



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

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**JUSTICE ROSS, PRESIDENT**

**C2019/1**

**s.285 - Annual wage review**

**Annual wage review  
(C2019/1)  
Public Consultations**

**Sydney**

**10.07 AM, WEDNESDAY, 15 MAY 2019**

**Continued from 14/05/2019**

PN231

JUSTICE ROSS: Good morning, please be seated. Can I have the appearances please.

PN232

MS M O'NEIL: Your Honour, Michelle O'Neil appearing on behalf of the ACTU and I have with me today also appearing for the ACTU Mr Clarke, Dr McKenzie and Mr Kyloh.

PN233

JUSTICE ROSS: Thank you.

PN234

MR SMITH: Yes, your Honour, Smith (indistinct) of the Australian Industry Group with Ms Toth and Dr Burn.

PN235

JUSTICE ROSS: Thank you.

PN236

MR A SAGE: If it please the Commission, Sage, initial A, for the Australian Workers Union.

PN237

JUSTICE ROSS: Thank you.

PN238

MR FERNON: If the Commission pleases my name is Fernon. I seek permission to appear for the Australian Catholics Bishop Conference and with me is Mr Brian Lawrence.

PN239

JUSTICE ROSS: Thank you. Anybody else?

PN240

MR MILLMAN: May it please the Commission, my name is Alexander Millman appearing on behalf of the National Retail Association.

PN241

JUSTICE ROSS: Thank you, Mr Millman. Do I take it the application for permission is put on the basis that having regard to the complexity of the matter it would be dealt with more efficiently if permission were granted?

PN242

MR FERNON: If the Commission pleases, yes.

PN243

JUSTICE ROSS: Does anyone oppose the application? The application is granted, permission's granted. Ms O'Neil.

PN244

MS O'NEIL: Thank you, your Honour. I do want to begin today by acknowledging the traditional owners of the land where we're meeting on today, the Gadigal people of the Eora Nation, pay my respects to their elders past and present.

PN245

Members of the expert panel, as you may know prior to my election as the ACTU President last year, I spent 28 years representing some of the lowest paid workers in the country in the textile clothing and footwear industry. That taught me a lot about the level of the workers' pay, telling me nothing about a person's skill, work ethic, worth, capacity and knowledge. That being in jobs and industries which pay the minimum wage is more often than not a product of your gender, your ethnicity, where you live and the wealth of your family. That low pay traps you and your family in a cycle of poverty. That is why the decisions of this panel are so important.

PN246

You would be well aware that the ACTU has a view that the rules need to change so that the notion of a living wage is recognised in your deliberations. However, in the context of this year's minimum wage review the Fair Work Commission is charged with the responsibility of establishing and maintaining a safety net of fair minimum wages. In circumstances where working people can work full-time hours and still be left in poverty because their wages are too low, it is clear that the safety net is failing for those workers.

PN247

This year our claim is for an increase of 6 per cent. Six per cent is a modest proposal. It's a particularly modest proposal when you consider what life is like for people currently living on award minimum wages. What life is like for Elisa who's received an hourly pay increase of just \$3 an hour after 13 years of doing the same job. Or what life is like for Mohani, a single mother who manages to save only \$100 a month despite full-time employment on award rates. She has never been able to go on a holiday with her children. How could she when her rental expenses are \$700 a month. A median monthly rent in Greater Melbourne is nearly two and a half times that figure, according to the Victorian Department of Health and Human Services.

PN248

Then there's Kim who earns an award rate just \$2 an hour more than the federal minimum wage in a call centre answering telephone queries for the Australian Tax Office, or should we consider Deborah who only seven years out from retirement works full-time on an award rate 54 cents an hour more than the federal minimum wage and can't convince a bank to lend her \$10,000 to fix her parent's leaking roof.

PN249

There is Nahid who works two full-time cleaning jobs. She does 16 hours of work many days and nights of the week supporting two children with no funds to spare and surviving on around four hours sleep a night. She often goes without food at work, can't afford a myki ticket or urgently needed dental surgery, and Sagita working a full-time cleaning job who wants to start a family but simply

can't afford it, or perhaps Michael who in eight years of award dependent work has only ever seen a wage increase when this Commission has ordered notwithstanding a very polite text message he received from his employer thanking him for his contribution to their 25 per cent productivity increase and we can't forget the lived experience of those workers affected by decisions of the Commission that have seen their Sunday rates cut between 5.1 per cent and 7.8 per cent in real terms since July 2016.

PN250

There are many more lived experiences, over 2 million of them, of workers who depend on the decisions of this panel for their livelihoods. A workforce of predominantly women workers, the majority working less than full-time hours particularly if they are low paid, where up to 75 per cent of the lowest paid are casual workers. Over a third of the workers reliant on the decisions of this panel are trying to make ends meet as the sole or primary earners in couple households. These lived experience illustrate the harsh reality that the low road approach of a near zero real wage increases is a recipe for an entrenched working poor, high inequality and social divisiveness.

PN251

Despite a decade of economic growth, including some years of double digit growth in profits, the proportion of workers who are paid the lowest they legally can be paid for their work has drifted ever upwards. It's hard to think of any better example of how trickle down economics has failed working Australians. Our income and wealth are simply not being shared. How do those who are just further down such a low road justify it? The truth is in modern Australia this simply can't be justified but that hasn't stopped them from trying in this review.

PN252

In this year's review, the panel is faced, yet again, with claims by many employer interests for what is, at best, real wage stagnation. For them the lowest paid workers in Australia deserve nothing more than to keep marching down the path towards a low wage future. This approach merely seeks to approximate what its advocates would otherwise predict as a market outcome. Nothing could be more ignorant of the origins and purposes of minimum wage fixation.

PN253

For over a century it has been accepted in this country that a legislative requirement to set fair wages for workers is intended to secure those workers something which they otherwise couldn't get through the inherently unequal contest between employer and employee. A trickle down market approach simply isn't capable of delivering fair minimum wages or a fair and relevant safety net let alone supporting the normal needs of a human being living in one of the richest countries on earth.

PN254

That approach says to those that have helped to build the 27 years of uninterrupted economic growth in this country that they should at least stand still - sorry, at best stand still while those above them speed on the high road further out of reach. This is an approach we reject. Our submissions to this review and the Commission's own statistical report focus on things we can measure and compare

over time. Using those sources, we can see a number of things that should inform the panel's decision making.

PN255

We can see that the economy's growing below expectation but certainly within the margins of the high and low points in annual growth seen over the last five years. We can see that a contributed recent lower levels of economic growth has been a decline in growth of household consumption. We can see that notwithstanding slow growth in consumption, the household savings ratio has been declining steadily and the debt to income ratio is high. The average growth in compensation per employee has actually been negative for six years.

PN256

We can see that over the current business cycle in annualised terms, labour productivity and multi-factor productivity are ahead of the last cycle and labour productivity has grown in the year to December. We can see that wages have simply not kept up. We know they've not kept up with productivity because we can see that average growth rates in the real minimum wage, real median earnings and the average weekly ordinary time earnings are all lagging behind real GDP per hours worked and real GVA per hour worked over more than two decades.

PN257

We can also see that they've not kept up with many costs of living because we can see that the growth in nominal disposable income of half of the minimum wage reliant household types modelled in the statistical report have grown less than CPI over the five year period. Consistent with that modelling, is analysis from Greg Jericho in the Guardian on 2 May showing a gap opening up between growth in the household disposable income per capita and CPI over the last five years. His analysis also complements that our initial submission showing the faster growth in prices for essential versus discretionary goods and services.

PN258

The analysis of ANU professor, Ben Phillips, reproduced in our initial submission, also shows a sharp decline in living standards in the last three years. An example of the movement in essential expenditure is included in the Victorian Essential Services Commission we referred to in our submission which shows a rapid growth in the number of people signed up to hardship programs to pay their energy bills in the last financial year on the back of 16 per cent increases in residential energy prices.

PN259

The recent minor improvements in wage growth is no cause for celebration or answer for those struggling with the cost of living because the levels we are now seeing only those match those seen in 2015 when the wage price index was at its lowest since its inception. We can see that the minimum wage bite and the labour share of income have fallen over a long period. The wages share of national income is now hovering around the lowest levels seen in close to 60 years. This is evidence of widening income inequality supported by the long term trends in the 90:10 and 50:10 ratio and as for the increase in compensation of employees, we have shown in our submission that 46 per cent of compensation paid to employees in 2017/18 went to the top 20 per cent of households.

PN260

The poorest 20 per cent of households received only 3 per cent. We can see from the ABS survey of employee earnings and hours that the workers who rely on the decisions of this panel are more likely to be in part-time or casual employment and we can see from Foodbank that 20 per cent of casual and part-time workers experience food insecurity. That is, running out of money for food within the last 12 months. We can also see that based on the 2016 census, around one in six homeless people actually work full-time.

PN261

We can see also from ABS data that having more than one job, the secondary job that now make up around 7.3 per cent of all jobs in the economy, provides no guarantee of a higher income. With median incomes of multiple concurrent job holders barely exceeding the equivalent of full-time work at the minimum wage. In fact the data shows that those working three or four jobs concurrently are getting less pay overall than those working two. The arguments in favour of the low road are weak and tend to avoid highlighting the fact that in every industry, including the more award reliant industries, most employees are paid more than their minimum award rates.

PN262

Even in the businesses with less than 20 employees, over 70 per cent of employees are paid above award rates. The evidence suggests that the loudest advocates for the low road are a vocal minority of employers who pay the lowest legal rates of pay to their workers not because they have to, but because they can. Those minority views are reflected in the submission of the Australian Chamber of Commerce and Industry who caution against any increase in minimum wages that is out of sync with the rest of the economy when the rest of the economy is paying above those wages.

PN263

It's said that an out of sync increase will harm the labour market, but evidence on the relationship between minimum wages and employment - which we reviewed in detail in our submission - barely rates a mention in the Australian Chamber's materials or the Ai Group, who make much of a supposed 0.83 per cent increase in disposable incomes which they attribute to personal income tax changes as a reason why minimum wages should raise slowly, but are the rolling small business tax cuts introduced from 2015 that now include business with a turnover of up to \$50 million among their beneficiaries. Are those tax changes cited in support of a corresponding increase in wages? Of course not.

PN264

In the Ai Group's view real wage stagnation is the way to go, with no allowance for productivity increases or long-term declines in living standards. Wage indexation was a policy adopted in the accord years, which were characterised by high inflation and leap-frogging wage growth, a polar opposite to where we find ourselves now. Even during that unique and challenging period of the 1980s, the general objective was that productivity increases would be distributed to workers, but in that case by way of superannuation contributions. The rate of the superannuation guarantee contributions has of course now been frozen since July 2014.

PN265

Then there were the restaurant and catering employers; six consecutive quarters of solid profit growth in their sector bolstered by a 2.5 per cent business tax cut and from 2015 to '19 the ability to deduct \$20,000 per year off their tax bill for equipment purchases with higher write-offs of \$30,000 available from April this year. They want a real wage cut and a zero increase to minimum wages.

