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C2018/1

s.285 - Annual wage review

Annual wage review

(C2018/1)

Sydney

9.44 AM, WEDNESDAY, 16 MAY 2018

Continued from 15/05/2018

PN271

JUSTICE ROSS: Can I have the appearances, please?

PN272

MR S SMITH: If the panel pleases, I appear for the Australian Industry Group - Smith, initial S - and with me I have Ms Toth, initial J, Ai Group's chief economist and Ms Street, initial N, our national manager of workplace relations policy.

PN273

JUSTICE ROSS: Thanks, Mr Smith.

PN274

MR B LAWRENCE: If the Commission pleases, I appear for the Australia Catholic Counsel for Employment Relations - Lawrence, initial B.

PN275

JUSTICE ROSS: Thank you.

PN276

MR LAWRENCE: Also in attendance today is Margaret Savage, who is co-chair of the Australian Catholic Counsel for Employment Relations, and Mr John Ferguson, who is the national executive director of the Australian Catholic Social Justice Counsel.

PN277

JUSTICE ROSS: Thank you.

PN278

MR S McINTOSH: If it pleases the Commission, I represent the Transport Workers' Union of Australia - McIntosh, S, and soon I will be joined by Hill, M, a food delivery rider.

PN279

JUSTICE ROSS: Thank you. (Indistinct) order? Yes, I think we'll have you go first, Mr Smith.

PN280

MR SMITH: Yes, thank you. As the panel is aware, we've filed three submissions in the proceedings - a main submission in March, a reply submission in April, which dealt with the panel's first set of questions on notice and a post-Budget submission dealing with the questions for the final consultations. All of those submissions argue in support of a 1.8 per cent minimum wage increase, which translates to a \$12.50 per week increase on the national minimum wage and \$14.60 on the base trade rate.

PN281

A detailed economic analysis is set out in those three submissions and Ms Toth will make some supplementary remarks in a moment about the economic environment. Those key economic factors that are highlighted in those submissions show that now is not the time for a large minimum wage increase.

Many businesses are struggling. Average wage growth is low. Inflation is obviously low and productivity growth has been very weak over the past decade. Australia already has either the second or the third-highest minimum wage in the world, depending upon the way it's measured. The vast majority of Australian workers, of course, are entitled to award wage rates that are higher than the national minimum wage. Australia cannot afford to have an uncompetitive minimum wage.

PN282

A reduction in competitiveness obviously most impacts upon the low-paid. As we've said in our submissions and in our public statements, we believe that the 3.3 per cent minimum wage increase that was awarded last year was exceptionally high and in our view out of step with economic settings and we urge the panel to award a more modest increase this year, in line with what we have proposed of 1.8 per cent. I'll hand over now to Ms Toth who'll make some supplementary remarks about the economy, thank you.

PN283

JUSTICE ROSS: Thanks, Mr Smith. Ms Toth.

PN284

MS TOTH: Good morning. Just I had a couple of things I wanted to highlight for you today. The first is just on the wage price index. As you're no doubt aware, that will be updated today at 11.30 by the ABS for the first quarter of 2018. We're expecting it to stay fairly steady or possibly to tick up slightly.

PN285

If we look at the trend data over the last couple of years, I notice that the wage price index, and pretty much all of the other average wage measures that are available, indicate that the growth rates have already troughed. They'd hit their low during 2016 and 2017 and are now very gently trending up, so it's a modest rise but they are gently lifting largely for economic reasons.

PN286

We're seeing the same pattern with the CPI, so in terms of wage and inflation growth rates, they look like they have already started to lift and just the general cycle is already – it's very modestly trending up. When we look at the outlook, the most recent set that we have is from the Federal budget last week and that's quite an interesting set of forecasts and I've included in our final submission on page six just the summary table that's published by Treasury as part of the budget documents, and when we look at that, I think the main things for our purposes today to look at the employment growth forecasts, the unemployment rate and, of course, wages and inflation, that suggests that employment growth is expected to moderate from here going forward, so although we had a very strong jobs growth number of well over 400,000 over the year to the end of 2017, it doesn't look like Treasury is expecting that to repeat next year and going forward and as - - -

PN287

JUSTICE ROSS: How does that sit with the – I agree that's what they're forecasting but how does that sit with the proposition that the wage price index is going to increase significantly over the next two years?

PN288

MS TOTH: This is the question that I was going to raise with these forecasts because there is a bit of a disconnect in here between what they're forecasting on the labour market side, although I notice that jobs growth rate moderating, unemployment rate coming down slightly to five and a quarter percent, which is still a measure that would indicate we've got a fair bit of spare capacity in the labour market.

PN289

The wage price forecasts, however, are quite strong. They're going up to three percent and I agree it's a bit of a puzzle. One explanation is that they are assuming productivity to growth to lift quite strongly from here to help push up real wages growth. That's a bit of a stretch in the short term because business investment is still relatively weak and it's difficult to see that the fairly low rates of productivity growth that we've had in recent years turning around quickly.

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JUSTICE ROSS: I don't think – I mean, that might be the explanation but I don't recall that being made explicit.

PN291

MS TOTH: It isn't, so trying to unpick why they have such a strong wages forecast when the labour market is pretty much on the same level as now, if anything slightly weaker when we look at employment growth, then that means trying to unpick some of those assumptions that might be being made.

PN292

JUSTICE ROSS: Maybe that – I mean, they're also forecasting CPI to rise so they might be assuming that that leads to – even with real wage maintenance, you would see an increase in the wage price index on that basis.

PN293

MS TOTH: We would but when we look at these, inflation is still weaker than the wage price index in the forecasts, so that's part of the story and there's several things that are not published in the forecasts. One is productivity growth rates and the other is population growth rates, so that means we need to pretty much guess at the assumptions that might have been made there because they aren't published but it looks like one of those two, probably productivity, is assumed to lift from here which may take longer. It is lifting but I think it will take longer than the one or two years that are in here.

PN294

JUSTICE ROSS: I did raise this, similar to the issues you've raised with the Commonwealth, yesterday in trying to understand what the basis for their forecasts on wages were and my recollection is that it's based on the proposition that they expect GDP to improve, that that will have an impact on jobs growth, so it seemed to be a combination of two factors which lead to the wage price index forecasts.

