

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
Workplace Relations Act 1996

WAGES AND ALLOWANCES REVIEW 2006

Submission by the Australian Catholic Council for Employment Relations

1 December 2006

Introduction

1. This submission is made by the Australian Catholic Council for Employment Relations (“ACCER”) to the Australian Industrial Relations Commission (“the AIRC”) in its inaugural *Wages and Allowances Review* under the *Workplace Relations Act 1996* (“the Act”). The review is the successor of the AIRC’s annual *Safety Net Reviews* and is a consequence of amendments to the Act made by the *Workplace Relations Amendment (Work Choices) Act 2005* (“*Work Choices*”) which came into operation in March 2006.
2. The *Wages and Allowances Review 2006* follows the publication of the *Wage-Setting Decision October 2006* by the Australian Fair Pay Commission (“the AFPC”) on 26 October 2006. That decision was made under the *Work Choices* amendments that transferred most of the AIRC’s wage-setting functions to the AFPC. However, the AIRC has retained the function of setting wages for respondent employers to Federal awards who are not within the AFPC’s jurisdiction. These respondents are unincorporated employers in States other than

Victoria. The relevant provisions are found in Schedule 6 of the Act. The AIRC also has the capacity to review and adjust the allowances that are required to be paid by all employers following wage determinations by the AFPC.

ACCER

3. ACCER is an agency of the Australian Catholic Bishops Conference. (In May 2006 the Conference changed ACCER's name from the Australian Catholic Commission for Employment Relations to the Australian Catholic Council for Employment Relations.) ACCER provides the Conference and Catholic employers with advice, research and advocacy on matters affecting the employment relationship in Australian workplaces.
4. The Catholic Church has an established body of teaching, within Catholic Social Teaching, on work and the employment relationship. The Church's public advocacy on employment issues is based on that teaching. The teaching is also important in the life of the Church. The Church, through its many agencies, is one of the largest employers in Australia and its agencies are required to manage their activities in accordance with Catholic Social Teaching.
5. Catholic teaching on the spiritual, economic and social aspects of modern industrial societies has its genesis in Pope Leo XIII's 1891 encyclical *Rerum Novarum*. *Rerum Novarum* "expounds ... the Catholic doctrine on work, the right to property, the principle of collaboration instead of class struggle as the fundamental means for social change, the rights of the weak, the dignity of the poor and the obligations of the rich, the perfecting of justice through charity, on

the right to form professional associations”; Congregation for Catholic Education, *Guidelines for the Study and Teaching of the Church’s Social Doctrine in the Formation of Priests*, 1988, page 24.

6. On the centenary of *Rerum Novarum* the Australian Catholic Bishops issued a Pastoral letter in which they referred to the need for adequate wages:

“It was his [Pope Leo XIII’s] view that human society is built upon and around productive human work. When a person is employed to work full-time for wages, the employer, in strict justice, will pay for an honest day’s work a wage sufficient to enable the worker, even if unskilled, to have the benefits of survival, good health, security and modest comfort. The wage must also allow the worker to provide for the future and acquire the personal property needed for the support of a family. To pressure or trick the worker into taking less is, therefore, unjust.” (*A Century of Catholic Social Teaching*)

ACCER’s advocacy for the low paid and their families

7. ACCER has participated in each *Safety Net Review* case from 1997 to 2005. It has sought to advocate outcomes consistent with the objective stated by the Australian Bishops in 1991. Its primary concern has been the position of low paid workers, especially those with family responsibilities. It has argued that the lower rates of pay fixed by awards, and the Federal Minimum Wage in particular, have been inadequate to provide for the needs of low paid workers.
8. ACCER has argued that the needs of low paid workers include the needs of their families and that wage rates should take them into account. It has argued that the Federal Minimum Wage, and the rates for higher classifications, should be sufficient to provide for a family that includes a breadwinner and a parent who works within the home and is not engaged in paid employment. Having regard to

the number of children in contemporary families, ACCER has argued that the pay should be sufficient to support two children. It has said that the appropriate wage has to take into account the taxes paid by workers and transfer payments received by them and their dependants. In short, ACCER has argued for a family wage that takes into account the needs of the worker and his or her family.