PN266

Of course there is the Chamber of Commerce and Industry in Queensland who come here for the ninth year in a row seeking that workers in regional Queensland are treated differently. This time around the ask is that regional Queensland workers in Townsville be hit with a wage freeze for six months. They boldly make this claim on the strength of figures that show only one in 10 insurance claims made on account of the recent tragic flood were by business and only four in 10 businesses that operate in the region have any employees.

PN267

The pathway to this wage discrimination which the Queensland Chamber propose is conveniently linked to eligibility for a state government grant for property damage with no minimum threshold for eligibility. We hold the view that no employer should, for example, be exempt from safety net wages on account of having been reimbursed by the state for the cost of replacing a damaged floor. There is simply no rational, defensible basis to introduce a two-tier wage structure in Queensland and we would urge the panel to strongly reject this claim, consistent with previous decisions.

PN268

We would add that some research that was just released this morning by the Centre for Future Workers shows that workers in Townsville and surrounds fell behind the rest of the country between financial years 2012-13 to 2016-17. The Centre for Future Workers analysed the declared wage and salary income and personal tax returns over that period and found average real wages and salaries declined by 4.69 per cent over that period in and around Townsville across the federal seat of Herbert. That decline was seven times bigger than the national decline in real wages in the same period which fell by 0.64 per cent.

PN269

This report bells the cat. It demonstrates that wage earners in North Queensland have been going backwards for years before the recent floods and it shows that the CCIQ claim is just business as usual, seeking to suppress wages. This time the great shame is that their hiding behind a natural disaster is the rationale for their unfair and cruel approach to wage setting for the lowest paid. I have copies of that research paper with me and I'm happy to provide them to the panel if you wish.

PN270

The indignant protests against low-paid workers recovering some of their lost share in the nation's economic prosperity by well-resourced, unrepresented minority voices have obvious and troubling parallels to other areas of debate in Australia. Those areas are unrelated to the panel's deliberations of what is

presented today, but are related to the broader decision facing Australia in a few days' time.

PN271

We have sought a significant yet modest increase to the minimum wage and modern award minimum wages in this review; a 6 per cent is not the low road, but it is necessary. It is fair and it is relevant in a tightening labour market, in a growing economy with a long to medium term legacy of declining living standards. We submit that the increase we seek is within the band of increases that does not constitute a threat to economic or employment growth, nor is it outside the band of increases observed in some other comparable countries, and is by no means unusual in the international context. A nominal increase of 6 per cent would place Australia 20th out of the 37 countries analysed over the last year.

PN272

The Low Pay Commission in the UK increased the UK minimum wage for those over the age of 24 by 7.5 per cent in 2016. This had no discernible negative employment effects. Again, in the decision this year the Low Pay Commission raised the minimum wage by 4.9 per cent despite the tremendous economic uncertainty of Brexit. In the last two weeks the UK Chancellor of the Exchequer, Philip Hammond, has announced that the Conservative government is considering supporting a very substantial increase in the minimum wage and has ambitious plans for the UK to have the highest effective minimum wage amongst advanced economies.

PN273

The Low Pay Commission in the UK has been less conservative than the Fair Work Commission in recent years. The average increase in the UK since 2015 to '16 for the minimum wage for those over 21 has been 4 per cent. Canada, a country that is socially and economically alike to Australia, has had a nominal 12.6 per cent increase in minimum wages in 2018-19.

PN274

Also our friends from across the ditch are increasing their minimum wage and fast. The minimum wage in New Zealand, presently \$16.50 an hour, is already higher as a share of median wages - above 60 per cent - than here in Australia. The new government has been increasing it substantially as one of its very first policies. The minimum wage will grow 25 per cent over the government's four-year term, by which time it will equal approximately 68 per cent of median wages.

PN275

So the decision that this panel faces is whether to accept a low road of low wage growth, low living standards and low hope for people like Sagita, Michael, Nahid and Deborah, or to accept the evidence and deliver a modest increase of 6 per cent for them and the many other Australian workers who rely on the benefit of your wisdom. We commend our claim to you.

PN276

JUSTICE ROSS: Thank you, Ms O'Neil.



PN277

PROFESSOR RICHARDSON: I would just be interested in this number which I think I heard you say. Was it 20 per cent of low paid households went without meals? Was that a number that you - - -

PN278

MS O'NEIL: It was a number that we quoted and it's something that can be found in our submission. I will just refer you to where it is.

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JUSTICE ROSS: It's paragraph 445.

PN280

MS O'NEIL: Thank you very much, your Honour.

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JUSTICE ROSS: I think that's where you referred to.

PN282

MS O'NEIL: It's an organisation called Food Bank.

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JUSTICE ROSS: Yes. It's talking about those who experience food insecurity.

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MS O'NEIL: Food insecurity.

PN285

JUSTICE ROSS: It doesn't seem to differentiate between those in employment and those not in employment. Is that right?

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MS O'NEIL: I think that's correct. Is that right?

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MR CLARKE: As an aggregate it doesn't.

PN288

JUSTICE ROSS: Yes.

PN289

MR CLARKE: But it certainly does provide a figure in relation to employment of people within the body of the report. We have not provided the whole of the report in our submission. We have extracted some statistics to it. We've provided a hyperlink to it.

PN290

JUSTICE ROSS: Okay, yes.

PN291

PROFESSOR RICHARDSON: If I could take you to - if you have it with you - table 12.2 in the statistical report.

PN292

MS O'NEIL: Professor Richardson, just give us a moment. I'm very happy to take your question, of course, and may well be ably assisted by the other ACTU officers with me.

PN293

PROFESSOR RICHARDSON: So these are measures of financial stress that have been derived from the HILDA data and have been reported, well, in this table, from 2013 to 2017. And it's focussed on those who are in low paid employee households. It says that 3 per cent in 2017 went without meals. So it's a very different number from 20 per cent. I'm not saying that 3 per cent is acceptable. It is a very different number. Would you think it's maybe the more appropriate number?

PN294

MR CLARKE: I am not in a position to fully critique the different research methodologies used between the two samples. Obviously, HILDA is a big sample. But it tends to follow the same group of people over a long period of time, whereas the methodology of Foodbank was to outreach to organisations that are supporting people who are having trouble meeting their expenses and to directly interview those people. I don't recall, off the top of my head, what the size of their sample is. It would be much smaller than HILDA. There is no dispute about that, whatsoever. But their methodology was to reach out to the organisations that were providing support.

PN295

PROFESSOR RICHARDSON: But they're not necessarily employed households?

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MR CLARKE: No, they're not seeking employed households but they're finding them when they go to the organisations that are providing welfare support to these people.

PN297

PROFESSOR RICHARDSON: Yes.

PN298

JUSTICE ROSS: So paragraph 446 of the submission talks about 20 per cent of those employed part-time or casual, experiencing food insecurity.

PN299

MR CLARKE: Yes. Yes.

PN300

VICE PRESIDENT HATCHER: And that concept is seen as being a bit wider than simply skipping a meal, I would gather, from the gist of the summary in your submission?

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MR CLARKE: Yes.

PN302

VICE PRESIDENT HATCHER: That is, it talks about eating less food than they need, as well as skipping meals, and the like.

PN303

MS MCKENZIE: We would need to check the frequency they're referring to. So it may be that HILDA's referring to, within the last week. It's not – we would need to confirm those rates. Whereas the 20 per cent may be over – well, it is over a year. But we need to sort of look at the comparatives more closely.

PN304

VICE PRESIDENT HATCHER: Yes, all right.

PN305

PROFESSOR RICHARDSON: But my other question with respect to that table 12.2, is that if you look at all the indicators of financial stress, including the bottom few lines where there's indicating that you have more than one measure of stress, say, moderate stress - - -

PN306

MR CLARKE: Yes.

PN307

VICE PRESIDENT HATCHER: There isn't, to my eye, any trend there, that things are getting worse. Would you share that interpretation?

PN308

MR CLARKE: It depends on which indicator you're looking at, and how far back you want to look.

PN309

PROFESSOR RICHARDSON: Well, I've got 2013 to 2017, and I'm drawing your attention to, say, moderate stress, which seems to me like a pretty good summary indicator.

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MR CLARKE: Yes. Yes, it's - - -

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VICE PRESIDENT HATCHER: Or even high stress.

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JUSTICE ROSS: I think you touch on it at 451 of your submission where you look at the number of individual indicators that have moved up and down.

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MR CLARKE: That's right, yes.

PN314

JUSTICE ROSS: I'm not sure I agree with you about the number of indicators that have worsened slightly. Just looking at the table there seem to be five. I

think you draw attention to four. But in any event, the point is that some of the indicators have gone up and some have gone down.

PN315

MR CLARKE: Yes.

PN316

JUSTICE ROSS: And that's where you get the overall shift in low stress, moderate stress, et cetera.

PN317

MR CLARKE: That's right, yes. It's a combination of shifts in different areas. But it's still – we wouldn't say the 2017 figures are anything to write home about.

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JUSTICE ROSS: No.

PN319

MR CLARKE: And it's got to be considered in the context. I mean, the difficulty with all of these sort of indicators is that it get difficult. But they're numbers. You can see some trends, you can see some movements, they jump around a bit. But there's a lot that the numbers don't actually tell you, the numbers on the page. If you look at the very useful research work that was released just a few days ago, either by the work done by you or your staff, updating the budget standards material. What I read out of that, which wasn't said explicitly in it, was that in a perfect week where nothing went wrong, best case scenario, the single adult on a minimum wage might have \$30 in their pocket at the end of the week. Now that to me doesn't seem like a terrific situation.

PN320

JUSTICE ROSS: As you say, you've provided the hyperlink and I'll read the report, but the Foodbank hunger report, I just don't know how they get the extrapolation to – or how you've done it, your proposition that 18 per cent of Australians experienced food insecurity in the last twelve months, when at 444 you talk about the methods, that there were two surveys, et cetera, and one is of charities and community groups. How do you get from – they may have a reported increase in, for example, people requiring their services and that would be consistent with the HILDA data, as well because it saw an increase in those who sought assistance from a welfare or community organisation over the period between 2016 and '17. I can't work out how you get from the survey of the agencies that provide this assistance, to the number of 18 per cent of Australians, about 4 million people.

PN321

MR CLARKE: Yes. Look, the aggregate statistics we refer to in 455 are attributed to the Foodbank report.

PN322

JUSTICE ROSS: 445?

PN323

MR CLARKE: Sorry, 445.

PN324

JUSTICE ROSS: Yes. No, no, I appreciate that.

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MR CLARKE: Yes.

PN326

JUSTICE ROSS: I'm just wondering how they got it, that's all.

PN327

MR CLARKE: Yes. When McCrindle(?) got involved for the second survey, there may have been some stratification of the sample which gave them some comfort in making that claim, but the detail of that methodology, I can't expand upon. One would expect that was the purpose of getting them involved.