PN295

One was what they described as a further tightening in the labour market, although, as you've indicated, it still has an unemployment rate above five and the pick up in the CPI. They thought those two factors seemed to explain it but, yes, I'm not sure that it explains the – it may explain some upward movement in the wage price index but they're forecasting quite a strong upward movement.

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MS TOTH: Yes.

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JUSTICE ROSS: Over a fairly short period of time.

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MS TOTH: Yes, I think it's a partial explanation, so the other part of it probably lies in the variables that are not published but are included in the modelling.

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JUSTICE ROSS: Yes.

PN300

MS TOTH: The other area of the Treasury papers for the budget last week that I think are relevant today are to look at some of the tax revenue numbers that were in there. They're quite interesting and they tell us quite a bit about where income growth is coming from in the economy, which I think is relevant for you. Sorry, I've got this in the wrong place haven't I. That's better.

PN301

The tax revenue numbers that were in the budget were really interesting for lots of reasons but one of the more interesting aspects I think for today is when we look at the increases in tax revenue collections in 2017-18 from company tax and from personal income tax, the company tax revenue take went up by 22 percent which is quite remarkable. Going forward though, it's looking like five to six percent growth over the next two years.

PN302

What's interesting about the 22 percent increase is that it's fairly clearly a one off rise. It's in the mining industry and it is mainly due to the commodity price resurgence that we saw towards the end of 2017.

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JUSTICE ROSS: Obviously the spike in profits towards the end of 2017 that - - -

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MS TOTH: That's right, and that ties in quite closely with some data that I put in our first submission, chart 16 on page 20, which just draws out some of the ABS data on company profits across industries and that makes it quite clear that the big increases that we'd seen are in the mining industry and not spread evenly across the economy and they're certainly not evident in many of the industries that are big employers and big employers of low wage workers.

PN305

The other area that was in there was on the personal tax side and the revenue lift that was in the budget papers was mainly due to the lift in total employment numbers, that really big increase that we've seen rather than to income per capita to wage growth, so that speaks to the population growth rates that we've seen and the labour market participation growth that we've seen, both of which are still reasonably strong.

PN306

The last aspect that I wanted to raise for you today is just lately there's been a bit of a flurry of research papers in Australia and elsewhere on the drivers of wage growth. I'm conscious though that most of these look at average wage data rather than minimum wage data so you would need to take that into account, but just in March this year, so since you've opened these proceedings, there's been a major research piece by the IMF looking at wage growth across a number of countries, including Australia, and two pieces from the RBA that were published in their March bulletin, both on the drivers of wage growth, and this adds to research published by Treasury late last year for Australia and annual pieces from the OECD and the ILO on labour market outlook and wages outlooks globally. All of this really looks at wages growth in a global context and it draws out the macroeconomic drivers rather than what's happening for individuals, but it does suggest that the slow pace of wages growth over a very long period of time is explainable by fairly conventional economic/macroeconomic variables, and they include primarily productivity growth, spare labour market capacity and inflation rates, and drawing all of that together, as I said, it's mainly on the basis of average wages but also relevant to looking at the minimum set.

PN307

JUSTICE ROSS: If you look at the international experience, it doesn't give you much confidence that the wage price index is going to be growing significantly over the course of the next two years.

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MS TOTH: Yes. It doesn't lend much weight to that 3 per cent forecast that Treasury has included in the budget, I agree.

PN309

JUSTICE ROSS: We're still going to have an unemployment rate on the forecasts above 5 per cent. You've had an unemployment rate below 4 in the US, UK, and very low wages growth, accepting that the NAIRU might be different, for different economies. The international experience doesn't seem to support at least a short term rebounding in the wage price index.

PN310

MS TOTH: The IMF paper really highlighted the role of underemployment. They attempted to model that separately to the unemployment rate and it did show up as an additional spare capacity factor. There's also evidence that the NAIRU rate may have fallen in some countries.

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JUSTICE ROSS: And the underutilisation rate in Australia hasn't moved much.

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MS TOTH: That's correct, so I think the underemployment rate is really becoming more prominent as a factor for consideration.

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JUSTICE ROSS: Thank you.

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PROFESSOR RICHARDSON: Ms Toth, could I just - I don't know if you've finished - - -?

PN315

MS TOTH: Yes.

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PROFESSOR RICHARDSON: But just follow up your brief summary of the international literature on the causes of low wage growth, because I understood they're also drawing attention to the declining in effect power of labour, partly because of technological change, partly because of the increase in secure work - part-time, casual, that sort of work - and partly because of the decline in the proportion of the workforce that are members of unions, that these were significant contributors to the lower rate of growth of wages. Is that correct, and would you like to comment on that?

PN317

MS TOTH: That has been found as a factor in some countries. It is bundled in with the spare labour capacity issue in that when there is more spare labour capacity, that tends to weaken bargaining situations across the board.

PN318

PROFESSOR RICHARDSON: Yes, but it's also if you're casually employed or part-time employed, you're less likely to be a member of a union, you've got less bargaining power, in a collective sense, I thought was part of the argument.

PN319

MS TOTH: Yes. That has been found in some countries, yes. I think in Australia that might not be as relevant, because we know that the rate of casual work in Australia hasn't changed for the last 20 years.

PN320

PROFESSOR RICHARDSON: I did have one question on your proposition that the rate of growth of productivity is low, which is a point that you've made previously, but it seems to be at odds both with the data and with the positions put by the Commonwealth government on labour productivity. So you say it has been - and I'm quoting you from your initial submission - it has been exceedingly weak over the past decade and over the current productivity cycle. But the chart in our statistical report, and this is supported by other data, says that labour productivity went up by 1.9 per cent in the last productivity cycle or the current productivity cycle. That's significantly higher than the previous productivity cycle, and we note that labour productivity on the data actually fell in the last year, probably because of the very high growth in employment, but we asked the parties about

this and none of them wanted us to focus on the last year, all agreeing that you needed a longer time period in order to get a proper view about what's happening to labour productivity. So I remain puzzled as to why you keep saying that labour productivity growth is particularly low.