9. When account is taken of taxation and transfer payments, the Federal Minimum Wage must be sufficient to enable a couple with two children to achieve an acceptable standard of living. ACCER has argued in the *Safety Net Reviews* and in the inaugural case in the AFPC the current Federal Minimum Wage and some other classifications are insufficient to meet that standard. It has argued that the setting of an appropriate Federal Minimum Wage cannot be achieved in one year and must be achieved over time, following the undertaking of appropriate research into the needs of workers and their families.
10. The Federal Minimum Wage (and other classifications) should not, however, be limited to the wage that merely meets the minimally acceptable standard of living. In good economic times workers who are dependent upon arbitrated rates should receive real increases in their wages, consistent with the economic circumstances. They should share in labour productivity gains. The AFPC and the AIRC should also consider wage comparisons between minimum wage workers and those who are in the bargaining sectors of the economy so as to promote fairness and equity.

The AFPC's inaugural determination

11. The AFPC decision was made in the context of a very strong Australian economy in which, ACCER submitted, minimum wage workers, particularly those in the lower paid classifications, should receive real wage increases.
12. ACCER submitted to the AFPC that the maintenance of real wages must take into account all of the movements in the Consumer Price Index since the last wage adjustments by the AIRC in June 2005. At the AFPC's closing date for the filing of submissions, 28 July 2006, there had been five quarterly increases in the index, the most recent of which was released on 26 July 2006. They totalled 4.6%.
13. The AFPC decision was published on 26 October 2006, a day after the release of the Consumer Price Index movement for the September 2006 quarter. It is important to recognise that this movement was not taken into account by the AFPC. This is evident from page 35 of its decision: the decision was dated 6 October 2006.
14. ACCER argued that there were no economic circumstances that would warrant a decrease in the real wages of the 20% of Australian workers who depend on prescribed minimum wages. It said that the mere maintenance of real wages at the time would require, for example, weekly increases of \$22.30 (59 cents per hour) at the Federal Minimum Wage level of \$484.40 and \$26.60 (70 cents per hour) at the base trades level of \$578.20. It said that these figures would need to be increased if the AFPC were to hand down its decision after the release of the September 2006 quarter Consumer Price Index movements.

15. ACCER argued that the increases should be in excess of that which is required for the maintenance of real wages. It supported an increase in minimum wages that would reflect the strength and prosperity of the Australian economy and distribute the benefit of national productivity gains to low paid minimum wage. It also relied on the delay to the annual adjustment to wages brought about by the transition to the new wage-setting system. It argued that the increase should be more than that which was needed to compensate for the 4.6% increase in prices (to the June 2006 quarter).
16. Any evaluation of the AFPC's decision must be made on the basis that the decision was made before the publication of the September 2006 quarter increase in the Consumer Price Index and the delay until 1 December 2006 in the wage increases coming into effect. The appropriateness of this delay is a matter which may give rise to some debate between the parties. However, it is clear that the September quarter 2006 price movements should be taken into account when the AFPC undertakes its next review.
17. Leaving aside the delay in the operative date of its decision, the decision by the AFPC to increase wage rates by \$27.36 for those workers on classifications up to \$700.00 per week has increased the real wages of workers on the Federal Minimum Wage by a small margin of approximately \$5.00 per week. Smaller real wage increases apply to those earning up to approximately \$595.00 per week. The increase of \$27.36 per week does not maintain real wages for workers on classifications above that point, particularly those on classifications over \$700.00 per week. Workers on classifications above \$700.00 per week will receive an

- increase of \$22.04 per week, an amount substantially less than that required to maintain real wages.
18. The number of workers employed on the Federal Minimum Wage is limited. ACCER's submissions to the AFPC referred to material previously put to the AIRC by the Australian Chamber of Commerce and Industry ("ACCI") regarding what ACCI called the Effective Minimum Wage, a figure substantially above the Federal Minimum Wage. ACCER argued that this material showed that the Effective Minimum Wage would be approximately \$520.00 per week. This would mean that the wage increase necessary to maintain its real value would be \$23.92. This calculation highlights the limited real wage increases delivered by the AFPC's decision.
19. The ACTU's written submissions dated 24 November 2006 in the current case refer to the claimed real wage reductions caused by the AFPC's decision; see paragraphs 32-4 and Table 3. For the above reasons, ACCER disagrees with the detail of that material, but does not disagree with the heading of that section, which states that the decision is "not generous".
20. ACCER's submissions to the AIRC and the AFPC have emphasised the importance of research and evidence about the financial needs of workers and their families in order for the setting of an appropriate safety net for low paid employees as is envisaged by the legislation. Necessarily, that requires due consideration of taxation and transfer payments. ACCER has recognised that time will be required for this research and that adjustments will need to be

introduced over time. ACCER is encouraged by the prospect of the AFPC commissioning relevant research.