PN328

JUSTICE ROSS: In any event, on the HILDA data, there is, well, 3.1 per cent of low paid employee households went without meals. And the fact that that might be a small percentage doesn't mean it's not a large number. And no doubt they would be suffering significant disadvantage.

PN329

MS O'NEIL: Yes, your Honour, that is correct. And what we're concerned, of course, about is the notion that this decision is meant to provide a safety net for all. So whatever the methodology of the two reports we're referring to, the fact that a safety net is allowing a percentage of people to fall through it and not have sufficient to eat in Australia in 2019, is what shows that there is a fundamental flaw or problem with it providing that safety net. So that notion should be that nobody falls through it. So if it is the case that people – you know, even the HILDA report is showing, in terms of financial stress, 27.9 per cent of people having any stress. That's a significant figure. I accept that that's showing now a longer term trend. But you can see that in terms of our submission, we're saying that the longer term trend is that the proportion of median wages that the minimum wage is, is becoming less and less. And this is showing more people in stress and it's showing that some people are at such significant stress that they're not able to eat properly in Australia.

PN330

JUSTICE ROSS: But how does your proposition work, that we should set a wage so that no one in work is below the 60 per cent equivalised? What about someone working part-time? What's the implication of an increase? It would be, for a part-time worker – what, you would want to put them in the same position as a full-timer? How does it work?

PN331

MS O'NEIL: Of course, our overall view is that no worker should live in poverty.

PN332

JUSTICE ROSS: Even if they're working one hour a week?

PN333

MS O'NEIL: But the reality is that there needs to be multiple ways of addressing what's happened in terms of the labour market in Australia. So one is, having a minimum wage that addresses the principle of full-time work and what happens in terms of a safety net so that people are not living in poverty and that we have a fair minimum wage set. The other is what's required to do something about the other figures we're telling you in the report in terms of the number of people because of the increase in insecure employment comparatively, casual, contract, labour hire, under-employment that we see, that there needs to be other measures that address ensuring that we address that trend as well. That's not for your deliberations today, but you are correct, we do not think the minimum wage alone, and lifting it alone, will be an answer to the issue of rising casual and insecure work. Both of those things need to be addressed.

PN334

JUSTICE ROSS: But let's assume you're able to address insecure work and deal with all of those issues, you're still going to have a proportion of the workforce who are working part time, and on the material in the statistical report that table, I think it's 8.6, something around there, that does a comparison of the ratio between different household groups and the 60 per cent relative poverty line. Those that are below that line - well, in particular a couple of them are those where the primary earner is working part time.

PN335

What can we do about that? They're below the relative poverty line because of the number of hours they work. Are you suggesting that everyone in that table should be above the 60 per cent by virtue of what we do, or are you putting that it's a combination of the tax transfer system and wages, and of course you take your tax transfer argument somewhere else, but I'm just not sure what follows from the general proposition, that's all.

PN336

MS O'NEIL: We'll both answer the question. We are saying that it's a combination of measures that is needed to address this.

PN337

MS MCKENZIE: We would be interested to have an hourly rate that reflects a decent increase that would actually go towards the role of this institution improving the conditions for - the pay for low paid individuals including the part time and casuals. We - - -

PN338

JUSTICE ROSS: Sure. But it's not going to lift them above the 60 per cent median. Your increase won't.

PN339

MS MCKENZIE: We also note that actually casual rates are disproportionately lower than other rates for workers, so that anything that contributes to an increase in those rates would be - but we acknowledge that it's a complexity of measures that need to be taken.

PN340

JUSTICE ROSS: Anyone else?

PN341

PROFESSOR RICHARDSON: Yes, could I follow that up, because on page 101 of your submission, initial submission, if I might take you to that, and you're there talking about the budget standards research that was released last year by Saunders and Bedford, and you say:

PN342

*The new budget standard estimates for a low paid couple families are between 22 and 47 per cent above the median income poverty line with the largest gap for single adults at 35 per cent, and the sole parent with one child at 47 per cent.*

PN343

You say these disparities between the new budget standards and the poverty line for those in low paid work are not surprising since the primary goal of Australia's wage setting system since its inception has been to protect workers against poverty, and this involves setting a minimum wage that is above the poverty line, which we've accepted in earlier decisions.

PN344

I'm just wondering whether that paragraph leads us to the view that the ACTU concurs that the budget standards for low workers constitute a living wage.

PN345

MS O'NEIL: Could you refer us to the paragraph number, I'm sorry?

PN346

PROFESSOR RICHARDSON: I'm sorry, I've only got the page number 101. It begins, "The new budget standards". Sorry, if I've got that reference wrong. You can't find it?

PN347

MR CLARKE: No.

PN348

PROFESSOR RICHARDSON: No.

PN349

MR CLARKE: I don't find that. It actually sounds like something we said last year but - - -

PN350

PROFESSOR RICHARDSON: I don't think I would've made that confusion. If you can't find it, then I can't ask you. It's a long paragraph. The key point - don't worry about it. I can't expect you to find it on the run, and if I haven't given the correct reference.

PN351

But I might take you again, following up his Honour's comments on table 8.6, this is a slightly different question, but this is the 60 per cent median income poverty line, which we've used for this purpose in recognition that minimum wages would not be delivering a very minimalist notion of income, that workers should have something more comfortable than that. But the other groups apart from the single parents who are working part time, the other groups who have disposable incomes below the 60 per cent median, if they're earning at the national minimum wage rate, which of course is the very lowest rate, and most people are not on that rate, most award reliant people are not on that rate, they're on higher rates than that. And most of those who are on the lowest rate are actually young and single. But the groups that have earnings below that 60 per cent bench mark are single earner couples.

PN352

So are you saying that we should set award rates that enable a couple, only one of whom is in the workforce, to have what you call a living wage? These are not in the workforce. They are not getting the Newstart allowance, very modest that it is.

PN353

MS O'NEIL: Yes, we are.

PN354

PROFESSOR RICHARDSON: Okay. So the national minimum wage should enable a couple with or without children where only one of them is in the workforce to have what you call the living wage?

PN355

MS O'NEIL: That's right, Professor. There's multiple reasons why, in many households only one person is able to earn an income, and our basic premise here is that as a country we shouldn't have people living or trying to survive on poverty wages. And so where those - as you can see that there's single earner couples, as well as individuals who fall below that, so the figures in terms of the single earner couples with one child are still also below as well as the single earner couples with no children.

PN356

PROFESSOR RICHARDSON: Yes, that's my point. It's the single earner couple  
- - -

PN357

MS O'NEIL: Yes.

PN358

PROFESSOR RICHARDSON: - - -that's having this experience.

PN359

MS O'NEIL: But not just those - - -

PN360

PROFESSOR RICHARDSON: Not the single person.



PN361

MS O'NEIL: Yes, but my point is that it's not just single earner couples with no children, it's also single earner couples with children.

PN362

PROFESSOR RICHARDSON: That's true. That's true.

PN363

MS O'NEIL: That's right.

PN364

PROFESSOR RICHARDSON: But that, you might say, might have something more to do with the transfer system than with - you really think that it's feasible that the wage should be able to provide a sufficient income?

PN365

MS O'NEIL: At the moment the transfer system is not successfully dealing with that issue, so it is our submission that there is an opportunity for the minimum wage setting to consider it and deal with it, that's right.

PN366

PROFESSOR RICHARDSON: That's even though, if you're a single adult, you're earning well above the standard and including the budget standards?

PN367

MR CLARKE: As I said, the thing that stood up to me about the updated budget standard that at the end of that in the week that went fantastically with no unexpected expenses there was \$30 left over. We make a point in our submission about the conservativeness of some of these poverty lines.

PN368

JUSTICE ROSS: And the report authors say that it's a frugal standard.

PN369

MR CLARKE: Yes. Yes. And, you know, I mean, all of these calculations about how does the tax and transfer system work, what's equivalised income for different households, and all these other sorts of things, what are the tax transfer parameters that you take into account, how do you model it, they're incredibly complex. So complex in fact that as you can see from the correspondence that's ensued this time around, that, you know, Professor Saunders who's been researching in this area for over two decades got it wrong. How did he get it wrong? Because he relied on the Department of Social Services, who got it wrong. It's very - there is - it's not quite hypothetical but what you're really tracking here is movements over time and there is within each group that you're comparing, there may be a whole series of individual differences that these broad classifications don't take into account. It starts to get a bit academic and it starts to - - -

PN370

JUSTICE ROSS: Well, I accept that - and you make the point in your submission that hypothetical households can't capture individual experiences but nor can you

extrapolate individual experiences to the broader population. There are limits to the data, there's no doubt about that.

PN371

MR CLARKE: Yes.

PN372

JUSTICE ROSS: I'd like to know how many people are in each of these categories, how many are on the minimum wage, how long have they been on it but nobody can tell us that. So that's why they've been constructed to try and give us some insight into some family types, and even within that table there are assumptions around the ages of the children and all of that will effect, both how much you need and how much you get from the tax transfer system.

PN373

MR CLARKE: Yes.

PN374

JUSTICE ROSS: So it's a sort of infinite variety of possibilities. The problem becomes, I think, that if you're expecting the wages system to do all of the heavy lifting and to lift every one of these groups out of the - above the relative poverty mark, then wages become very sensitive to movements in the tax transfer system. You might see them bouncing around quite a bit year to year, and that might have its own costs in uncertainty as well.

PN375

MR CLARKE: Yes, well I don't - I mean unless I've misunderstood what Ms O'Neil has said, we're not - - -

PN376

JUSTICE ROSS: I think she'll tell you if that's the case.

PN377

MS O'NEIL: Don't worry.

PN378

MR CLARKE: For some hard indexation or relativity between measures. So you know if the tax and transfer parameters change, for example, as a result of change of government, therefore minimum wages should decrease by \$50 a week. We're not saying that there's a hard connection that needs to be made, but we are saying that you need to look at the different types of household circumstances that award dependent workers and minimum wage workers find themselves in, and look at their relative living standards, whatever household types they're in, and make a decision that takes into account that some of them are finding it very difficult at the moment and to do what you can within the framework of the rules that you have to work with at the moment to assist them, rather than it being a ratio. Is that - - -

PN379

MS O'NEIL: I would just add to that. I suppose what we're saying is that we acknowledged the constraints you're operating under, so we're identifying that

there's other measures that also need to be addressed, and we have a broader view about that and we are actively pursuing those other measures that need to be addressed. But within the rules that you currently have to operate under that overarching obligation, responsibility, in terms of maintaining a safety net of a fair minimum wage is what you have to concentrate on. That does, you know, mean grappling with all of those questions that we've just discussed the difficulty in getting the exact answer for in terms of what's happening to individual households but it does, I think, mean that you have to look at that notion of what is fair across the board including those single and couples.