PN321

MS TOTH: The OECD data does show that and the Treasury paper from last year also found that weaker productivity now, the most recent decade compared to previous decades, is a factor for weak wages growth.

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PROFESSOR RICHARDSON: I'm sure it goes to time periods.

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MS TOTH: Yes, it does.

PN324

PROFESSOR RICHARDSON: I mean, I'm not suggesting that 1.9 per cent is high over a very long period, but the government in its own submission was saying if you take the last five years and compare it with the average of the last 30 years, they're about the same, that it's kind of average.

PN325

MS TOTH: Yes, over the long term. I think I was comparing the most recent decade to the one before it, and I'll just find the data for you.

PN326

PROFESSOR RICHARDSON: But that includes the very low period, which was associated as we know with the heavy investment in the resources sector and so on.

PN327

MS TOTH: Yes. Just a moment and I'll find what I was looking for. So for the period 2009 to '16, which is the period that the IMF was looking at in its paper this year, productivity growth - labour - measured as GDP per hour worked on a US dollar real basis was 1.3 per cent annual average compared to 1.5 per cent for 2000 to 2008, but I agree that over a very long period, over 30 years, both those numbers are not dissimilar to the long run average, and in fact they're both a little bit higher than the OECD average. So although productivity growth has appeared to have slowed in the most recent decade compared to the one before it, it is actually still a little bit stronger in Australia than in other OECD countries.

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PROFESSOR RICHARDSON: Yes, and the difference that you have quoted there is not very large and it's in US dollars.

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MS TOTH: That's correct.

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PROFESSOR RICHARDSON: So I mean, why would we express it in US dollars?

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MS TOTH: Well I was replicating the work that the IMF has done in its latest study, which is, you know, because it needs to be comparable on a global basis.

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PROFESSOR RICHARDSON: Yes, but for the purposes of wage setting, it doesn't need to be comparable on a global basis really, does it?

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MS TOTH: No, but other data does show that productivity growth has slowed in Australia over the decade since 2007.

PN334

PROFESSOR RICHARDSON: But only by a small amount. I mean, you say it has been exceedingly weak over the past decade and over the current productivity cycle. It's the "exceedingly weak" that I am struggling with. Then you go on and quote the Australian government - labour productivity in the whole economy has grown at an average annual rate of 1-and-a-half per cent over the past five years, which compares with the long-term average of 1.6 per cent. It doesn't sound exceedingly weak.

PN335

MS TOTH: Yes, I think it's the timing of the comparisons that is probably different there. So I wasn't looking at the very long-term average, and you are correct that the very long-term average hasn't changed drastically but it does move over time.

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PROFESSOR RICHARDSON: Thank you.

PN337

COMMISSIONER HAMPTON: Ms Toth, I'm not sure whether this is directed to yourself or one of your colleagues, but I'd just like to draw out a little bit more on the AiG's response to question 1.3 in the questions for final consultations, which is on page 7 of the post-budget submissions. It's probably the best place to find it. So this is the response to a question about the difference between the wage price index and the annual wages year decision. Just in relation to your table, the second dot point talks about selected low wage industries. Can you just define what that means?

PN338

MS TOTH: It's just referring to the industries that I included in chart 21, page 8, which I think were the ones that you have mentioned in your question, although I did add in healthcare as well.

PN339

COMMISSIONER HAMPTON: All right. Just in relation to chart one, then, you point out that there is a difference in 2010, 2014 and 2017 - that is the minimum

wage increase or the annual wage review increase was larger than the private sector WPI. Now, just from my perspective I don't think there is a lot of significance in 2010 because of course increases went from 4, to 0 to over 4.5 so one would expect some unusual outcomes in that scenario.

PN340

But just in relation to the other two increases, I mean, at one level it is obvious that that is going to occur. In other words, if the commitment of the previous bodies or this panel sets the increase higher than the wage price index you'd think at a point in time that it will be but I think the question is really relating to - one would expect there to be a reflection of that in the subsequent wage price indices.

PN341

So I wonder whether you have any comment about that, because it seems to sort of just reflect the actuality of the time, whereas really the problem was one would expect in the normal course that an increase that we awarded would be reflected at least in part in the WPI after the decision.

PN342

MS TOTH: Yes, that is a reasonable expectation and I've - unfortunately I don't have an explanation for why it hasn't eventuated.

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COMMISSIONER HAMPTON: You would have seen the other responses that have been given, including that by the ACTU.

PN344

MS TOTH: Yes, but after I wrote this, unfortunately.

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COMMISSIONER HAMPTON: Yes, well, exactly - that's why I want to raise it with you. Amongst other measures, non-compliance has been raised.

PN346

MS TOTH: Yes, it has. I don't have any information on that. The industries that are listed here are not ones that I have any special insight into. But it's possible that that is a factor. I guess, you know, mathematically if the minimum is coming up and other wages are not, there could be a bit of wage compression happening in those industries. But - - -

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COMMISSIONER HAMPTON: You mean by that absorption of awards?

PN348

MS TOTH: Possibly, or just no increases at higher income levels or - I really have no insight on whether non-compliance would be enough in these industries to be pulling the average down.

PN349

COMMISSIONER HAMPTON: One would expect that whatever the level of non-compliance is, there may even be longer-term trends in that but they're unlikely to fluctuate dramatically from one year to the next, I would have thought.

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MS TOTH: Yes, I would agree with that.

PN351

COMMISSIONER HAMPTON: So just from my perspective, there must be some other dynamic that's going on here.

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MS TOTH: Well, the only thing I can think of is just, as I said, just a mathematical thing, that if the minimum has gone up and the average hasn't, then somewhere up higher must be getting a smaller increase.

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COMMISSIONER HAMPTON: Fair enough - thank you, Ms Toth.

PN354

JUSTICE ROSS: Thank you - Mr Lawrence.

PN355

MR LAWRENCE: If the Commission pleases - the focus of ACCER's submissions is on working families, where the wages earned by workers do not provide a decent standard of living and in which many parents and children are living in poverty. These workers are the working poor. They are the workers who we seek to represent. These working families can be identified in the data that we have drawn from the national census of August 2016 and included in our March 2018 submission.

