

Fair Work Commission

Fair Work Act 2009

Annual Wage Review 2018-19

Reply Submission by the

Australian Catholic Bishops Conference

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A. Introduction

1. This Reply submission by the Australian Catholic Bishops Conference (ACBC) is made in response to various submissions made to the Fair Work Commission (FWC) in the initial submissions of March 2019 in the Annual Wage Review 2018-19. As was the case with the ACBC’s March 2019 submission, this submission was prepared by the Bishops Commission for Social Justice on behalf of the ACBC.

B. Australian Council of Trade Unions

2. The Australian Council of Trade Unions (ACTU) has sought a uniform 6.0% increase in the National Minimum Wage (NMW) and all award wage rates in order that the FWC may “take further meaningful action to benefit working people and their families” (paragraph 3).

3. The grounds in support include
 - “The relative living standards of workers reliant on minimum and award wages have declined for over thirty years, yielding a far more unequal society ...” (Paragraph 4.n.)
 - “A substantial proportion of workers on the NMW and modern award rates of pay are in households at or below very conservative poverty lines.” (Paragraph 4.o.)
 - The “proposed increase in minimum wages is intended to improve the minimum wage bite, and contribute to recovering and improving the relative living standards of low-paid workers”. (Paragraph 365)
 - “Current minimum wage levels, in our view, provide neither a fair nor relevant safety net. The increase we propose would help to address the long-term erosion of relative living standards and restore fairness.” (Paragraph 368)
4. The ACTU’s submission addresses the impact that taxes and transfers have on living standards:
 - “... the tax and transfer system cannot be relied upon to alleviate the impact of small increases in the minimum wage. This is the case in the current policy environment where transfers have been reduced, in effect bringing more people into the low disposable income range.” (Paragraph 408)
 - “The gross minimum wage in Australia has to do relatively more heavy lifting than in many other OECD countries. (Paragraph 411)
 - “... not only has income distribution become more unequal over 22 years to 2015-16, taxes and transfers have done less to make the distribution fairer.” (Paragraph 420)
5. The matters referred to in the previous two paragraphs are consistent with the ACBC’s March 2019 submission. In addition, the ACTU’s submission presents a comprehensive survey of current and prospective economic circumstances which, in our view, supports the claims that the ACBC made in its March 2019 submission.
6. While there is much in common between the ACTU’s and the ACBC’s submissions, we have some concerns about the practical application of the living wage principle as proposed by the ACTU.
7. According to the ACTU, the 6.0% increase would, if granted “make meaningful progress toward a living wage” (paragraph 7) and, if followed by a further increase of 5.5%, the ACTU “believe(s) that a living wage of 60% of median full-time earnings should be achieved in two years”.
8. We expect that the objective and quantum of the ACTU’s claims will be opposed by some parties on the basis that they are inconsistent with the FWC’s decision in *Annual Review 2016–17 Preliminary decision* [2017] FWCFB 1931, (*Preliminary decision*) of 7 April 2017, in which the FWC rejected an application by United Voice for the setting

of a medium-term target for the NMW at 60% of median earnings. The grounds in support of the current claim (see paragraph 3, above) are similar to the grounds in support of the setting of the proposed medium-term target. The ACTU's submission does not seek a review of that decision. For reasons which we have given in Chapter 6 of our March 2019 submission, we submit that the *Preliminary decision* was contrary to law and should not be followed.

The Living Wage

9. The ACTU's submission assumes that a NMW set at 60% of median earnings would be a Living Wage. The basis for the assumption is in the following paragraphs of its submission:

“429. Sixty per cent of median earnings is the measure of the relative poverty level used by the UK Low Pay Commission as directed by the UK government [Footnote], and is accepted by other jurisdictions and international organisations.

430. The NMW has not kept pace with relative poverty thresholds such as 60% of the median, and has fallen below that level since 1999, nearly 20 years ago, as shown in Figure 75.