PN380

JUSTICE ROSS: I mean it won't be resolved in this review because there doesn't seem to be the data but one of the problems of the construct you're putting is that you certainly can point to - well in table 8.5, a hypothetical household that is below the median poverty line. But really what you also need to know is well how many people are in that circumstance and to use the vernacular you don't want the tail eating the dog. If you've got, you know, a very small number in that circumstance and you're sitting to address that circumstance you need a higher level of increase for all employees, then that may not be the most efficient way of addressing that particular circumstance. The tax transfer system may be more targeted to that group. At the moment knowing the numbers in each of the circumstances and their wages, matching all that data's not a straightforward exercise. But I understand what you're putting in that regard. Anything further?

PN381

PROFESSOR RICHARDSON: Could I ask a quite different question. In various parts of your submissions, very attentive submissions, well thought through, drawing attention - well presenting data that goes back to the mid 1990s or sometimes even earlier than that, I'm thinking about the minimum wage bite, Gini index, those sort of measures of inequality that you're putting to us, and I think it is clear to see that these measures of inequality that are relevant to the labour market have increased since the mid or early 1990s. But they haven't changed very much over the last six or seven years, most of them. They're relatively flat over more recent years.

PN382

So what I'm - they haven't fallen but they haven't - they've ceased going up, I think that's a broad characterisation of these inequality data. So I'm just interested in what you want us to make of the fact that in the late 90s and the early part of 21st Century, inequality went up. Are you suggesting that we should seek to get back to the position as it was in the mid and early 1990s? Is that a world that's capable of being recreated somehow? Well that's my question. So what's the point of taking us back that far?

PN383

MR KYLOH: Thank you. I think it's very important to have that perspective that we've had some very high and increasing level or rising income inequality over the long run, and I think some people are concentrating on a few data points but actually over the long run we know that income inequality has been rising considerably. I think, you know, we do want to see a more equal conduit and we do want to see actually inequality reduced. That's - and what we know is, actually

since the 90s and the 80s is that we've become much more unequal country, and that has negative effects for say economic growth and other - and it's an unfair conduit. You know we've seen the IMF, the OECD, the World Bank talk about extensively how actually high levels of income inequality have negative effects on economic growth. That's very clear and we actually provide some quotes from those institutions within this - with our submission.

PN384

That's important because if we want a better functioning economy, we actually need a fairer economy and we need lower levels of income inequality. Also I would say as well that to truly measure inequality, you also need to also assess wealth inequality as well. It's not just income. Why? Because actually the richest households are able to put their income into shares, into bonds, into property, into the multimillion dollar properties and so to assess the true living standards, the true gap in living standards between the poor and the rich, you need a comprehensive look at both wealth and income inequality.

PN385

JUSTICE ROSS: Are you suggesting we might do something about wealth inequality or is that just the context?

PN386

MR KYLOH: Well, I think if we recognise that actually the gap in living standards between the poor and the rich are higher than just looking at income, and we know that actually that widening gap in living standards between the poor and the top is worth considering because the living standards are - when we look at living standards it's important to them both. For example, we know that actually someone who's extremely wealthy who owns a second or third house, bought a million dollar house, lives on Sydney Harbour, has a share portfolio, they could arrange their income to be the same as a retail worker or on 37,000, they could arrange their income.

PN387

But are we really saying that the living standards are the same as the poor retail worker compared to the wealthy person who lives on Sydney Harbour with four properties? I don't - their income maybe the same, they may arrange their income to be the same, but I don't believe their living standards are actually the same. (1) You can draw income off your share portfolio, (2) even the ABS, and we've quoted the ABS in our submissions, talks about how it's appropriate to look at income and work inequality together to truly understand living standards.

PN388

JUSTICE ROSS: Thanks very much. Mr Smith.

PN389

MR SMITH: If the expert panel please, I'll make a few brief introductory comments and then Ms Toth, Ai Group's chief economist, will make a few comments about the economic factors and Dr Burn is Ai Group's head of policy and influence and he prepared the analysis on the lower and middle income tax offset so he'll make a few brief comments on that and then we'd be happy to endeavour to answer any questions that the panel may have.

PN390

As you're aware, we filed a couple of detailed submissions so we don't intend going through, of course, all of that material but in those submissions we set out in substantial detail the factors why we believe a modest wage increase is appropriate this year and the level of wage increase we believe is appropriate is a 2 per cent minimum wage increase which translates to \$14.40 per week on the national minimum wage and \$16.75 per week on the base trade rate and that's given the current rate of inflation would deliver a real increase in household spending power.

PN391

I won't go through all the other factors because they're set out in substantial detail that Ms Toth will make some up to date comments on the economic factors. Thank you.

PN392

MR CLARKE: Sorry, if I may.

PN393

VICE PRESIDENT HATCHER: Yes.

PN394

MR CLARKE: I'm sorry to interject. May we be excused.

PN395

JUSTICE ROSS: Certainly, yes, yes.

PN396

MS TOTH: Would you like me to continue or just wait until they've - - -

PN397

JUSTICE ROSS: Yes, probably easier to wait, yes. Do you want to come up, Mr Fernon, it might make it easier?

PN398

MR FERNON: Thank you.

PN399

MS TOTH: I'll just wait until everyone's re-arranged, if that's okay.

PN400

JUSTICE ROSS: Yes, I think that's probably best otherwise there will end up sort of be shuffling around, Ms Toth. Mr Sage, if you want to move up too, that might be easier. Did you say your title was the head of policy and influence?

PN401

DR BURN: It is, yes.

PN402

JUSTICE ROSS: That's tremendous. Where did you - - -

PN403

DR BURN: We're very proud of that, your Honour. We workshopped it extensively.

PN404

JUSTICE ROSS: Yes. Obviously you exert a lot of power within Ai Group.

PN405

VICE PRESIDENT HATCHER: Influence.

PN406

JUSTICE ROSS: Yes, a lot of influence, yes, good point. I think everyone's settled.

PN407

MS TOTH: Good morning. As Steven said, we have given you a number of submissions so I don't propose to go through those at all but I'm happy to answer any questions you might have on them. What I wanted to do for you this morning is just provide a little bit of an update on the latest numbers that we're seeing on some of the key metrics that I know you'd like to focus on and noting that, let's see, it's five past 11, at 11.30 am this morning we will get the latest wage price index from the ABS so we can all have a look at that when it comes up and tomorrow we'll get another month of labour force status so the data cycle never stops but the timing of it probably isn't ideal for your deliberations today in that we have got those key numbers for you coming out while you're actually conducting the hearings.

PN408

I think it's fair to say that the evidence that we're getting on the Australian economy in 2019 has been fairly mixed to date but on the whole it does appear to be changing quite rapidly and a little bit unpredictably in that some of the numbers have been quite a bit worse than were expected given some of the forward indicators from last year so we did see a sharp drop in business conditions and sentiment and few other measures in late 2018 and they were disappointing but they were largely understandable and explainable.

PN409

Much of it arose from the turn that we saw in the housing market in terms of pricing and activity. As you know, construction activity does have quite big flow on effects to other sectors so some of the declines that we started to see particularly in sentiment reflected the mood that that decline was having and I think the pricing plays into that sentiment as well. Also on global trade, we did start to see real effects with manufacturing exports and some other areas where the concerns about global trade volumes were starting to show up in measurable effects.

PN410

For the first quarter of 2019, we were hoping that some of these things would start to level out or even turn around but that hasn't really been the case and just to walk you through just a couple of measures and certainly not every piece of data that's come out so far this year. If I can highlight for you just the inflation and living cost indexes that you already have. Secondly, the retail sales data tells us

quite a lot about what's going on from month to month and over that first quarter and thirdly, what we're seeing in the business surveys both from Australian Industry Group and the NAB business survey which came out just yesterday and lastly, something you already looked at and discussed yesterday, the RBA forecasts for Australia and their comments on what's going on.

PN411

Firstly, on inflation, we did see quite a big drop in the inflation rate in the first quarter of 2019 and I think there's a little bit of debate that's worth having about how much of that is going to be a temporary fall because of large movements particularly in the housing side. Apparently the drops that we're seeing in house prices, in rents were showing up there so whether that is sustained or whether it just turns out to be a single drop, and petrol prices - - -

PN412

JUSTICE ROSS: Did the drop in oil prices flow through to those?

PN413

MS TOTH: That's right, yes, so the petrol price is another one. That was counted a little bit by some seasonal rises in fruit prices, so swings and roundabouts, but when we look at the core measure of CPI, which does attempt to strip those out, that fell quite substantially too, so headline CPI, as you know, was completely flat in the quarter but core inflation fell as well. That was just .2 per cent in the quarter, so we've ended up with annual inflation rates of 1.3 for headline and 1.4 for core.

PN414

The living cost indexes are showing a similar pattern and interestingly out of the household types that the ABS looks at the household headed by employees was the only one that showed a completely flat profile for the first quarter of 2019, and an annual rate of 1.4 per cent. There's definitely been a big swing down in living costs in that quarter. As you say, a lot of that is to do with the fall in oil prices, petrol prices. But also, housing costs that was a big part of the fall in that quarter.

PN415

Moving on to the second item that I wanted to highlight for you today. The retail sales starter, I know we don't normally look at that in a lot of detail, but the first quarter of this year was interesting, probably for all the wrong reasons, in that the volume starter. We get the retail sales starter comes out every month. The monthly data gives us a nominal reading on sales and once a quarter, we also get volume measures.

PN416

The volume measures for the first quarter showed a fall and that was the first fall that we'd seen since 2012. So, you know, it speaks to what's going on in the retail sector and a little bit about the composition of spending across the economy, in that we are collectively all buying less stuff at the shops. The only state that saw an increase was actually New South Wales. That bucked the trend. But pretty much every other state and territory saw a drop in retail volumes.

PN417

The other thing that came out of that data which is - - -

PN418

PROFESSOR RICHARDSON: Sorry, could I just - that's volumes, not values?

PN419

MS TOTH: That's right. The volumes fell. The value was up marginally. So, the value was up 0.7 per cent over the quarter. The volumes were down by 0.1 over the quarter. There was an inflation effect there and a lot of that's in the food pricing. So, supermarkets in particular did see quite a bit increase in nominal sales values, but not in the volume measures.

PN420

JUSTICE ROSS: Sorry, is that data in your submissions somewhere?

PN421

MS TOTH: No, it's not because it only came out last week.

PN422

JUSTICE ROSS: Okay.

PN423

MS TOTH: We can provide that. The retail trade data can be a bit tricky for current purposes for this forum, because it doesn't line up exactly with the retail industry by - and we were looking at employment or when we're looking at activity. It actually crosses over between what we look at as retail trade and hospitality because it does include take away food, cafes and restaurants which are normally counted as food and accommodation. But in this data set, they're in there as retailers. It is telling us a little bit about both of those sectors that are relevant to your deliberations.

PN424

The other thing that's in there that's quite interesting - and again, it's only done on a quarterly basis is splits on retail sales for small and large retailers. For the purposes of these data, again the definitions are different to what you might normally look at, for example, turnover or employment numbers. For the retail sales data they look at the number of sites that businesses have got.