PN356

The data identified the composition, work patterns and incomes of 573,322 low-income families, including 1,095,888 dependent children for whom a decent standard of living is elusive and where poverty is real or threatened. These families comprise 12.8 per cent or about one in eight of couple parent families and 47.8 per cent of almost half of sole-parent families. Not all of these families are in employment. Among couple parent families 47.1 per cent have at least one parent in full or part-time employment. Among the sole parent families, living in or near poverty, 40.9 per cent of sole parents are in full or part-time work. 10 per cent are in full-time work and 30.8 per cent are in part-time work. About one quarter of employed sole parents are employed full-time. In couple parent working families 66.3 per cent are employed in full-time work.

PN357

The data enables an estimate of the number of children living in these low-income working families who are in or near poverty. 262,805 in couple parent families and 220,007 in sole parent families. Usually the lives and future prospects of about 480,000 children, mostly dependent on the minimum wage decisions made by this Commission. In the current budgetary context, that dependency is complete.

PN358

This material presented by ACCER demonstrates that for many low-paid workers and their families full-time employment and even full-time employment supplemented by part-time employment is not a pathway out of poverty and into a decent standard of living. The level and depth of child poverty in Australian working families is scandalous. It is scandalous because Australia can do better and because it is to a substantial degree the result of wage decisions of national wage-setting tribunals over the past two decades which have cut the relative wages of minimum wage-dependent workers.

PN359

The inevitable effect has been increasing inequality between these workers and the rest of the workforce and between their families and Australian families generally. It has caused increasing poverty levels among low-income working families. It is no answer to this concern to say that this deleterious trend has been largely contained over recent years. As the successor to the tribunals that presided over these cuts, this Commission has an obligation, we submit, to address this legacy.

PN360

For the reasons set out in this submission, ACCER is asking the Commission to award relatively greater increases to low-paid workers in recognition of the greater unmet needs of those workers and their families. It asks that the Commission abandon its wages relativity policy of awarding a uniform percentage increase to all minimum wage rates. It also asks the Commission to start a process of providing greater increases in the national minimum wage, so that over a period of time it can be said to be a living wage providing a decent standard of living consistent with recognised human rights and the intention and purpose of the national minimum wage. In previous decisions, the Commission has recognised widespread poverty in wage-dependent families but has not in our view accepted responsibility for alleviation of that poverty. It is as if the Commission has decided that poverty in working families is the Commonwealth government's responsibility and one to be addressed through the welfare system.

PN361

But the severity of the problem has been caused by the failure of the national minimum wage system over the past two decades or so to adjust minimum wage rates to reflect rising community-wide incomes. We appear to have a standoff between the institutions setting the wages safety net and the social safety net with a devastating effect on the lives of the working poor and their families. As we have said in our March 2018 submission, if the Commission is not prepared to take poverty and economic deprivation seriously through its wage-setting decisions, no government will feel impelled to address the matter through its budgetary policies.

PN362

ACCER asks the Commission to address the manifest inadequacy of the national minimum wage and award rates and to do so in a phased manner over a period of time. The claimed amount for the national minimum wage is an increase of \$40.10 per week over the current level of the national minimum wage and \$8.10 per week more than the \$32 per week that is claimed in respect of award wages

for lower-paid workers. The claim seeks the conversion of the money increase into a percentage increase of 3.9 per cent for classifications above the C10 wage rate in order to prevent the national minimum wage from rising above the lowest wage rates. In some awards we seek an order that no award rates shall be less than the national minimum wage.

PN363

The amount claimed for lower paid award rates is designed to provide lower paid workers with a relatively greater increase than that applied to higher paid workers on the basis that it provides relatively more to those most in need. The national minimum wage is a critically important wage rate because it is the basis upon which wage rates in awards and collective agreements are set.

PN364

As the basic general entitlement of Australian workers, the national minimum wage should be a living wage but it is not. At present, a worker has to obtain a skilled position in order to receive a living wage. In the event that the Commission finds that there are economic constraints on its ability to award these overall increases, ACCER submits that priority should be given to the adjustment to the national minimum wage and low paid award wage rates.

PN365

As I said, ACCER seeks the progressive adjustment of the national minimum wage to a point where it is a living wage. The term living wage has been used for more than a century in minimum wage debates and decisions in Australia. It is not an idiosyncratic local term but an expression of a universal desire for workers to receive a wage that will provide a decent standard of living for themselves and their families.

PN366

The universality of the term is illustrated by the use of the term in the constitution of the international labour organisation and in its current policy on social justice and globalisation, which we have quoted at paragraphs 36 and 39 of our submission of 9 April 2018. The term living wage is also an expression of a right that is recognised in the international covenant on economic, social and cultural rights. The right of a worker to remuneration that will provide, and I quote, "a decent standard of living for themselves and their families". Australia is obliged to give effect to that right.

PN367

ACCER has argued that the terms of the wage setting provisions are intended to give effect to these kinds of objectives. In this regard, we have made submissions on the construction of section 284(1) of the Fair Work Act and the Commission's wages relativity policy that have been adopted by the Commission since 2011.

PN368

We argued that the wages relativity policy is inconsistent with a proper construction of the sub-section. The consequences of the construction issue, that is how section 284(1) is to be understood and applied, are profound. Under the Commission's past decisions, the achievement of a decent standard of living is

only one of a number of objectives of the wage setting process and one with no primacy.

PN369

Under the sub-section, properly understood, the achievement of a decent standard of living is the objective of the national minimum wage subject, of course, to a proper evaluation of economic circumstances that may constrain that objective. The object of the minimum wage provisions in section 284(1) of the Fair Work Act is the establishment and maintenance of a wage safety net.

PN370

The term safety net is not defined. By its ordinary meaning, a safety net wage is a wage that protects a worker against poverty and provides the worker with a decent standard of living with due account for those workers with family responsibilities. The Commission will have noted that none of the submissions, other than ACCER's, have addressed the nature and purpose of a safety net yet the term is central to an understanding of the objective and purpose of the minimum wage provisions in the sub-section.

PN371

The principle to be applied when giving effect to a generally expressed human right in legislation and in decision making is that the enacting legislation and decisions made under it must be reasonable and proportionate to the right. The right that is recognised does not extend to the setting of a minimum wage for unusual or exceptional cases, such as setting a wage that would be needed to support a family with nine children.