433. It is estimated that the gap between NMW and 60% of nominal median earnings at 2018 would require an increase of around \$73 per week or 10% in order for the current NMW to reach a level of 60% of the median equal to \$792 per week at 2018. This amounts to around \$1.92 per hour. A practical proposal for an increase to the minimum wage by 6% or \$43.15 would mark significant progress in moving toward that objective. This increase would amount to \$1.13 an hour, to \$20.06 per hour. This is within range of the minimum wage increases that other countries have put into place.”

10. The ACTU's position is also set out in a media release issued by it on 13 March 2019, part of which stated:

“Minimum wage: Fair Work should close the poverty gap over 2 years

The Fair Work Commission should close the gap between the minimum wage and the OECD definition of relative poverty within 2 years so that no full-time worker is living in poverty, starting with a 6% increase this year a (sic) – or \$43 per week. Currently the minimum wage is below the OECD definition of relative poverty, which is 60% of median earnings. A 10.7% increase – or \$72.80 per week – would be necessary this year to guarantee no full-time Australian worker lives below the poverty line.

The Australian Council of Trade Unions says the Fair Work Commission should close the gap over the next two years, starting with a \$43 per week increase this year, and assuming a 1.5% increase in the median next year an additional 5.5% in 2020.”

In the Fair Work Commission's previous determinations, it has admitted that Australia's minimum wage of \$18.93 per hour – \$37,398 per annum – leaves many people working full-time in poverty.”

11. There are, in our view, three errors in the ACTU's reasoning. First, the ratio of the NMW (or any other wage rate) to median wages does not measure living standards. The ratio of a wage rate to median wages (at 60% or some other percentage) measures the gross incomes of the minimum wage worker and the median worker, which says nothing about the living standards that the wage will support. By contrast, the relative poverty line (at 60% or some other percentage) identifies a standard of living relative to the median equivalised disposable household income across the community, which enables a comparison to be made between the disposable incomes of particular wage-dependent households and the community-wide measure of disposable income.
12. The relativity of a wage rate to median wages and the relativity of household disposable income to median household disposable incomes measure different matters, although the higher the NMW (or some other wage rate) is relative to median wages, the more likely it is that the wage rate will support a worker's household at or above the poverty line. Whether the 60% of median poverty line is a sufficient measure of poverty and disadvantage is an issue that has to be informed by empirical research.
13. The second error is found in the claim that the 60% of median wages is the measure of relative poverty used in the UK. The footnote to paragraph 429 of the submission states: "UK Low Pay Commission Report 2018 *National Minimum Wage*, p.xii." The relevant passage at that page of the Low Pay Commission report does not link the 60% of median wages measure to any assessment of poverty:

"The Government's objective is for the National Living Wage to reach 60% of median earnings by 2020, subject to sustained economic growth. The Government asks the Low Pay Commission to monitor and evaluate the National Living Wage and to recommend the rate which should be effective from April 2019."
14. The National Living Wage was introduced into the U.K. legislation in 2016 by the then Conservative Government in conjunction with welfare reforms affecting low income workers and working families. The provision of the National Living Wage at a rate in excess of the National Minimum Wage (which was introduced in 1999) and applying to older workers (25 and over) has been highly contentious. The Living Wage Foundation, for example, argues that the setting of a *real* Living Wage must be based on the needs of low paid workers and their families; <https://www.livingwage.org.uk/what-real-living-wage>.

15. Apart from the UK legislation which is used, in effect, to declare a wage set at 60% of median wages to be a Living Wage, there is, to our knowledge, no other jurisdiction in which the 60% of median wages measure has been treated as a Living Wage. Clearly, whether or not 60% of median wages delivers a wage that can be truly described as a Living Wage depends on the taxes and transfers arrangements, which will vary from country to country and over time in particular countries. The ACTU provides no support for its claim that the 60% of median wages measure has been accepted in other jurisdictions.
16. The third error in the ACTU's claims in regard to the quantification of the Living Wage concerns its claim that international organisations have accepted that "Sixty per cent of median earnings is the measure of the relative poverty level". There is no reference given in the submission to any such organisation, although the media release of 13 March 2019 (quoted above) refers to the OECD.
17. The OECD website does not base its assessments of poverty by reference to the relationship between wage rates and median wage levels. The OECD's analysis of poverty is based on calculations of the disposable incomes of households: see <http://www.oecd.org/els/soc/income-distribution-database.htm>. To our knowledge, no international organisation has adopted the 60% of median wages benchmark as a Living Wage, as a benchmark for wage sufficiency, as a benchmark for the prevention of poverty or as a measure for an acceptable or decent standard of living.