PN425

Small is single site retailers and large is the chains, anyone operating more than one site. Over quite an extended period, but it seems to be accelerating a little bit, is a declining share in sales volumes and nominal values going to the small retailers and more of to the chains. It's interesting; I'm not quite sure what it means for your purposes, but I know we have looked in a fair bit of detail in the past at what's happening in the retail industry and in food and accommodation, hospitality. It might be worth a bit more of a dig.

PN426

Moving on to the monthly business surveys which we get every month. The NAB business survey, Ai Group publishes three of these, as you know, each month. One for manufacturing, one for services and one for construction. For the month



of April, we published those in the first week of May. Manufacturing did actually tick up a little bit and out of the three, that's actually looking the strongest. It's still signalling on balance, very mild modest growth. That seems to be mainly in the food and beverages sector and very much an export focus. The low Australian dollar is helping there.

PN427

On the services index and the construction index, they're both still giving us a negative, that is, a contracting activity measure for the month and have been for quite some time. Just running through them briefly, so the monthly index for manufacturing that peaked in March last year, so when we were discussing the same thing last year, our indexes were all relatively elevated levels and they were rising.

PN428

But at the moment, that was actually the peak when we were talking. It's decelerated since then and as of January 2019, it moved into a fairly flat level, just indicating stable. It has picked up a bit since then, so the last couple of months we've moved into sort of moderate growth for manufacturing on that index.

PN429

Now the ABS value-added output measures do follow the same trend, but we only have those up to the fourth quarter of last year. But it does have a fairly close relationship and it suggests that value-added output for manufacturing is probably stable for Q1, rather than another fall.

PN430

For services, that peaked in June 2018. It decelerated quite sharply after that and it moved into contraction. So, indicating declines in some sectors that were big enough to outweigh the continuing growth in other sectors. That one seems to track most closely to domestic final demand in the national accounts in the quarterly measures. That was also showing a deceleration through the same period. We are concerned that when you put them together it is suggesting a further decline in final demand and particularly on the consumer household side because those sectors are particularly weak.

PN431

In the construction index, that one also peaked in the first part of last year. It's been decelerating in line with the housing cycle, following building approvals down and building activity. It doesn't track to house prices. We're not actually following that. It's really about the activity, orders, employment, sales going forward. When we look at the value-added output for construction, that's shrunk by 3.7 per cent at the end of - towards the end of 2018, the last quarter. We can see a match there as well.

PN432

The NAB business survey - - -

PN433

PROFESSOR RICHARDSON: Sorry, can I just ask?

PN434

MS TOTH: Yes.

PN435

PROFESSOR RICHARDSON: For the construction index, are you saying that that's now negative?

PN436

MS TOTH: Yes, it is. So, it's contracting from the peaks that we saw last year and so is the construction output data from the ABS. But in both cases, we're talking about declines from a very big peak in activity. It is the downside of the construction boom that we're witnessing.

PN437

The NAB business survey that came out yesterday it's showing a similar pattern and altogether these surveys do actually track quite closely together. Even though we've checked, we're not asking exactly the same companies every month and they do track quite closely together. NAB's is a little bit higher and I think the main difference there is that they do include mining. We don't have mining companies in our surveys, so that does tend to account for a little bit of the gap that we see.

PN438

The NAB survey that came out yesterday, is rather disappointing in that February and March had shown a pick-up after that sharp drop that they saw through summer, December and January. But apparently, as of April, conditions have deteriorated again and dropped another three points. Again, NAB's survey, like the Ai Group ones, is showing this pattern of quite a big deterioration through the second half of last year and it hasn't bottomed out yet. We are still seeing deteriorations in these measures.

PN439

What else was I going to talk about? Yes. Whoops, sorry, I've just moved onto the wrong page. That sort of feeds into what I wanted to highlight for you in the RBA's statement on monetary policy, particularly because the RBA does actually look very closely at the business surveys and at business reports more broadly, through its liaison program and through the data collections that it does. It's looking far more widely than just the published ABS data.

PN440

As you know, the RBA did downgrade its forecasts for 2019, 2020, 2021 across a range of measures. What stands out for me there is the drop that they're seeing this year. The very last table that they've published at the back of the statement on monetary policy is actually showing for the quarter of June 2019. They're expecting GDP growth to slow to just 1.7 per cent, peaking up to 2.6 in the second half of this year. So, through to December 2019, they are expecting roughly the same as Treasury, 2.6 for the RBA and I think it's 2.75 for Treasury. But before that they are forecasting quite a sharp drop in output growth.

PN441

The other thing they've done is revise down their forecasts for inflation and for wages growth over the outlook period. There is now quite a considerable gap between what the RBA is suggesting is the most likely scenario and the forecasts that we've seen in the Treasury documents for the Federal budget and for PFO.

PN442

JUSTICE ROSS: What did you say about the - there was a discussion yesterday with the Treasury about the - and the short point seemed to be well, there is a difference in the growth forecast but that's because they're measured differently. One uses point to point and the other one is quarterly averages. It was put, at least my recollection was, but when you compare the same method of measurement, Treasury was broadly the same as RBA.

PN443

MS TOTH: That's true at the headline level particularly for GDP where in that case the RBA uses a year end measure and the Federal budget Treasury documents use a year average. That's where you do get that big gap where the RBA is saying for June 2019 it will be 1.7 and Treasury is saying it's 2.25. What that's telling us is that Treasury is including the better growth that we saw earlier in that financial year, rather than - it's not picking up on the weak profile that we're seeing for Q1 and Q2 of this year.

PN444

I don't know that that accounts for the gap that we're seeing with inflation and wages in their forecasts because they are quite big gaps. And actually, they are calculated the same way on the pricing side. They're both year end measures, quarter over the same quarter of the previous year. When we look at those on the inflation side, so for June 2019 the RBA is saying 1.7 per cent, Treasury is saying 1.5, so actually a little bit lower for Treasury.

PN445

But then the wage measure is a little bit higher. So, Treasury is saying 2.5 for wages. The RBA is 2.4. It's in the out years when the gap starts to open up. So, when we move to June 2020, the RBA has got pencilled in 2 per cent for inflation and 2.5 per cent for the wage price index versus Treasury's forecasts of 2.25 for inflation and 2.75 for the wage price index, jumping up to 3.25 per cent for 2021. Treasury is forecasting the wage price index to rise by 3.25 per cent to June 2021, whereas the RBA is forecasting 2.6. To me that is quite a bit gap.

PN446

JUSTICE ROSS: Well, Treasury has been consistently about the wage price index.

PN447

MS TOTH: Yes, it has. And part of the difference, even though they're not published to the assumptions that are being made about productivity growth and they are really important for your deliberations and of course, the growth rates that we see across the economy. Although they're not published in these data, it does look like RBA has revised down its productivity estimates that are used in its forecasting modelling to better match the rates that we've seen recently, rather than simply using a long run average. My understanding is that Treasury still uses

a long line Australia average for productivity growth which is around sort of 1.5, 1.6 per cent per annum. Because we haven't actually achieved that for a number of years, my understanding is that the RBA has actually lowered that number in its modelling.

PN448

The other thing that's in the RBA forecasts, is they do include the market expectations for the interest rate movements. These numbers are predicated on an assumption of two more rate cuts through the remainder of this year, which will take the cash rate down to a record low of 1.0 per cent.

PN449

PROFESSOR RICHARDSON: So, Ms Toth, your submission is emphasising the recent gloom - I don't want to be exaggerating too much, but perhaps to characterise it, that things were looking quite good up until the middle of last year and then things have turned down in terms of rates of growth. Not much has become negative, but rates of growth.

PN450

MS TOTH: That's right. It's about slowing; that's correct.

PN451

PROFESSOR RICHARDSON: So, it's a slow in growth. Yesterday the Australian government in its oral presentation emphasised solid growth. It emphasised non-mining investment was strong. It said it thinks that the economy is going to grow at its estimated potential over the next little while and that the low dollar is supportive of domestic economic activity.

PN452

So, I'd just like you to comment on the sort of apparent disparate perspectives that are being offered here.

PN453

MS TOTH: Yes, I think the - I would agree that the low dollar is supporting exports, but from what we're seeing and hearing it isn't enough on its own and the disruptions that we're seeing to global trade and the slower growth path in China is playing a path in slowing the outlook for export growth from the non-mining parts of the economy.

PN454

PROFESSOR RICHARDSON: It would also support the import competing parts of the Australian economy.

PN455

MS TOTH: Yes, that's right. We are also seeing - as I've already mentioned, the construction cycle turning down quite sharply and the deceleration has happened a little bit earlier and faster than we were expecting to be honest. That's the main reason why domestically we're seeing a slowing in activity because it does have a such a long supply chain through other parts of the economy. Also, the downturn in property prices probably a sentiment effect and a wealth effect, but certainly, it is having an effect already.

PN456

PROFESSOR RICHARDSON: Non-mining investment is strong?

PN457

MS TOTH: No, I wouldn't characterise it as strong at all. It's better than it was. It has lifted, but I wouldn't characterise it as strong.

PN458

JUSTICE ROSS: These changes don't lead you to change your view about the 2 per cent?

PN459

MS TOTH: No, they don't. We were looking at being able to provide a real wage increase. So, that means it does need to be above inflation and we've tried to do that every year. Certainly, when we look at the main components that feed into that kind of decision. So, if we look at inflation, productivity growth and what's happening in the labour market, it does suggest that yes, it does need to be higher than inflation, but how much above is debateable. But certainly, a margin for productivity growth and other factors in the labour market.

PN460

As you've noted, the labour market is a little bit tighter than it was and we are seeing average wage pressures build and the wage price index is starting to accelerate. For those reasons, we looked at 2 per cent.

PN461

PROFESSOR RICHARDSON: Last year, of course the national minimum wage and the (indistinct) pay went up by 3.5 per cent. Are you aware of any robust evidence that this caused any harm, economic harm?

PN462

MS TOTH: No, I'm not.

PN463

PROFESSOR RICHARDSON: I mean I look at table 7.2 in this statistical report and it shows that one of the - the most award reliant of all industries is accommodation and food services. They seem to have done quite well. Hours worked went up by 6.8 per cent on that measure, for example. Okay, thank you, you've answered it.

PN464

MS TOTH: Just to answer that, on one of the pieces of data that we provided in our submission that has subsequently been updated, I think we provided the November quarter data for employment by industry including under-employment. So yes, it's true that food and accommodation services employment head count an hour has gone up. But I'd note that it still has got the highest under-employment ratio of any industry.

PN465

JUSTICE ROSS: Well, you'd expect that from the proportion of part timers and casuals.

PN466

PROFESSOR RICHARDSON: Part time workers.

PN467

MS TOTH: Yes, that's an interesting one because it has got - that's correct, but if you look at the other industries that have got double digit under-employment ratios. So, as of February 2019, which is the latest data available from ABS by industry and as I said, we did include the November data in our submission. But it's been overtaken by February.