PN372

The practical application of these rights, according to the reasonable and proportionate test, will cover the ordinary and expected circumstances in which workers live. Those covered will include single workers and workers with family responsibilities, whether as sole parents or as workers with a partner. In the contemporary Australian context, having one or two children is within the scope of the ordinary and expected circumstances.

PN373

A safety net wage should be sufficient to support couple parent and sole parent families with one or two children. It would not be acceptable to set a wage that is sufficient for one of these categories of workers but not for others. In each decision since 2013, the Commission has stated that full time workers have a reasonable expectation of a standard of living that is in excess of poverty.

PN374

However, it has not indicated which workers, and consequently which working families, have that reasonable expectation. ACCER has, again, asked the Commission to make that indication. There is also an associated question concerning single breadwinner couple parent families with dependent children who are living in poverty or who are unable to achieve a decent standard of living. These are the people who we seek to represent.

PN375

The question is, is the sole breadwinner obliged to work overtime or find another job and/or the primary carer of the children obliged to seek employment in order for the family to have an income that will enable it to escape poverty and achieve a decent standard of living? This is a question that has been asked in the past but has not been addressed.

PN376

The question has been asked again in this year's submission. The measuring of the needs of the low paid, which is a part of the setting of a national minimum wage safety net, has been hampered by the limited contemporary research on the needs and the costs of low paid workers and their families. However, very useful data on the living costs is now available in the budget standards report entitled New Minimum Income for Healthy Living Budget Standards for Low Paid and Unemployed Australians, which was published in August 2017.

PN377

One of the purposes of this research was to provide data for use in minimum wage reviews. Chapter four of our March 2018 submission sets out the major findings of the research insofar as they are relevant to this case. Various parties discussed the utility of the research in their March 2018 submissions. ACCER responded to those submissions in its April 2018 reply.

PN378

The substance of the reply is that the Commission does not need to make any conclusions in the current review about the utility of the research and any related matters that might bear on its utility. Further consideration of the research is needed if an informed safety net is to be set. We have proposed that this matter be initially pursued through a section 290 investigation and report process.

PN379

It is sufficient for the present time for the Commission to continue with its view that its calculations of the positions of various households relative to the 60 percent of median poverty line reflect the living standard that, and I quote, "Those in full time work are entitled to expect some margin of other harsher measure of poverty". That passage is taken from paragraph 463 of the June 2017 decision by this Commission.

PN380

As it stands, the budget standards research demonstrates that the 60 percent of median measure is likely to underestimate the proper needs of low paid workers and their families. As indicated in an earlier submission, ACCER seeks leave to formally tender the report as evidence in the current annual wage review.

PN381

Chapter three of our March 2018 submission demonstrates how the last 20 years of minimum wage decisions have contributed to increasing inequality between minimum wage dependent workers and the rest of society. Chapter 3(b) of that submission uses data from the Commission's own statistical report to show that the national minimum wage has fallen behind median levels since 1997. In 1997 it was almost 62 percent of the median.

PN382

Since then it has fallen by seven percentage points. It is now slightly more than five percentage points below the 60 percent of median figure, to which reference is sometimes made, requiring a 9.5 percent increase to reach that percentage and even more to re-establish the relative wage levels of 1997 and earlier.

PN383

ACCER's data on relative living standards and relative poverty lines in the March 2018 submission have been updated in our post-budget submission as a result of the publication of updated data based on the median equivalised disposable household income, the data emphasised that failure of recent wage decisions to reverse the impact of earlier national wage decisions. It is illustrated by the Commission's calculations in table 8.6 of its statistical report, which show that a worker with a family has to get a skilled job in order to achieve the income which is regarded by the Commission as providing the margin over poverty that unskilled workers in full-time employment are entitled to expect. Something is seriously wrong with our minimum wage system when the wage rate for skilled workers barely provides them and their families and families with two children the standard of living that the Commission regards as the basic level for a person in full-time employment.

PN384

We repeat a point that was made in paragraph 33 of our post-budget submission. From January 2004 until January 2018, the standard of living of this family, the skilled worker family, fell from 7.1 per cent above the 60 per cent relative poverty line to 2.4 per cent below it. We also note that over this period the national minimum wage dependent family went from 3.2 per cent below the poverty line to 9.5 per cent below the poverty line. It is evident that cuts in living standards have been occurring for some years prior to 2004 by reason of the cuts in relative wages prior to that date. This is a lamentable change since the Harvester decision 110 years ago, when a decent standard of living for an unskilled worker with the average sized family was determined and set. Now you need a skilled worker's wage for the average family to achieve a decent standard of living.

PN385

In the course of its June 2017 decision, the Commission made a series of observations about social changes in Australia and their relevance to the setting of the national minimum wage. In drawing comparisons with the past, the Commission expresses a number of views concerning the expected role of women and the structure of families in contemporary Australia. We have responded to those matters in chapter 5 of the March 2018 submission. Part of chapter 5 of that submission responds to the general commentary regarding social change, including the reference to the changing role of women in the workforce. Obviously the actual role of women within the workforce and outside the workforce has changed. This is because it is now generally accepted that women should be able to exercise an effective choice as to how they will balance their work and family responsibilities.

PN386

ACCER's view on this matter is consistent with the one put forward in the speech in December 1993 by Prime Minister Paul Keating to mark the launch of the

international year of the family, and we've set that out in relevant detail in our submission. It is important to note that his view represented the bipartisan position and a position that is widely held. Public policy should enable women and parents generally to make an effective choice as to how they balance their family and work responsibilities. The June 2017 decision by this Commission, like earlier decisions, showed some opposition to the notion that single breadwinner couple families should be entitled to a wage that would support the family at a decent standard of living. ACCER has argued that the position adopted by the Commission in the June 2017 decision in regard to single breadwinner couple families with children is inconsistent with the principle that parents and women in particular should have an effective right to choose how they exercise their family responsibilities.