The NMW at 60% of median wages would be insufficient

18. In August 2018 the median wage in Australia was \$1,330.00 per week. At 60% of that figure the NMW would have been \$798.00 per week, rather than \$719.20 per week, a difference of \$78.80 per week. With a tax rate of 32.5%, excluding the Medicare levy, this would have lifted the disposable income of the NMW-dependent worker by no more than \$53.19 per week, which would leave many working families in poverty and well below the decent standard of living that a Living Wage is meant to deliver.
19. It should also be noted that the 60% of median wages benchmark is lower than the relative level of the NMW's predecessors in the years before the cuts to relative wage rates. Figure 96 of the ACTU's submission shows that prior to 1999 the predecessors of the NMW had been above 60% of median wages: to such an extent that in 1991 it was, in current value, more than \$30.00 per week in excess of the August 2018 estimate of a shortfall of \$78.80 per week based on the 60% of median wages benchmark.

20. When the *Safety Net Review Case 1997* established the Federal Minimum Wage (a predecessor of the NMW) it was about 62.0% of median wages and was set at a level which was shown to be, and found to be, inadequate to protect working families against poverty; see ACBC submission, March 2019 paragraphs 233-40. The finding was in the dissenting decision of Vice President Ross, as he then was. The majority did not deal with this aspect because of their view of the terms of the legislation, a view that was abandoned in the following year. The historical evidence supports the view that the NMW should be set at a level above 60% of median wages. The contemporary evidence demonstrates that, on the current levels of taxes and transfers, a NMW in excess of 60% of median wages is required in order for Australian workers to be protected by a Living Wage.
21. In our view, a problem more than two decades in the making cannot be rectified in two years, as proposed by the ACTU. This is the reason for our proposal to adjust wages by a greater amount over a longer period of time.
22. Another point of distinction between the ACTU's and the ACBC's proposals for the practical application of the living wage principle is the way in which it is to be implemented. The ACBC's proposal is essentially a "bottom up" process that gives priority to providing a wages safety net to those who most need it: those whose basic right to a decent standard of living is being denied.
23. The ACTU's proposal is that all award rates will move by the same percentage that is required for the NMW to become a Living Wage. The ACTU has identified the percentage increases that would be needed in 2019 and 2020 "to guarantee no full-time Australian worker lives below the poverty line": a 6.0% increase in 2019 and a predicted 5.5% in 2020. However, the ACTU's claim seeks to apply the 6.0% adjustment and the foreshadowed adjustment to all minimum wage workers, even where they have a minimum wage rate in excess of the Living Wage and are able to secure a decent standard of living. The ACBC submission has given considerable emphasis to the need to review the wage rates set for higher paid classifications, but has stressed that priority should be given to the alleviation of poverty and disadvantage.
24. The ACTU's submission presents a strong case for a substantial increase in the wage rates set for low paid classifications, but its case in respect of higher paid classifications rests on the maintenance of current relativities. Having the wage increases awarded to the most disadvantaged and lowest paid workers dependent upon a uniform wage

increase across all wage classifications must weaken the prospects of workers and their families being lifted out of poverty and disadvantage.