PN468

Retail trade, food and accommodation services, administrative services and arts and recreation are the only industries that have got double digit under-employment ratios. All of the other industries, including some of the ones that have got relatively high part time work rates, the under-employment ratios are much lower. That is suggesting that maybe the spare capacity at that lower end is larger than we realise and it appears to be larger than in other industries that are seeing stronger wage rises.

PN469

Health care, for example. 44 per cent part time work rate, but the under-employment ratio is 8.6 per cent, as of February. It's more than double - - -

PN470

JUSTICE ROSS: That might reflect the age profile of part time workers in retail and accommodation.

PN471

MS TOTH: That's right. All of that is definitely relevant. The demographic profile of the workforce, the skill levels of the workforce. But it is suggesting that at those lower skill levels, there is more capacity, more spare capacity already in the workforce in terms of under-utilisation, than there is in some of the other industries.

PN472

JUSTICE ROSS: Thank you Ms Toth.

PN473

MR BURNS: I'd like to make some comments about the lower middle income tax offset we addressed in our submission and subsequent submissions. The lower middle income tax offset was legislated last year after having been announced in the 2018/19 budget and it delivers to a range of low and middle income tax payers an increase in disposable income. It does that by giving them a higher - typically a higher tax refund than they would have otherwise received when they do their tax returns for the current financial year.

PN474

To illustrate the impact for a single person working full time and earning the national minimum wage, the extra income would be \$214.97 in greater tax refunded. We also point out that as this is - that the income is not taxed, it is equivalent to a larger quantum of pre-tax income. Again, with that illustration of

a full time worker and the national minimum wage, that increase is equivalent to a pre-tax increase in income of \$311.55 or \$6.00 a week.

PN475

We submit that this increase in disposable income should be taken into account by the panel in its considerations about the quantity of the minimum wage grant.

PN476

JUSTICE ROSS: Can I just deal with that. The criticism that's made of your submission in the ACTU's reply is that they characterise it that what you're seeking is a direct quantified reduction in the amount we would have awarded, but for the tax transfer changes. I haven't actually read your submission that way.

PN477

When you say taking into account, are you putting that we should reduce the amount we would have awarded by \$6.00 because that's the pre-tax effect of the offset?

PN478

MR BURNS: We didn't make that suggestion.

PN479

JUSTICE ROSS: No?

PN480

MR BURNS: We took into account - - -

PN481

JUSTICE ROSS: I'm not making the suggestion either, I'm just trying to understand what you're - - -

PN482

MR BURNS: No, no, no. That was a mischaracterisation. We are aware of the way that the panel has taken in previous increases or changes in transfer systems into account and it's not in that mechanical way. We don't exactly know how it is, and that hasn't been specified and that's as it is and we haven't attempted to impose a mechanical way.

PN483

JUSTICE ROSS: Yes. Speaking for myself, it occurs to me that if you were to do that, that is reduce by the precise amount, then bearing in mind these tax transfer changes were targeted or intended to assist low income households, that would sort of negate entirely the legislative policy. It's for that reason you can't really put a quantified amount to well, how much would be taken into account.

PN484

But consistent with past years, those sorts of changes have been taken into account, albeit not in a quantified way.

PN485

MR BURNS: Another complication is that there are so many different types of households that would be affected very differently by this.

PN486

JUSTICE ROSS: Indeed. And indeed, there are some on the Commonwealth's figures that derive no benefit from the offset.

PN487

MR BURNS: Yes, if someone doesn't pay tax, they can't get a tax break.

PN488

JUSTICE ROSS: I think on their table they provided in response to the question on notice, there were two household groups - I think one part time - and in any event, there will be some who don't. All right, thank you.

PN489

Any questions arising?

PN490

No?

PN491

MS TOTH: Would the panel like me read out the latest wage price index figures for you?

PN492

JUSTICE ROSS: Sure, yes.

PN493

MS TOTH: They came out just a few minutes ago at 11.30. They're completely unchanged from Q4 of 2018. So, the headline wage price index rose by 0.5 per cent in the March quarter and 2.3 per cent through the year with the same numbers for private sector wage growth. Public sector wage growth rose by 0.4 per cent over the quarter and 2.3 per cent over the year.

PN494

JUSTICE ROSS: Might make the budget forecast a bit difficult to meet.

PN495

MS TOTH: Well, Treasury is expecting them to go up to 3.25.

PN496

JUSTICE ROSS: No, I meant this year's forecast, difficult to meet.

PN497

MS TOTH: Yes.

PN498

JUSTICE ROSS: All right, thank you. Nothing like up to date information, Ms Toth.

PN499

I think Mr Millman, you were next, is that right?

PN500



MR MILLMAN: Yes thank you, your Honour. With the leave of the panel, for the sake of the video link, may I conduct these proceedings from the seated position?

PN501

JUSTICE ROSS: Yes, certainly.

PN502

MR MILLMAN: Thank you, your Honour. And I should also advise that my view of the panel is very small, so I can't really identify who is speaking. So, if I do address anyone incorrectly at any point in time, I can only apologise after.

PN503

I would like to start by explaining how the National Retail Association sees their role. The National Retail Association is a member of the Australian Chamber and in that regard, we largely join in support of the submissions made by Australian Chamber in this matter.

PN504

How we see our role is to provide some retail-specific insights to the matters for consideration in this review. So to that extent if there is any matter relevant to the panel's consideration which is not specifically addressed in our written submission, but we defer to the submissions of the Australian Chamber.

PN505

For the purposes of today, I don't want to take up too much of the panel's time. I just want to touch briefly on a few key points, and largely building on what my colleagues at the Australian Industry Group said, we support what my colleagues have said with the retail trade figures for the previous quarter. The only comment we would like to make with respect to the retail trade figure that have been released since our initial submissions in March, is with respect to the February figures. At a time the February figures for retail trade were considered to be – well, they are far greater than the trend of what we have seen previously throughout the quarter. The seasonally adjusted estimate for February was 0.8, with the surrounding months being 0.3 and 0.2.

PN506

At the time it was considered that this might be indicative of a turnaround in retail trade, and rosy days, moving forward. Unfortunately that does not appear to be the case. That February figure is, I might say, a statistical outlier and as such, we urge the panel to view it as such.

PN507

The panel asked of Ai Group if they were aware of any robust research that indicated that the decisions of this panel in the previous year, a measurable harm on a particular industry. We agree with Ai Group. There is no robust research of that matter. And we raise this because this was a criticism of our submissions made by the ACTU. We note that whilst there may be no direct research demonstrating that there is a significant causal link, it is ultimately, at the end of the day, a matter that what affects the business is multi facet(?) test and the

decision of this panel will simply be one of many factors that go towards the success or failure of it.

PN508

We would like to add that at this point in time our members are indicating that the proposed changes to the industrial relations framework following the federal election if the opposition is to win, is causing some concern among the retail sector, particularly with respect to proposed changes to penalty (indistinct) not considered - - -

PN509

JUSTICE ROSS: I'm not sure we can do much about that, Mr Millman.

PN510

MR MILLMAN: Yes. I note the panel's practice, but I do just bring it to your attention. Although as I say, the panel does not habitually consider legislative change (indistinct) enacted, and not whilst they're (indistinct).

PN511

JUSTICE ROSS: Or even one step removed from that.

PN512

MR MILLMAN: Yes, indeed, your Honour. The only other matter that I would like to touch on at this point in time is that there was a question for consultation put to the NRA. Unfortunately due to staff movements around the Labour Day long weekend, up here in Queensland, the posting of that question for consultation was missed and it did not come to our team's attention until we were making our final preparations for these proceedings.

PN513

Now I am conscious of the fact that other parties in these consultations will not have had the opportunity to respond or see any proposed response to that, so I'd like to ask the panel if they would like me to make a verbal response to that question of consultation.

PN514

JUSTICE ROSS: Yes, I think that would be appropriate and then if anyone wants to comment on that they will be free to do so during this stage of the proceedings.

PN515

MR MILLMAN: Thank you, your Honour. So the question put in the question for consultation refers to a statement in the introduction to our submissions in reply, where we say the majority of goods of the kind subject to retail sale continue to experience minimal increases or further decreases in real price as a result of continuing price competition in the retail industry. But the question put to us is can the NRA provide any information on the extent to which the wholesale cost of goods of the kind subject to retail sale have fallen.

PN516

We may not have expressed that in the most appropriate fashion, or in a clear fashion. And I say that because when we refer to the real price of goods of the

kind subject to retail sale, we were referring to the retail or consumer price rather than – and that refers to the CPI which is addressed at part 2.3 of our initial submission, noting of course that the consumer price paid of goods for retail, such as food and beverages are, to a degree, subject to seasonal changes.

PN517

If, however, we are to talk about the wholesale price of goods, in our view that requires a reference to the producer price index. And from what we can see from the March quarter figures, at least with food product manufacturing, there appears to be an increase in the twelve months, in the index at least, from March 2018 to the March quarter 2019, from 110.4, to 115.3, or an increase of 4.4 per cent. Beverage manufacturing, including alcoholic beverages, increased over the twelve months to March 2019 from an index of 121.5, to 125.7, 3.4 (indistinct). Now compare that with the consumer price for food and non alcoholic beverages in the twelve months to March 2019, being 2.3 per cent. So in that regard we're saying that the cost of producing those and getting those items on the shop floor for sale to consumers, is growing at a rate greater than the price paid by consumers and that is, of course, the price that generates revenue.

PN518

JUSTICE ROSS: So that's demonstrative of intensity of competition, is that right?

PN519

MR MILLMAN: Yes, your Honour. So when the retail industry, or those parts of CPI or those CPI groups when we're talking about retail, food and beverage, clothing, household furnishings, whitegoods and the like, tend to have a greater downward pressure on their prices than we see in other sectors, and that is largely due to competition on price. Other sectors may be able to compete on the quality of type of product that they provide but in the retail sector, effectively, a carrot is a carrot.

PN520

JUSTICE ROSS: And that intensity of competition, and we know that there's online shopping and major new entrants in the supermarket business, does that from your organisation's perspective, have employment consequences one way or the other?

PN521

MR MILLMAN: We're not seeing too much in the way of a change in employment consequences and that is, by and large because whilst, yes, we do have major retailers who are major employers, the bulk of employees in the retail industry are still employed by small businesses. And those small businesses don't necessarily have the capacity to enter into those analogically streamline productivity measures that those large (indistinct). So on an aggregate level we're not seeing much in the way of employment (indistinct).

PN522

JUSTICE ROSS: So the employment figures for the retail trade sector over the past three years has been jumping around a lot. We saw a sizeable drop to the year to February 2017, then an even bigger rise in the year following, and the

latest year we've had a small drop. I mean, apart from in your statistical issues, can you say anything about that which might explain it?

PN523

MR MILLMAN: I'm afraid I can't comment on that.

PN524

JUSTICE ROSS: All right.

PN525

MR MILLMAN: So I've had the opportunity to (indistinct) response.

PN526

JUSTICE ROSS: Thank you, Mr Millman. Was there anything further you wanted to say?

