

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.285 – Annual Wage Review

C2018/1 Views on Preliminary Hearing re Budget Standards Research

SUBMISSIONS OF THE AUSTRALIAN COUNCIL OF TRADE UNIONS

1. These submissions are made in response to the Statement of the Commission [2017] FWC 4403 on 25 August 2017 (“the Statement”).
2. The ACTU does not seek a preliminary hearing to discuss the outcomes of the Saunders & Bedford Report.
3. Budget standards of the type set out in the Saunders & Bedford report have been considered in the course of minimum wage fixation in Australia prior to the *Fair Work Act* and have also been utilised elsewhere. Most recently, in the Decision of the Panel in the 2015-16 Annual Wage Review, the Panel:
 - a. Described budget standards as a way in which poverty is measured¹;
 - b. Noted that measures of poverty, or the risk of poverty:

“..are relevant in assessing the needs of the low paid because poverty entails an inability to buy the material resources required to meet basic needs. If the low paid are forced to live in poverty then their needs are not being met and those in full time employment can reasonably expect a standard of living that exceeds poverty levels. Information about low paid and award reliant employees at risk of poverty is also relevant in assessing relative living standards, given poverty measures typically involve benchmarks of community incomes or expenditure standards.”²

We agree with and would not seek to challenge or revisit those general observations, via a preliminary hearing or otherwise.

¹ [2016] FWCFB 3500 at [431]

² [2016] FWCFB 3500 at [429]

Lodged by:	Australian Council of Trade Unions
Address for Service	Level 4, 365 Queen Street, Melbourne 3000
Telephone:	(03) 9664 7333
Facsimile:	(03) 9600 0050
Email:	tclarke@actu.org.au

4. The Panel has not placed any weight on budget standards in Annual Wage Reviews under the *Fair Work Act* to date, owing to the lack of budget standards research with contemporary relevance:

“We remain of the view that the SPRC budget standards data provide little guidance to the Panel because the original research upon which they are based lacks contemporary relevance. In this respect, the 2011 Report to the Minimum Wage Panel noted that “[i]n 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”. We note a project being undertaken by ACOSS, Catholic Social Services Australia and United Voice with the SPRC to update the SPRC 1996 budget standards benchmarks of community living standards may provide more contemporary budget standards data.”³

5. The question of whether, or the extent to which, the Saunders & Bedford report should be a source that the Panel takes into account in informing itself in this year’s Review is matter capable of being addressed in submissions and in the consultations that are schedule to occur in May 2018. Should the Panel wish to be addressed on any particular matters arising from the submissions or the Saunders & Bedford report, it can identify those matters in the consultation questions that are made available prior to those sittings. The benefits of that approach over having a preliminary hearing are twofold.
6. Firstly, the task of the Panel (and the approach of the interested parties in submissions) is heavily informed by evaluating and synthesising the whole range of relevant information that becomes available over the course of a year:

“There is no formulaic relationship between changes in particular indicators or factors over time and the outcome of particular Reviews. While the Panel seeks to explain its view of the circumstances (including forecasts or projections) prevailing in each Review in comparison with previous years, it is not feasible to quantify the weight given to particular factors in balancing the various considerations prescribed by the Act. This also explains why proposals premised on a fixed relationship between the rate of inflation and minimum wages directed towards real wage maintenance are not consistent with the statutory framework. These considerations also informed our recent decision to decline to adopt a medium-term target for the NMW.”⁴

“When evaluating developments in the economy, the labour market, relative living standards and the needs of the low paid, collective bargaining and equal remuneration, we routinely look to developments over the medium and long term, as well as to changes over the past year. This is evident in the material that is included in the Statistical Report— Annual Wage Review 2016–17 (Statistical report) that accompanies the Review. Our capacity to take both a contemporary and a longer-term perspective is determined by the available data. A focus on developments over the past 12 months enables us to see how

³ [2016] FWCFB 3500 at [442]

⁴ [2017] FWCFB 3500 at [17]

things have changed since the previous Review decision. The longer-term perspective reduces our reliance on contemporary data that can be volatile and subject to error. It also enables us to see the cumulative effects of the annual changes on which we focus, including our own decisions.”⁵

“...information about low-paid and award-reliant employees at risk of poverty is also relevant in assessing relative living standards, given poverty measures typically involve benchmarks of community incomes or expenditure standards. The Panel already considers a number of indicators for the relative living standards and needs of the low paid and can be expected to do so in future Reviews.”⁶

7. In our submission, it would not appropriate, or helpful, for either the Panel or the interested parties to now adopt a fixed view about what is to be made of the Saunders & Bedford report or its outcomes. The analytical task needs to consider the range of available information in parallel, not in series. To the extent that a preliminary hearing provides an opportunity to comment on the design features of the material presented in the Saunders & Bedford report, that opportunity also arises in the usual process and may be informed by other sources not presently available.
8. Secondly, a preliminary hearing may be seen to give the Saunders & Bedford report some primacy either as a measure of poverty or as a source of determining the relative living standards and the needs of the low paid. That exercise carries with it similar difficulties to those that occasioned the effort by United Voice and ourselves during the last review to seek that the Panel adopt a medium term target of 60% of median earnings. In the crudest sense, giving primacy to Saunders & Bedford report would involve asking the Panel to “not go below X”, where *and because* “X” is a figure derived solely from that report. That in turn involves elevating “relative living standards and the needs of the low paid” above other considerations that inform the task the Panel is called on to perform, and adopting a somewhat mechanical process. The Panel’s comments in rejecting the medium target approach are apposite:

“As the Panel has observed in previous Review decisions, there is often a degree of tension between the economic, social and other considerations which the Panel must take into account and, as we have mentioned, no particular primacy is attached to any of these considerations.

While the statutory considerations referred to must be taken into account it is important to bear in mind that these considerations inform the modern awards objective and the minimum wages objective, but they do not themselves constitute the relevant statutory

⁵ [2017] FWCFB 3500 at [8]

⁶ [2017] FWCFB at [70]

objectives. The modern awards objective is to ‘ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions.’ The minimum wages objective is to ‘establish and maintain a safety net of fair minimum wages.’ These objectives are very broadly expressed and the notion of fairness is at the heart of both statutory objectives. Fairness in this context is to be assessed from the perspective of the employees and employers covered by the NMW or the modern award in question.

The range of competing considerations and the broadly expressed nature of these statutory objectives has led the Panel to reject a decision rule approach to wage fixation, such as the adoption of real wage maintenance. The range of considerations we are required to take into account calls for the exercise of broad judgment rather than a mechanistic approach to fixing minimum wages.”⁷

9. The Saunders & Bedford report is a substantial undertaking which may inform the Panel’s deliberations, but in our submission there is no utility in conducting the preliminary hearing posited for consideration in the Statement.

Australian Council of Trade Unions

⁷ [2016] FWCFB 3500 at [56]-[58]