C. Australian Council of Social Services

25. As in its past submissions, the submission by the Australian Council of Social Services (ACOSS) presents an analysis of the extent of poverty among wage-dependent families and a broad policy position on the respective roles of the wages safety net and the social safety net.
26. ACOSS's preferred policy is for the NMW to be set by reference to the needs of the single person (so as to provide the single worker with a decent standard of living), with the Federal Government providing transfer payments to prevent families from falling into poverty. We cannot agree with this policy because families should not be left with a standard of living that merely avoids poverty. More is required if families are to achieve a decent standard of living, which is, as we explained in our March 2019 submission, derived from a basic right of workers.
27. Nevertheless, ACOSS's submission recognises that the current level of Government support for families is inadequate to protect them from poverty and that the wages system has to respond accordingly.
28. ACOSS presents compelling evidence of the widespread existence of poverty among wage-dependent families.
29. In the absence of a social safety net that keeps families out of poverty it seeks the adjustment of minimum wage rates so that it will keep families out of poverty:

ACOSS recommends that the FWC "increase real minimum wages substantially in order to reduce the gap between them and median pay levels" and that decisions "on the level of minimum wages be informed by regular comparisons of the living standards of minimum wage-earning households with benchmark indicators of a 'decent basic living standard' for a single adult, together with the wages needed (along with relevant social security payments) to ensure that low-paid families with children are free from poverty" (Page 6).

"In assessing the living standards of low paid workers and their families, the Commission should take account of both minimum wages and social security payments, especially Family Tax Benefits. It is vital that the NMW and family payments together are sufficient to prevent a family from falling into poverty." (Page 14)

"The combined effect of the minimum wage and family payments on the extent of poverty among families, including recent significant cuts in family payments, should also be expressly considered in setting minimum wages." (Page 15)

30. Consistent with our previous response to ACOSS’s policy position on the protection of families against poverty, in our view the protection against poverty is a necessary, but not a sufficient, objective of minimum wage setting. The NMW, supported by family payments should not merely prevent the family from falling into poverty, but it should, in our view, provide it with a decent standard of living. As we explained in our March 2019 submission, the obligation to provide a families with a decent standard of living does not extend to setting a minimum wage that is sufficient for, say, families with nine children, but it must extend to cover the average couple parent or sole parent family, comprising two children. (This does not negate the Government’s obligations in respect of larger families.) ACOSS does not address the practical and proper limitations on the wage system to protect larger families against poverty.

31. We agree with the following statements by ACOSS:

At page 11 ACOSS refers to family payments, noting that in “recent years, this social compact between workers, employers and governments has begun to break down”.

At page 12 ACOSS states that the “experience of the last decade shows that governments cannot be consistently relied upon to supplement low pay for families with children, leaving them vulnerable to poverty in the absence of substantial increases in the NMW”.

D. Council of Single Mothers and their Children

32. As a membership-based body, the Council of Single Mothers and their Children (CSMC) brings particular knowledge about the “impacts of the real poverty affecting children in these families and watch[es] with alarm the increasing rate of children living in poverty”.

33. We support the recommendations made by the CSMC:

“1. In order to address the entirely unacceptable levels of poverty facing low income workers, we ask that the Fair Work Commission accept that the government tax, transfers and assistance packages are manifestly not working and, on that basis and on the evidence of rising child poverty in Australia, substantially increase the national minimum wage rates for low paid workers.

2. We recommend that the rate of minimum wage be untied from the wage relativity structure so that how much is available to the lowest paid is no longer dependant on what can be afforded for the middle and upper levels of payments.

3. We note that in the past the Fair Work Commission has acknowledge the social problem of rising poverty and request that on the basis of international evidence

that increasing inequality hurts us all, the FWC now take the next steps and join the battle to make Australia a more equal society.” (Emphasis in original)

E. Australian Government

34. The Australian Government’s submission of March 2019 advises that the “Department of Jobs and Small Business estimates that in May 2018 (latest data) around 180,200 Australians (1.7 per cent of employees) are paid the national minimum wage rate”.
35. At paragraphs 450-7 of our March 2019 submission we refer to the estimated number of employees who are paid the NMW and the coverage of the *Miscellaneous Award*. The submissions were based an estimate that 1.9% of employees are paid at the adult NMW rate. Despite this revision, our conclusion regarding the numbers appears to be sound: “It appears that, adding in juniors, over 200,000 Australian workers are employed on the NMW rate, with over half of them covered by the *Miscellaneous Award*.” (Paragraph 456)