PN527

MR MILLMAN: No, thank you, your Honour.

PN528

JUSTICE ROSS: All right, thank you. Mr Sage?

PN529

MR SAGE: Thank you, your Honour. The AWU's role in the proceedings today is limited to the junior rates issue which we raised in our initial submission, and of course we completely support the submissions of the ACTU. We did initially propose to appear today in case there were any questions from the panel relating to that submission or if there had been any late opposition from any party. As it turns out, I don't believe there is any opposition and in particular I note that it appears that the relevant industry associations have both not opposed our submission in relation to the junior rates and the Vehicle Award, namely Ai Group and the motor trades organisations, with the support of the Chamber of Commerce and Industry. I also note that Ai Group mentioned the agreement that they had reached with the AMWU in relation to the manufacturing stream workers in that award following to the transfer to the Manufacturing Award. Of course we don't seek to interfere with that at all.

PN530

JUSTICE ROSS: But in any event they're the subject of a conference this afternoon.

PN531

MR SAGE: Yes, and that's also the case, your Honour. We had put in a submission to appear today before the conference was listed and so out of an abundance of caution we have appeared today again just in case there was any further questions, but, if not, we're happy to resolve those matters this afternoon.

PN532

JUSTICE ROSS: Thank you, Mr Sage.

PN533

MR SAGE: Thank you.

PN534

JUSTICE ROSS: Mr Fernon?

PN535

MR SAGE: Could I be excused, your Honour?

PN536

JUSTICE ROSS: Certainly.

PN537

MR FERNON: If the Commission pleases, I had proposed to make some supplementary submissions regarding chapter 6 which is concerned with some construction issues in respect of the written submission that we have filed. That will deal principally with nature, purpose or objective of the safety net; but before doing so, if convenient, Mr Lawrence would make some supplementary submissions by way of overview in respect of other matters in our submission.

PN538

JUSTICE ROSS: Sure.

PN539

MR LAWRENCE: If the Commission pleases, the focus of the submissions made by the Australian Catholic Bishops Conference is on low income working families in which the wages earned by workers do not provide a decent standard of living and in which many parents and children are living in poverty. We seek to speak on behalf of these working families whose standard of living largely depends on the decisions of the Fair Work Commission.

PN540

The workers in these families are a large part of Australia's working poor. Advocacy on behalf of low income families is needed because their interests are not being sufficiently protected by the decisions in the annual wage reviews. These working families are broadly defined in appendix B of our March 2019 submission in data drawn from the National Census of August 2016. The data from the 2016 census enabled an estimation of the number of children and adults living in these low income working families who were living in or near poverty in August 2016.

PN541

We have estimated the numbers in couple parent working families living in or near poverty. The numbers are 459,200 children and 472,000 adults. In sole parent working families we have estimated that 220,000 children and 120,400 adults were living in or near poverty. It is fair to say that about 680,000 children and about 592,000 adults were living in or near poverty in wage dependent Australian families at the time of the 2016 census.

PN542

These figures are generally consistent with the number of commissioned reports of poverty over recent years. The report entitled Poverty in Australia 2018, which was published by the Australian Council of Social Services in November 2018, found that a large proportion of those living in poverty were in households where

there was full-time employment. There were 663,800 at the 50 per cent of median relative poverty measure and 1,112,400 at the 60 per cent of median relative poverty measure.

PN543

In homes where there was part-time employment, there were 342,200 below the 50 per cent poverty line and 564,400 below the 60 per cent poverty line. The Poverty in Australia 2018 Report also found that among the total number living in poverty, there were 620,200 children under the age of 15 living in poverty at the 50 per cent poverty line, with 912,300 in poverty at the 60 per cent poverty line.

PN544

The lives and future prospects of these children, and the ability of their parents to nurture and educate them, depend to a large extent on the minimum wage decisions made by the Fair Work Commission, yet the alleviation of child poverty in wage dependent families has not been given priority or emphasis in past annual wage decisions. We are entitled to ask the question how many children in wage dependent families have to live in poverty before their interests are taken into account in the decision of the Fair Work Commission?

PN545

The level and depth of child poverty in Australian working families is, in our view, scandalous, especially because the level of poverty is to a substantial degree the result of decisions of national wage setting tribunals over the past two decades which have cut the relative value of the wages paid to minimum wage dependent workers. Successive national wage setting decisions have, by design or effect, sought to move the responsibility for family support and the alleviation of poverty among children in working families to the Commonwealth government, while successive governments have been unwilling to commit to the responsibility.

PN546

There is no prospect the government policy in this regard will change, whether under a Coalition or a Labor government. We have reached an impasse on tackling poverty and disadvantage in wage dependent families. The Fair Work Commission will not commit to the objective of setting the national minimum wage at a level where it can provide the average family with a couple parent or sole parent with a decent standard of living that is above poverty.

PN547

The material drawn from the 2016 Census and the Poverty in Australia 2018 Report further demonstrate 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. This is not the situation that we could have expected when the Fair Work Act was enacted by the Federal Parliament in 2009.

PN548

This year marks the 10th anniversary of the enactment of the Fair Work Act 2009 which came into operation in January 2010. The decision in this annual wage review will be the 10th made under this legislation. One of the main purposes of

the legislation was to set aside and replace the wage setting system established under the earlier Work Choices legislation.

PN549

In a speech entitled "Introducing Australia's new workplace relations system" at the National Press Club on 17 September 2008, the then Deputy Prime Minister, the Honourable Julia Gillard, started her speech with the following reference to the living wage and a decent standard of living:

PN550

*The signature values of nations are often defined by the circumstances of their birth. This is as true for Australia as for other countries and for us there's one value above all others that we identify with as truly our own. It's the value that emerged out of the circumstances of Federation, which coincided with the industrial turbulence of the late 19th and early 20th centuries. That value is fairness or, as we like to put it, "The fair go". It inspired us to establish a society that aimed to give every citizen a decent standard of living and it led us in 1907 to establish the principle of the living wage.*

PN551

It was implicit in this statement that after the Work Choices years the objective of setting a living wage would be an integral part of the new wages system. It has become evident that the Fair Work Act 2009 has failed to provide fair safety net wages for low paid workers with family responsibilities and, as a result, alleviate the poverty and disadvantage suffered by them and their families.

PN552

Instead, we have a situation where the national minimum wage is set at a level that provides a reasonable wage for a single worker without family responsibilities; nor is the current national minimum wage consistent with the universal right of workers to fair wages and a decent standard of living for themselves and their families, which is recognised in Article 7A of the International Covenant on Economic, Social and Cultural Rights.

PN553

This international convention binds Australia and which, by section 3(a) of the Fair Work Act, is to be taken into account among other matters when setting the national minimum wage. The wage to which the covenant refers expresses the nature and purpose of the living wage. The national minimum wage is not a living wage consistent with the right to a wage that is sufficient to provide workers and their families with a decent standard of living by reference to contemporary Australian living standards.

PN554

Furthermore, decisions under the Fair Work Act have failed to address the well-documented failure of earlier minimum wage decisions to maintain the relative value of minimum wage rates. For a number of years prior to 2009 increases in minimum wage rates lagged behind increases in median and average wages. Over the period 1997 to 2009 the federal minimum wage, the direct predecessor of the national minimum wage, had fallen from 61.9 per cent to 54.4 per cent of median wages, and from 50.5 per cent to 44.4 per cent of average ordinary time earnings.

PN555

Other low paid rates had a larger wage case. As a consequence many more workers and their families were living in poverty and disadvantage. After nine decisions under the Fair Work Act we have seen that the national minimum wage is still about the same relativity to median wages and average earnings at 54.1 per cent of median wages in August 2018 and 44.8 per cent of average ordinary time earnings in November 2018.

PN556

These nine decisions under the Fair Work Act have maintained the earlier cuts and have failed to meet the expectations that came with the introduction of the new wages system. Instead of addressing the legacy the Fair Work Commission has effectively locked in the earlier wage case. Furthermore, by awarding uniform percentage increases to the national minimum wage and all wage rates since 2011 the setting of the national minimum wage and low paid award rates has been effectively tied to a global one size fits all assessment, even though the lowest paid workers are in most need of wage increases.

PN557

Not one extra dollar has been awarded to the lowest paid workers even though many of them and their families are living in poverty and disadvantage. As a result of the decisions over the past two decades what was in 1997 an inadequate wage to support working families is now a reasonable wage for a single person without family responsibilities. One of the consequences of these developments is that the national minimum wage has not been set at a level where it can provide a proper basis for the setting of award wage rates.

PN558

The national minimum wage is intended to be the basis upon which wage rates will be set so as to reflect the skills, responsibilities and circumstances of work covered by awards and their work classifications. At its current level the national minimum wage is not the basic wage on which the award system can function as intended. It is, we submit, fair to conclude that the minimum wage setting system is in crisis.

PN559

The minimum wage system in Australia is in crisis because first, the national minimum wage is not a living wage capable of supporting working families and is set at a rate that provides a reasonable standard of living for a single worker without dependents; and second, the higher minimum wage rate set by awards to cover work classifications do not provide fair, relevant and contemporary margins for the skills and responsibilities of workers employed in those classifications. The result of this is that it is necessary for a worker to obtain a skilled job in order to be paid a wage that will provide a decent standard of living for an average family.

PN560

We have illustrated this by reference to the worker who is paid the base award rate for a trade qualification, which is commonly known as the C10 rate. In January 2019 a C10 dependent single breadwinner family of a couple and two children had a lower standard of living than pensioners in receipt of aged pensions. Something



is seriously wrong when a skilled worker working full-time is unable to support an average family at a higher standard of living than pensioners receive from the public purse.

PN561

We have also demonstrated how the relative living standards of minimum wage dependant families have fallen over the past 15 years when taking into account wages, taxes and transfers. In the case of a C10 dependent family of a couple and two children in rented housing and in receipt of rental assistance, the living standard fell from 64.6 per cent to 59.4 per cent of the median household disposable income over those 15 years. This amounts to a loss of \$96.52 per week.

PN562

JUSTICE ROSS: Sorry, Mr Lawrence, I'm a bit confused. You're talking about people on the C10 rate now?

PN563

MR LAWRENCE: Yes.

PN564

JUSTICE ROSS: But I thought you were advocating a higher rate of increase for people lower than that? That is, what's the point where you say there needs to be some differential in terms of the wage increase?

PN565

MR LAWRENCE: Yes, we argue that the national minimum wage - - -

PN566

JUSTICE ROSS: Yes, but at what point? That is, are you arguing that C10 gets lesser increase than the national minimum wage?

PN567

MR LAWRENCE: No. No, we say that with a C10 the margin for the C10 has to be considered. We've set this out in chapter 2 of the submission and we say we've got a problem. For the C10 worker in receipt of a margin for the skill and responsibility that he or she exercises, that is based on a national minimum wage that itself is too low and is not a living wage, cannot be regarded as wage that can support a decent standard of living. And the point we make is that under the current wage system if you are to get a living wage you need to get a skilled job. That is, it's only when you get a skilled job at or above the C10 rate that you start to get a wage that can be fairly characterised as a living wage. We still - - -

PN568

JUSTICE ROSS: I thought you were disparaging the rate even at C10 in respect of a working family.