PN387

This position has the effect of discriminating against working parents and women in particular by failing to recognise to their rights to make decisions as to how they will balance work and family responsibilities and provide for their children. A consequence of this is that it impacts on the rights of children to a decent standard of living. The position adopted by the Commission is, in our submission, unreasonable and disproportionate in regard to the setting of the national minimum wage as a fair safety net and in regard to the proper protection of workers with family responsibilities.

PN388

Of course this is a policy position that the Commission adopts in respect of the low paid. Those who are not low paid have a greater economic capacity to make a choice as to how they will care for their children. So far as possible, children in low paid families should have the same kind of support as those in higher income families. The course of public policy and legislative changes over the past four decades has been to enhance the capacity of coupled parents to have one of them remain out of the workforce to stay at home to care for their children. It has been designed to give parents an effective choice on this issue.

PN389

It is inconsistent with these policies and practices for the Commission to adopt a policy or practice to set wages at a level at which a single breadwinner couple with children cannot live in excessive poverty and have a decent standard of living. It is inconsistent with these policies and practices for the Commission to adopt a policy or practice that is intended to place or has the likely effect of placing economic pressure on the couple to obtain further employment in order to achieve a standard of living in excess of poverty and a decent standard of living. To do so would infringe a recognised right for parents to make choices as to the best interests of their children and discriminate against workers with family responsibilities.

PN390

Despite their limited financial resources and the pressure for both parents to work, the predominant family type by a substantial margin among low income families is the single breadwinner family. This is demonstrated in the data drawn from the 2016 national census, which is contained in chapter 5 of our March 2018 submission. Whatever way we may describe the social changes since the

Harvester decision 110 years ago, parents still seek to promote the best interests of their children. The community and the Commission in particular should reject policies that frustrate this objective.

PN391

Once again, ACCER is seeking a fair wage for low paid workers which will have an impact on award relativities. The substance of this kind of claim is similar to the kind of outcome proposed in the minority decision in the initial setting of the federal minimum wage in 1997. Your Honour the President, then the dissentient, found that the proposed federal minimum wage was much less than the figure you regarded as appropriate, having regard to the evidence before the tribunal. You were in the minority because the majority had taken an unsustainable view of the then legislation. They held that the legislation did not require the tribunal to take into account the material needs of the low paid. That view was abandoned in the following year.

PN392

In response to the evidence about widespread poverty among the wage dependent workers, your Honour proposed an initial flat rate increase of \$15 per week up to the C7 wage rate and a 2.5 per cent increase in wage rates above that rate. The flat dollar increases would have delivered an increase of between 4.3 per cent and 3 per cent for the lower paid classifications. This involved a lower percentage increase for higher paid classifications and not simply the conversion of the C7 money amount into an equivalent percentage, with that percentage awarded to the higher paid classifications. Under your Honour's proposal, there would be a drop from 3 per cent to 2.5 per cent at the C7 level. The difference in treatment was referred to in the following passage of the dissent, and I quote:

PN393

The adjustment that I would have awarded seeks to strike a balance between the existing award-based skill relativities and providing an additional benefit to the low paid. Relativities are maintained above the C7 level by virtue of the percentage adjustment, and the low paid are provided with additional assistance by means of a \$15 adjustment to classifications at C7 and below. I recognise that a flat adjustment would have resulted in some compression of relativities, but in my view the disadvantages of such an outcome are outweighed by the benefits accruing to the low paid.

PN394

We have referred to these matters in chapter 3A of our March 2018 submissions and we do not need to elaborate on those matters, save to say that since 1997 there has been no evaluation of the federal minimum wage and now the national minimum wage, to take proper account of the needs of the low-paid, even though under the Fair Work - even though the Fair Work Act intends the setting of the national minimum wage at a level that will provide a decent standard of living. I might also comment in relation to that decision, that as I've said there was a drop of half a per cent between the C7 rate and the higher-paid classifications.

PN395

In our submission, we have sought \$32 per week up to the C10 rate, which is currently \$809.10 per week. Then a conversion of that amount into a percentage,

which is 3.9 per cent for higher-paid classifications, if the Commission believes that there is insufficient capacity or insufficient merit in the claim for 3.9 per cent for those higher-paid classifications, then on the basis of this earlier view, which we see the logic of, it would be open to the Commission in this case not to award the \$32 a week up to the C10 level and a percentage lower than 3.9 per cent above that level.

PN396

In our submission, relativities are not sacrosanct. The most important thing is doing justice to the low-paid. I want to refer to the questions for consultations and in particular question 1.3, which we may be able to provide some assistance to the Commission on. The - we have in the past, in our past submissions, referred to the wage price index and how it is compiled. We did it for a certain reason - the reason was that we were arguing in those earlier cases that the wage price index actually undervalued the value of work that was being performed by workers over a period of time.

PN397

The Commission will be aware that in each of the publications of the wage price index by the Australian Bureau of Statistics, that the Bureau makes the points that the wage price index measures only pure price changes. In order to understand what pure price changes are, and how they're identified, we can go to a publication by the ABS called, "Wage Price Index - Concepts, Sources and Methods," which has been published or at least I should say the most recent publication of which is in 2012. So what was put in 2012 is still current.

PN398

I'm referring here to chapter 9 of that document. It reads - perhaps by way of introduction I should say that the data used in the wage price index is compiled from surveys of employers with particular employers reporting over a period of time in respect of relevant aspects of their business. This is how it's explained in chapter 9 and I'm reading from chapter 9.4:

PN399

Pure price movements are allowed to contribute to the ordinary time price. These movements will include those due to inflation, cost of living, enterprise or agency agreements, award rises, minimum wage rises, individual contracts both formal and informal and salary reviews. Elements that are excluded from changes in the ordinary time price are those that relate to changes in the quality or quantity of work performed. Quality changes within a job can occur in a number of ways including changes in the level of performance of the occupant, changes in the age, grade or level of qualification of the occupant, changes in the duties required to perform the job.

PN400

A range of procedures have been developed to quality-adjust the data collected to ensure only pure price changes are reflected in the indexes. Only those jobs that exist in both the current and the previous quarter - i.e. matched jobs - contribute to the index calculations. Jobs are matched by collecting detailed job specifications and ensuring job occupants do not deviate from these specifications over time. When an employee moves out of the same job, the

WPI will continue to collect information about the job rather than the employee.