Characteristics of low paid workers

36. Paragraphs 33-5 of the Australian Government submission refer to data drawn from the HILDA Survey in 2017 (release 17, published in December 2018) which is included in Appendix A of the submission. The upper cut-off point for the low paid category is \$19.53 per hour (see Appendix A.1), which equates to \$742.14 per week. This is a low cut-off point for the “low paid”. In July 2017 the C12 award rate was \$742.30 per week, which suggests that this wage rate was used to set the cut-off point. At the same time the widely used C10 award wage rate was \$809.10 per week. Workers in receipt of that wage should be regarded as low paid. The conventional measure for determining the upper limit for identifying low paid employees has been two-thirds of median earnings. According to Table 8.2 of the *Statistical Report* of 8 March 2019 two-thirds of median full time wages in August 2017 was \$843.33 per week.
37. It follows that the characteristics of the low paid in Appendix A do not include a wide range of employees who should be regarded as low paid. Compared to the wider group, we can expect that this narrowly defined group will have a greater proportion of students who are working part time and a smaller proportion of older workers with family responsibilities. The low paid covered by Appendix A are not representative of all low paid workers.
38. Appendix A in the Australian Government’s submission is in similar form to Appendix A of the Government’s March 2018 submission, which was based on the previous

HILDA survey. We have responded to the FWC's use of that data in its June 2018 decision (at paragraphs 407-417) and adopt those comments in respect of any use that may be made of Appendix A in the current wage review.

39. The narrow range of low paid employees also has relevance for the question of the distribution of low paid workers among a range of households. We expect that the lower the cut-off point, the more likely it is that a greater proportion will be found in higher income households because of the number of students in those households are working part time. However, this is not a matter that should bear upon the proper setting of the NMW: as a matter of principle, setting a wage that provides a decent standard of living for the average wage dependent family should not depend on the number and average working hours of part time students who are paid junior wage rates.

F. Australian Chamber of Commerce and Industry

40. The Australian Chamber of Commerce and Industry (ACCI) has proposed an increase of 1.8% in minimum wage rates. In support of its argument for limited increases, it has argued:

- "... the tax and transfer system should be the primary mechanism for addressing wealth inequity and poverty income redistribution to low-income households" (Paragraph 16).
- "... minimum wage fixation is not an effective way of addressing the needs of the low paid. The tax and transfer system is better targeted to address the actual household circumstances of low paid employees and provide necessary support." (Paragraph 243)
- "... the minimum wage is not an appropriate tool to address poverty. We believe poverty in Australia should be addressed through the tax and transfer system." (Paragraph 286)

41. An economic case can be made for increasing transfer payments to offset the wage increases that are needed to provide working families with a decent standard of living. That was accepted in the past and it led to the changes that we have described in Chapter 3.D. of our March 2019 submission. But the possibility of introducing such changes does not minimise the obligations of the wages system to support families at a decent standard of living.

42. In the absence of any targeted increases in the social safety net, the points made by ACCI are of no relevance to the setting of minimum wage rates in 2019. It would be improper, in our submission, for the FWC to withhold or constrain wage increases on the basis that it would be better for the Government to provide targeted increases in family payments.

