission does not foreshadow any issues that it might raise in relation to the design, methodology and processes of the research. If it has any concerns, under its proposed timetable those concerns would not be raised until the Reply submissions. The timetable does not allow for responses to any concerns raised by Ai Group, which, depending on the nature of the concerns, may require the adducing of further evidence. Furthermore, ACCER expects that the Budget Standards report and relevant documentation will be formally tendered as evidence through a witness, which means that any questioning or contradiction of that evidence may require cross examination and/or the adducing of evidence in opposition.

7. ACCI has raised a number of issues about the Budget Standards research. These matters, which are not exhaustive of ACCI's criticisms of the research (see paragraph 47 of its submission), illustrate the difficulties of dealing with these matters in the course of the March to May 2018 timetable. Some of the matters already raised suggest the need for an investigation into past events and may require the adducing of evidence. These steps cannot be effectively and fairly accommodated within the current timetable.

8. United Voice and the ACTU propose the same course as the employers, but add further considerations supporting this course of action. United Voice's position is set out in the following paragraphs of its submission.

"In our submission it would be inappropriate for the Panel to hear submissions on this research because:

1. Considering it without knowledge of the various specific positions of parties regarding an annual adjustment to the NMW and Modern Award wages and the latest available data would have no, or very limited utility;
2. The conduct of a preliminary hearing on this issue may be seen to elevate this relevant consideration over the other factors the Panel is required to consider; and
3. Consideration of the specific issue of budget standards in isolation seems highly likely to invite formulaic or mechanical suggestions regarding the NMW and Modern Award wages, an approach the Panel has consistently rejected.

We also note that the research has taken place over a number of years, and raises a range of complex issues, which the parties should be given an appropriate opportunity to consider. While United Voice was involved in the research, we did raise a series of issues with the methodology and approach. These contents appear, in the limited time we have had to consider the research, to be born out in the final reports. In our submission this further supports the research being addressed by the parties and considered by the panel in the ordinary course of the submissions and consultations in 2018."

9. The second paragraph in this quotation is significant because United Voice was one of the three "partner organisations" under the funding arrangement, with the Australian Research Council, for the Budget Standards research. It is clear from United Voice's submission that it

has fundamental concerns about the "methodology and approach" of the research. It claims the research "raises a range of complex issues", yet opposes a preliminary hearing which would give it an opportunity to disclose those matters and give those who argue that the research has utility in understanding the needs of the low paid a fair opportunity to address those issues.

10. The cause of United Voice's criticisms may be its view that the money amounts found in the research are insufficient to provide workers and their families with a decent standard of living. If that is the real cause of its discontent, the appropriate response is to address those shortcomings through argument and, if needed, further evidence. This cannot be done under the processes established by the current timetable.

11. ACCER noted in its argument that some parties may wish to contest the figures used in the research for rental accommodation. Similarly, if United Voice wishes to contest the amounts attributed to particular matters (which are recorded in a transparent way), it may do so. We note that the research specifically excludes a savings component to cover the contingencies of life. If this is part of United Voice's concern it should make the case for an adjustment.

12. There is a suggestion in United Voices submission that it will take time for it to consider the research and that a preliminary hearing would be too soon for it to present its views. However, as a research partner to the documents it should have sufficient knowledge of the nature of the research and the processes being adopted for it to identify the issues involved and its responses to them. If United Voice requires assistance to fully participate in a preliminary hearing, the ACTU would be available to provide that assistance. The ACTU relied on the Budget Standards research in the Safety Net Review Case 2004, when it commissioned updated research from the SPRC and relied on a witness statement from Professor Saunders. In the Annual Wage Review 2010-11 the ACTU relied on updated data from the same research, while acknowledging the fact that those figures were based on an earlier economic setting; see Annual Wage Review 2010-11, Decision, paragraph 209. The articulation of the financial needs of workers and their families so that they can achieve a decent standard of living is a basic task of the trade union movement and, we should expect, one to which it will give very high priority. It should welcome the opportunity to respond to the most comprehensive Australian research on those needs in a preliminary hearing where the claimed strengths and weaknesses of that research can be ventilated and issues can be identified. This would give the ACTU the opportunity to make out a case for a decent wage for a decent standard of living for Australian workers and their families.

13. The ACTU submission claims that the issues raised by the research can be dealt with in the timetable already fixed and that, if the Panel wishes to be addressed on any particular matters, it can identify those matters in the consultation questions. This course of action would not permit the proper articulation and consideration of questions arising out of the Budget Standards research, including those raised by United Voice.