PN401

MR LAWRENCE: I end the quote there. Now, as I understand it, and it may be incorrect, that there is a sample group, there is a group of employers, who check quarter by quarter as to what they're paying in relation to an identified range of positions so that when - subject to a job disappearing and another job coming in and being put into this research - it will mean that you will be tracking the same positions within a particular group of employers and they will be accounting for the rates of pay that they are observing in relation to each of those employees.

PN402

So it's not as though you have a different sample each quarter and some assessment is made as to what happened before and after. You're not sampling a group of people within the hospitality industry one quarter and then another group in the next quarter. You're looking at what particular employers have done. We know from the material that you've referred - the Commission has referred to - in that question 1.3 that even though there was a 3.3 per cent increase in the minimum wage in for example the retail industry, the wages in the retail industry went up by only 1.6 per cent. Now, in the retail industry 35 per cent of employees are paid only the minimum rate of pay - that is they're award-reliant. The only suggestion or only reasonable suggestion that we can come up with in relation to this is that there is a very large proportion of absorption, or all or certainly most of the difference between 3.3 per cent and 1.6 per cent in the retail trade is accounted for by the absorption.

PN403

We wouldn't see non-compliance as being a significant matter if our understanding of how the data is collected is correct. We think it's unlikely that employers who are counting quarter by quarter to the ABS are engaging in non-compliance. So that - I think we would put it the fact that we're discounted - it may be there is a limit on absorption. There might be - the 3.3 per cent increase might promise some absorption but if that was to be repeated or increased next time there might not be as much absorption.

PN404

But it does indicate just what the costs, what the flow-on costs of the decisions of this Commission are, because we have here what appears to be a very good example of a decision made in June 2017 providing significant support to low-paid workers which helps them but its economic impact is constrained by the ability of employers to absorb over-award pay increases. But other than making those comments, I don't think that I can be of any more help on that but it may be that the Commission can get a fairly quick response from the ABS as to this sort of matter and perhaps if it's relevant, it could be raised with the parties.

PN405

Otherwise, if it's just straight information, it needn't be raised with the parties. Unless there are any particular matters that I can assist the Commission with, they are the submissions on behalf of the Australian Catholic Council for Employment Relations.

PN406

JUSTICE ROSS: The TWU?

PN407

MR LAWRENCE: Thank you.

PN408

MR McINTOSH: I represent the Transport Workers Union of Australia today and we thank the Commission and the expert panel for the opportunity to make submissions today. With me is Matthew Hill who is a food delivery rider in the so called gig economy. The TWU supports the submissions previously made to this panel by the ACTU. From the previous ACTU's submissions, we specifically signal our support for the following as set out in their initial submission.

PN409

That the panel should increase the national minimum wage for full time adults and all modern award minimum wages by 7.2 percent, which equates to a \$50 per week increase on the minimum wage, and we also welcome the statement of the panel that the prevailing economic circumstances provide an opportunity to improve the relative living standards of the low paid and to enable them to better meet their needs.

PN410

In the knowledge that the ACTU has made all encompassing submissions to this annual wage review, the TWU will respectfully today focus our attention on the deliberate system avoidance that food delivery companies are engaging in in the so called gig economy and the case study of food delivery drivers and riders will show how the system is currently being exploited and must be broadened to protect and franchise society's most vulnerable workers and expand the powers of this body.

PN411

Currently, the system cannot deal with the deliberate avoidance and there is an exodus of workers that are currently covered. We are running the risk that this model not only becomes routine but is actually being championed by many companies in the economy. As a result of this incapacity, less and less Australians will be protected each year by a minimum wage.

PN412

The current system for food delivery riders is not new or innovative. It's old fashioned exploitation but on a digital platform. Precarious employment is on the rise in Australia and the on-demand economy is characterised by jobs that provide low incomes and with no certainty around pay or patterns of work. The food delivery sector illustrates that a huge number of our most vulnerable workers in our society currently sit outside the scope of today's proceedings.

PN413

This is a growing part of the economy that is completely unregulated yet with pay that falls below the minimums. Food delivery riders are just one example but it is not acceptable. Weak labour market conditions and the ambivalent stance of

regulators facilitates the process toward a more fragmented industrial structure and allows a more contingent and unstable workforce to proliferate.

PN414

The reality for food delivery riders is this, they currently sit outside the system that underpins the Australian minimum wage and do not benefit from entitlements because they fall outside the employment relationship. There's therefore a huge emerging part of the economy that these hearings simply don't apply to and while the TWU is fighting a number of unfair dismissal cases regarding threshold misclassification and sham contracting, fixing this situation needs to go further than simply moving these workers into an artificial employment classification because all of these workers deserve basic rights.

PN415

The transport industry in Australia employs over 600,000 workers, not including independent contractors, of course, with 40 percent working in road transportation. The industry is an important employer and will remain one. The industry is critical to the Australian economy contributing approximately \$80 billion each year to national GDP or about five percent of total national value added.

PN416

The number of transport workers in non-standard or contingent working positions, however, has grown markedly. Professor Jim Stanford reports that, and I quote, "Barely half of all the transportation workers are now employed in a traditional standard employment relationship in permanent full time work with standard entitlements like holiday and sick leave".

PN417

Food delivery in the so called gig economy is a big global industry that is growing. There are a number of major companies that currently occupy the on-demand food delivery market in Australia, including Foodora, Deliveroo and Uber Eats. These companies engage riders as independent contractors and this means that riders have none of the protections that employees do and carry all of the risk as a consequence.

PN418

However, unlike genuine owner drivers, for example, these riders do not have the autonomy that real contractors should have. Here are some of the key characteristics of the work which has many familiar standard working arrangements and I'm alluding to significant elements of control.

PN419

For example, many riders have to sign up to shifts in advance of working, there is no guarantee of regular working hours, riders provide their own capital, riders are encouraged to wear company branding, many companies do not provide insurance and if they do, riders are arguably paying for it themselves, riders are grouped into batches based on performance metrics as determined by the company, they get penalised, effectively, if they are sick or injured or have to take leave of some form and riders are only paid piecemeal rates and earn nothing when waiting to receive orders or pick up orders from restaurants.