The Applications

21. The ACTU seeks the adjustment of wage rates set by the AIRC so as to reflect the AFPC's decision. ACCI has indicated that it will oppose the granting of the increases awarded by the AFPC; see transcript of Directions Hearing, 20 November 2006, at PN62-9.
22. ACCI's position raises questions about the construction and constitutionality of clause 8 of Schedule 6 of the Act. Clause 8 provides:

- “(1) The http://www.austlii.edu.au/au/legis/cth/consol_act/wra1996220/s4.html - [commission](#) Commission must perform its functions under this Schedule in a way that furthers the objects of this Schedule.
- (2) In performing its functions under this Schedule, the http://www.austlii.edu.au/au/legis/cth/consol_act/wra1996220/s4.html - [commission](#) Commission must ensure that minimum safety net entitlements are maintained for wages and other specified monetary entitlements, having regard to:
- (a) the desirability of high levels of productivity, low inflation, creation of jobs and high levels of employment; and
 - (b) the principle that the wages and other monetary entitlements of transitional employees should not place them at a disadvantage compared with the entitlements of employees (within the meaning of subsection 5(1)); and
 - (c) the principle that the costs to transitional employers of wages and other monetary entitlements should not place them at a competitive disadvantage in relation to employers (within the meaning of subsection 6(1)).
- (3) In having regard to the factors referred to in paragraph (2)(a), the http://www.austlii.edu.au/au/legis/cth/consol_act/wra1996220/s4.html - [commission](#) Commission must have regard to:
- (a) wage-setting decisions of the AFPC; and
 - (b) in particular, any statements by the AFPC about the effect of wage increases on productivity, inflation and levels of employment.
- (4) In performing its functions under this Schedule, the Commission must have regard to:

- (a) the desirability of its decisions being consistent with wage-setting decisions of the AFPC; and
- (b) the importance of providing minimum safety net entitlements that act as an incentive to bargaining at the workplace level.”

23. There is a construction question concerning the ability of the AIRC to have regard to factors that are outside those specified in the clause; in particular whether the AIRC may have regard to any, and which, factors that ACCI may seek to rely on.
24. There is also a constitutional question arising from the constitutional basis of Schedule 6. The Schedule is based on the conciliation and arbitration power in section 51(xxxv) of the *Australian Constitution*. Section 51(xxxv) limits the power of the Commonwealth Parliament to constrain the tribunal that is established to exercise the powers conferred by the provision. The limitation in the power was summarised by Barwick CJ in *R v Commonwealth Conciliation and Arbitration Commission; Ex parte Amalgamated Engineering Union (Australian Section)* (1967) 118 CLR 219, at 242:

"The constitutional power in this area is to make laws with respect to the settlement of industrial disputes extending beyond the limits of one State by a specific means, namely, by conciliation and arbitration. The Parliament is unable itself to legislate the level of wages to be paid. Nor has it power to direct the arbitrator as to the level of wages he shall prescribe in the settlement of a dispute as to wages. The constitutional power requires that settlement of the dispute be left to the arbitrator."

25. The constitutional issue will arise if, on its proper construction, clause 8 purports to constrain the AIRC in an impermissible way. These are important issues for the AIRC to address for present and future cases.
26. ACCER submits that if ACCI presses its opposition to the ACTU claim and argues that the AIRC should depart from the AFPC decision, it is entitled to do so.

27. ACCER supports the application of the AFPC decision by the AIRC in the present case. ACCER submits that there are no economic or other circumstances that would justify the denial of any of the benefits conferred by the AFPC's decision. It supports the ACTU submissions that the operative date for the wage increases should be 1 December 2006.