14. To support its position, the ACTU raises two other matters. First, it suggests that a preliminary hearing would involve the adoption of a fixed view on the Budget Standards research in advance of the consideration of the full range of issues (see paragraph 7). This appears to be the same kind of point being argued in the first of the numbered points in United Voice's submission. It is a point without substance: the Panel will be mindful of the need not to pre-empt the rights of the parties and the proper consideration of all of the relevant statutory factors in the substantive hearing of the annual wage review.

15. Second, the ACTU argues that a preliminary hearing "may be seen to give" the report "some primacy" in the fixing of wage rates. The ACTU fears that the figures in the report would suggest a minimum below which the Panel should not go, with the effect that "relative living standards and the needs of the low paid would be elevated above all other considerations, thus rendering wage fixing as a mechanical process. These points reflect the matters raised in the second and the third numbered points in the United Voice submission. We do not believe that decisions made by the FWC that take into account the best available evidence about the financial needs of workers and their families could be seen as contrary to the *Fair Work Act*; or that the FWC faced with such evidence would be diverted from its statutory duty of taking into account all of the relevant factors when setting safety net wages.

16. These further matters raised by United Voice and the ACTU do not have any rational basis. There is no reason why the Panel's invitation for parties to comment on the utility of the research, including its design, methodology and processes should compromise its decision-making processes.

17. It should be noted that Budget Standards research was considered by the FWC in the Annual Wage Review 2011-12 by way of a section 290 investigation and report by Senior Deputy President Watson and Professor Richardson. That report (Print PR 517718, 14 December 2011) was the basis upon which the FWC found that then research lacked contemporary relevance. Professor Saunders appeared in the hearing leading to that report and explained the need to update the underlying household budgets to reflect changing community circumstances. The following is extracted from that report:

"17. There was widespread support for budget standards measures as an effective means of measuring the needs of the low paid. It was noted that budget standards were the only measure raised throughout the consultation process which attempts to identify needs and, conceptually, they provide a bridge between needs and income. They do have limitations, including that the lists of items that are included in the relevant "basket" are both very detailed and somewhat arbitrary, and do not adequately reflect substitution strategies that households use as they choose how to make the best use of their income. In the consultations, it was widely accepted that the 1997 SPRC study has passed its use-by date as a base for updating data. Updated measures of budget standards derived from the 1997 study were not seen to provide useful contemporary information about the needs of the low paid.

18. Professor Saunders advised that a proposal was about to be submitted to the Australian Research Council (ARC) for updating budget standards, with the support of three organisation. The proposal was that budget standards would be constructed for a smaller group of households than in the original research, reflect lessons learnt from the original SPRC study and the proposed new research would specifically address the needs of the low paid. However, no new estimates would be available until 2013 and the grant may not be funded by the ARC.

19. Professor Saunders also advised that the new study, if funded, would address more effective measures for updating the base measures derived. He suggested that a method for updating the standards that would avoid frequently re-calculating the budgets themselves would be to "anchor" them to points in the distribution of income for particular household types. These anchor points could then be updated by the regular (biannual) Australian Bureau of Statistics (ABS) income distribution surveys. To this end, more work would need to be undertaken in identifying such anchor points. More work could also be undertaken to identify which components of the budget standards would need to be examined each year, or less frequently.

....

41. The current HPL data and the SPRC budget standards data provide little guidance to the Panel because the original research upon which they are based lacks contemporary relevance. The proposed research project submitted to the ARC for updating budget standards will, if funded, provide valuable information when focused on the needs of the low paid so long as the information remains contemporary. Budget standards that are based on the needs of the low paid, rather than, for example, set at a level deemed appropriate for social welfare recipients, would be of most value to the work of the Panel. However, it is of concern that the availability of contemporary budget standards data is reliant upon the ad hoc efforts of academic researchers and there may be times, as is currently the case, when reliable contemporary data is not available.

42. There is a widespread view that more regular and consistent primary data as to the needs of the low paid is required and, if available, would better inform the Panel."

18. It is apparent from this report that Budget Standards research has the capacity to inform the FWC about the needs of the low paid (see paragraph 41), but the research requires attention to be given to a range of important matters concerning the construction of the budgets produced (see paragraph 17). These matters, such as household substitution strategies (to which the report referred), cannot be raised, discussed and considered within the

procedures established by the March to May 2018 timetable. A preliminary hearing similar in format to that proposed by ACCER would be the most effective and fair method to consider the capacity of the Budget Standards research to inform the FWC's wage review.