PN420

Riders themselves are often students and/or come from a range of diverse backgrounds. Many are open to exploitation and are actively being exploited. While this is not the forum to delve into an employer/employee/ independent contractor debate, the panel should be informed that the TWU is running a number of unfair dismissal matters concerning threshold questions with more in the pipeline.

PN421

Indeed, leaked emails from Foodora management in Australia aired on Channel 10's The Project last month showed that the company is concerned about getting caught for sham contracting practices. Importantly, however, as Professor Joellen Riley, Dean of Law at the University of Sydney, put it, and I quote, "It should not be necessary to squeeze the labour arrangements of on-demand workers in the new digital economy into the category of employment in order to provide them with appropriately protective labour standards".

PN422

In other words, our systems need expanded coverage. The TWU conducted a survey earlier this year over 160 food delivery riders across the Sydney and Melbourne markets and the results were shocking. Of particular interest for the purpose of this annual wage review is that three out of four riders interviewed reported earning less than the minimum wage for casual workers, although many riders at the time of being questioned did not know or understand that, and some riders reported earning as little as \$6.67 an hour.

PN423

Notably, a bicycle courier working pursuant to the Road Transport and Distribution Award as a casual grade one worker would earn, or should earn, at least \$24.21 an hour. Clearly, food delivery riders working on our roads do not always earn this minimum.

PN424

Of course, these riders currently have no entitlements to superannuation and there's a discreet point I would point out Professor Stanford's quote regarding the effects of wage suppression on superannuation savings and beyond, and I quote:

PN425

When workers' wages are unduly suppressed, then the normal flow of employer contributions into their superannuations account is also constrained. They will have smaller superannuation balances when they retire and will consequently experience a lasting reduction in post-retirement income. Moreover, governments will share a significant portion of the resulting damage. They will collect taxes on superannuation contributions and investment income, and will pay out more in means-tested age pension benefits since workers' superannuation incomes will be smaller.

PN426

The current system of minimum standards does not apply in the so-called new economy. The growth of insecure or gig work is less to do with the technology and more about the evolution of social relationships and power imbalances.

Indeed weak labour market conditions that currently exist are crucial in facilitating this process. Today's hearing is an example of incapacities within the system to address this and it is undoubtedly the case that a process like the annual wage review must be broadened to protect our most vulnerable. I'd just like to hand over to Matthew Hill who's with me and as I mentioned is a food delivery rider, just to read out a story from a fellow rider that he collected yesterday that may be of interest to the panel.

PN427

MR HILL: Hi everybody. I'm here to read out a story of Byrne. Byrne didn't tell his parents in Pakistan when he got injured working for a food delivery company last week. A car pulled out in front of him causing him to badly gash his knee and he was off work for four days. He didn't get paid while he was injured. His parents are quite worried about him and they regularly have to send money over to help out with just surviving. Recently there were changes within his company which means that he's riding 10 kilometres or more per delivery, on a pushbike, which you know, you can imagine that means the company - you can only do so many rides per hour and that's if he gets the rides. They're not guaranteed the rides, and it says here that they sent his pay job to around \$10 an hour. I know that sometimes it's zero an hour and that's just a fact, and it's much more common now. It has been getting progressively worse - yes, and he's saying that he's living hand to mouth, and I myself have had similar experiences to Byrne. Anyway, so that's - yes, I think my paper's here. I'm happy to tell you about my experience too, but I don't want to waffle.

PN428

MR McINTOSH: So we thought Matthew's here with us today and that's a story that he collected from a fellow rider yesterday, and as you can imagine, as the union that has coverage of these riders, we collected numerous stories and we thought it might be a useful illustration today of what it's like on the road, but happy to take any questions.

PN429

JUSTICE ROSS: Mr McIntosh, as I understand, the purpose of the submission is to draw our attention to the TWU's concern about the growth in the use of contracting arrangements in the food delivery area and the fact that those that work in that sphere don't fall within the scope of the minimum wage system under the Fair Work Act, and I think you've alluded to the fact that your organisation sees the need for a broadening of the role and function of annual wage reviews to cover the workers in this sector. But of course that's a matter for parliament, not for the panel.

PN430

MR McINTOSH: Correct. In highlighting these matters, I think where we're coming from is that I think it would be very useful if a body such as this one had the ability to inquire into new forms of work, because there is this growing economy out there that is not currently captured, and in terms of broadening the scope of the inquiry we think that would be a very useful thing to take place. As I said, we are running some unfair dismissal matters which address the threshold question, but essentially, yes, there are a lot of workers out there that are not covered by this, and if the system wasn't constrained by the traditional employee

independent contractor labels and a forum like this was able to look into these newer forms of work, inquire into it, we think that would be beneficial and that actually it would be beneficial to note that in the report of this expert panel, because currently we are all constrained.

PN431

VICE PRESIDENT HATCHER: So just to be clear, Mr McIntosh, is there any power that the expert panel currently has on the Fair Work Act that you wish us to exercise?

PN432

MR MCINTOSH: Not that I am aware of, but I would be happy to take guidance. But I think even noting and giving a nod, if you like, towards the gap that currently exists would be beneficial and something that could be built on by those that no doubt examine these reports pretty closely.

PN433

JUSTICE ROSS: Speaking for myself, Mr McIntosh, I am not sure I would be inclined to do that. The question of the panel's jurisdiction and those sorts of issues, other than technical matters, are matters which the Commission has historically not commented on. I think you'd need to argue the merits of your proposition in a different forum, leaving aside the fact that you've raised the issues now and if we were minded to give any consideration to them, we would have to afford all parties an opportunity to comment on them, which runs the risk of significantly prolonging these proceedings.

PN434

MR MCINTOSH: I obviously accept that. I suppose our position is that as the union we are taking proactive steps. As I say, we are running a number of matters. But the nature of running the unfair dismissal matters, for instance, as we know, is that it occurs on a case-by-case basis, and what we really require in a more global sense is for all of these workers to have basic rights but in a minimum wage forum. We do believe that, as I've said, the ability to inquire would be beneficial.

PN435

JUSTICE ROSS: Thank you, Mr McIntosh. Nothing further? Thank you. We'll adjourn.

ADJOURNED INDEFINITELY

[11.29 AM]