43. It should be noted that the submissions in past annual wage reviews about the advantages of targeted transfer payments over general wage increases have not been reflected in public lobbying by the proponents of this wage restraint for increased family payments and, in order to provide them, increased taxation.
44. As we have explained in our March 2019 submission, the trend over recent years has been to reduce the level of family payments received by low income families. As the ACTU has correctly noted the “gross minimum wage in Australia has to do relatively more heavy lifting than in many other OECD countries” (March 2019 submission, paragraph 411). Furthermore, given the changes in budgetary policies, wages will need to do more heavy lifting in the future.
45. In its submissions on poverty and poverty lines ACCI has stated:

“Employers agree that the low paid should not be forced to live in poverty, and the minimum wage should be set at a level that provides a ‘decent standard of living’ for NMW and award reliant employees, as those concepts are operationalised in legislation.” (Paragraph 280)
46. This is a significant statement on behalf of employers, and one that should be welcomed. Its significance as a statement of principle or as an objective should not be ignored by reason of the qualification concerning the operation of the legislation. The qualification may be influenced by the FWC’s past views about the operation of the legislation.
47. As we have explained in Chapter 6 of our March 2019 submission, there is a fundamental question about the construction of section 284(1) of the *Fair Work Act 2009*. Our contention is that the FWC has failed to give proper effect to the legislation and has impermissibly constrained the FWC’s obligation to establish and maintain a minimum wage system at a level that protects low paid workers against poverty and provides a ‘decent standard of living’ for NMW and award reliant employees.
48. If the qualification in paragraph 280 is based on the FWC’s interpretation of the legislation, it adds to the importance of the proper operation of section 284(1) being further considered, as we have sought in our March 2019 submission.

G. Australian Industry Group

49. The Australian Industry Group has argued that wage increases should be discounted by reason of the tax changes introduced in the current financial year:

“... low wage employees have benefited from tax changes introduced in last year’s federal Budget. The Low and Middle Income Tax Offset has increased disposable incomes for many low wage earners. While the impacts vary across

low and middle-income groups, the increase in disposable income for a person earning the current National Minimum Wage of \$719.20 a week is 0.63 per cent which equates to a change in pre-tax income of \$6 per week which is nearly 1% (0.83 per cent). The Expert Panel should take this into account, consistent with previous Annual Wage Review decisions which have recognised the relevance of changes to the broader social safety net when determining minimum wage increases.” (Page 4)

50. We are opposed to any discounting of wage increases on account of the income taxation changes from July 2018 for two major reasons.
51. First, the tax cuts offset (but only partially) the negative impact that bracket creep has had on the after-tax incomes of low paid and middle income workers since the taxation rates were revised in the May 2012 Budget, with effect from July 2012.
52. The following comparisons do not include the Medicare levy because the levy is not imposed on the low income families covered in the examples given. Single workers on these low incomes pay the levy, which was 1.5% in July 2012, but was increased to 2.0% from July 2014. The figures are taken from Tables A6 and A8 of Appendix A of the ACBC submission of 15 March 2019.
53. In July 2012 the NMW was \$606.40, with net income (\$565.97) being 93.33% of the gross wage. At present, with the NMW at \$719.20 per week, the net income (\$659.97) is 91.76% of the gross wage. For the C10-dependent worker at these two dates, the after-tax income as a percentage of the gross wage has fallen from 91.59% (\$706.10 and \$646.73) to 88.55% (\$837.40 and \$741.54).
54. If the NMW-dependent worker were to pay the same percentage of income tax as he or she paid in the 2012-13 financial year, the net wage received would be \$671.23 per week, not \$659.97 per week as it now is. This represents a cut of \$11.26 per week in after-tax income, despite the introduction of the tax cuts in July 2018. For the C10-dependent worker, the net wage would be \$766.97 per week, not \$741.54 per week as it now is. This increase in tax has meant the loss of \$25.43 per week in net income. At the current marginal tax rate for these incomes of 32.5%, these after-tax figures equate to a pre-tax amount of \$16.68 per week at the NMW rate and a pre-tax amount of \$37.67 per week at the C10 rate.
55. The second major reason for opposing the discounting of wage increases on account of the changes in tax rates is that the tax cuts introduced in July 2018 were not targeted increases for the purpose of offsetting any wage claims made on behalf of low income workers. They were part of a broader tax package that had no such purpose. For the

FWC to now discount wage increases on account of those changes would be inherently unfair to low income workers and contrary to the intention of Parliament to provide a benefit to low income workers.