PN569

MR LAWRENCE: We're saying it's insufficient, yes. It's insufficient and that's why we have proposed in chapter 2 of the submission that there be a review in due course of the C10 rate and other rates. We think the problem with the system at

the moment is that the base, which is the national minimum wage, is insufficient and as a result of that the rates for skilled workers are inadequate and we also say for reasons given in chapter 2 of the March submission that there is reason for those current relativities between the national minimum wage and the award classification rates to be reviewed.

PN570

JUSTICE ROSS: Sorry, I thought your review proposals related to the very bottom and top ends of the scale, not to C10?

PN571

MR LAWRENCE: No, it includes C10. We've got - because that is a reference point. We're proposing that C10 be reviewed as well as the first year graduate rate. Reference to the C12 review is at paragraph 105 of the March submission.

PN572

JUSTICE ROSS: C12? No, no, it's C10 and level 1 graduate employee. I see.

PN573

MR LAWRENCE: Yes. Our March 2019 submission - - -

PN574

JUSTICE ROSS: Sorry, but how does that relate to your submission that there should be larger increases at the bottom end of the scale? That is, you seem to be suggesting we should immediately make larger increases at the bottom end of the scale but there should be some review of higher classifications which in due course would presumably, on your submission, give them a further increase.

PN575

MR LAWRENCE: Yes.

PN576

JUSTICE ROSS: Don't we end up back where we started?

PN577

MR LAWRENCE: No, no.

PN578

JUSTICE ROSS: Well, because you argue about the - - -

PN579

MR LAWRENCE: No, we prioritise.

PN580

JUSTICE ROSS: - - - decompression, don't you, of the relativities.

PN581

MR LAWRENCE: Yes. We prioritise the needs, we prioritise the steps that we think are necessary to undertake this reform. The first priority, we say, is the people who are at the bottom, the low paid, and the first priority is to move the national minimum wage up towards a living wage, yes, and the further priorities involve reviewing the C10 rate and the first year graduate rate with a view to

establishing what are the appropriate relativities in 2020 or thereabouts after those  
- - -

PN582

JUSTICE ROSS: But the first step would compressed relativities even further.

PN583

MR LAWRENCE: Sorry?

PN584

JUSTICE ROSS: Your first step would compress relativities even further.

PN585

MR LAWRENCE: It would, yes. The first step - - -

PN586

JUSTICE ROSS: Then you want us to decompress them down the track.

PN587

MR LAWRENCE: Yes, yes, and the proposal is that this year we move the - the Commission moves the national minimum wage up by \$40.80 per week and award rates of pay by \$31 per week. They're the low rate, they're the low paid rates. For rates above the C10, we've claimed an increase of 3.7 per cent.

PN588

DEPUTY PRESIDENT ASBURY: But Mr Lawrence, the later review that you propose, if I'm reading your submission correctly, is based on work value and the increase to the lower - the national minimum wage that you're proposing is not based on work value, it's based on making it into a living wage so how do the two - because the 100 per cent mark is the C10 rate. That's how it has been traditionally set and it was valued at that point, so if you're going to move the lower levels on a different basis then what does that do to a work value consideration of the C10 level.

PN589

MR LAWRENCE: Well, first of all, the national minimum wage and, on the other hand, award rates have a different basis. The national minimum wage is, in traditional Australian terms, the basic wage whereas the award rates of pay, which may include a rate for unskilled workers, but generally they provide rates that compensate for the skills and responsibilities and particular circumstances of the work performed by those in the work classifications.

PN590

As far as you refer to the C10 rate being set at 100 per cent, that, of course, relates to the work that was done - the classifications review work that was done in around about 1990 when it was decided by all industrial tribunals in this country that the key reference point for obtaining consistency between awards would be the C10 rate. I was, at that stage, a deputy president of the Industrial Relations Commission Victoria and one of the functions that we had then was to go through our awards and find out how different classifications would relate to the C10 rate

and, perhaps before that, to identify the classification in the award that appropriately aligned with the C10 rate.

PN591

That's the last time, in the early 1990s, that award classifications and the rates in award classifications were looked at, were reviewed and we're saying that after 29 years, we've said this in the submission, after 29 years it's time to have another look at award relativity - - -

PN592

JUSTICE ROSS: But it's not true that they haven't been looked at for 29 years.

PN593

MR LAWRENCE: Well - - -

PN594

JUSTICE ROSS: There are a number of cases running now that are looking at one of the levels you want to review, the professional level, and there's a work value case running in the child care area.

PN595

MR LAWRENCE: I accept that and that point's been made by the ACTU, for example, but in a broad sense, in across the broad sense, in a general sense, there hasn't been a review and we say in relation to the award modernisation process leading up 2010 and the commencement of the current legislation, that that was - that did not amount to the kind of review that we're proposing in relation to award relativities.

PN596

JUSTICE ROSS: Well, I mean, this is where I'm still confused, with respect, and maybe it's just me, but the compression of relativities which you're complaining about in paragraph 103 of your submission was brought about the by predecessor of this commission awarding increases in what were then equivalent of annual wage reviews which favoured - gave greater increases, or greater relative increases, to those at the bottom end of the scale.

PN597

MR LAWRENCE: Yes.

PN598

JUSTICE ROSS: You want to continue that or revert to that approach while at the same time complaining about a compression of relativities.

PN599

MR LAWRENCE: No, no, we're looking at a - we've identified two fundamental difficulties with the current system, one the national minimum wages is not appropriate, not an appropriate level, and the relativities that are built on that need to be reviewed. As far as the earlier decisions were made that compressed the relativities, it's been said that that was done to the advantage of the low paid and that the higher paid, in effect, gave up something to support the lower paid but the point we've made is that when you look at the changes since 1997, that even

though there was a favouring of the lowest paid by money increases, that still lagged the community movements.

PN600

That's where there was a loss of relativities. That was a significant reason why we've got a current - why we've got the current degree of poverty and disadvantage in low income wage dependent families. It had - had the increases in the minimum - the lowest rates in the past been in excess of community movements or equal to community movements, the argument might be a little different but the fact is that the national minimum wage, and the federal minimum wage prior to it, even though it's been advantaged in relative terms to the higher rates, it has still lagged the community movements and that's why we can point to these losses, the loss in relativity of the national minimum wage to median wages and to average weekly ordinary time earnings.

PN601

There's been - even though the national minimum wage, and the federal minimum wage before it, was apparently advantaged, it still fell below the community wage movements and that's why we've got the kind of situation we have at the moment.

PN602

DEPUTY PRESIDENT ASBURY: But what you seem to be proposing is that you address the national minimum wage and the minimum - the lower level wage rate in awards, the entry level, the minimum rate in awards, by compressing them further, by giving those levels a greater proportion of increase and then you redress the increased compression that that will cause by a work value undertaking with respect to the CT10 rate and the two mechanisms are completely incompatible, aren't they? Work value is not looking at - - -

PN603

MR LAWRENCE: Yes, the two - - -

PN604

DEPUTY PRESIDENT ASBURY: - - - whether it's a living wage or not. It's looking at the value of the work compared to other work.

PN605

MR LAWRENCE: They're different processes but they're not, in my submission, incompatible because the award - the function of award rates is different to the function of the national minimum wage. The national minimum wage is meant to be the universal general right that workers have to a wage that will provide them with a safety net of a fair wage and we say that that in order to fulfil its requirement needs to provide a decent standard of living for workers and their families. That's the function of the national minimum wage. It should not be and if the system's working properly, it should not be the function of the award system to provide a living wage. The award system should be based on a living wage and properly compensate the people who are covered by the award classifications for the skills, responsibilities and circumstances of their work.

PN606

So it's quite a different process and we think that both matters need to be addressed but the priority needs to be the lowest paid, and that's why we're seeking to move the national minimum wage up and we've addressed the question as to how award rates between C10 and the rising national minimum wage can be adjusted. Then we say beyond that, C10 itself needs to be reviewed as does the entry level for graduates, first year graduates. That will provide a comprehensive view so we can have a rational system or a system that operates rationally where you have the national minimum wage operating as a basic wage recognising the universal entitlement that Australian workers have, and secondly the award system that provides something extra for those with skills and responsibilities et cetera.

PN607

JUSTICE ROSS: So we're going back to basic wage and margins. Is that what - -  
-

PN608

MR SAGE: There is a lot of logic in that and that is the policy of - that's the underlying policy of this legislation, that you have a basic wage, a basic entitlement in recognition of that universal right that workers have and then you have, and this is unique to the Australian system, further rates, higher rates for those who exercise skill and responsibility in their work.

PN609

What was decided by Higgins J and given effect to for many years made sense. It was logical, it was rational and it continued for many years. It was lost when the total award decision was made but it re-emerged in a limited form in the federal minimum wage in 1997 but it's back with full force and clarity in the Fair Work Act 2009. We say it's - - -

PN610

JUSTICE ROSS: Mr Fernon will deal with the statutory underpinnings of that submission (indistinct).

PN611

MR SAGE: Yes. Perhaps I can continue with just a couple of other references to the changes. Our March 2019 submissions also demonstrate how the position of wage dependent families has suffered over the past 15 years by reference to the 60 per cent of median poverty line. The tables in appendix A of the submissions show that the national minimum wage dependent family of a couple and two children fell further into poverty over the 15 years, from January 2004 to January 2019.

PN612

In January 2004 the family was 3.2 per cent below the 60 per cent relative poverty line with a poverty gap of \$20.37 per week. In January 2019 the family was 8.4 per cent below the poverty line with a poverty gap of \$93.97 per week. Since the publication by the Melbourne Institute of the latest issue of Poverty Lines Australia, the January 2019 poverty gap should be revised upwards by \$4.98 per week to \$98.95 per week.

PN613

JUSTICE ROSS: Can I just take you to table 8.6 of the statistical report.

PN614

MR SAGE: Yes.

PN615

JUSTICE ROSS: I'm just having trouble reconciling that submission with the table. Because if you look at C14, which is the national minimum wage rate, and you look at the three tables; December 2013, December 2017 and December 2018, which family groups are you talking about on the left-hand column that have had their position deteriorate over that period in terms of the ratio?

PN616

MR SAGE: The period I'm talking about, I've just been talking about, is the period January 2004.

PN617

JUSTICE ROSS: No, no, I appreciate that but you said that they had deteriorated between then and now. I see - - -

PN618

MR SAGE: Yes.

PN619

JUSTICE ROSS: So you're not saying that they've deteriorated over this period. It was an earlier during - well presumably during the Work Choices legislation.

PN620

MR SAGE: Yes, and prior to that. We've gone into - in our submissions, we go into that and we made submissions in March about the equivalent of this table 8.6 as it was published prior to March and I just can't recall the paragraph numbers. But we looked at the increase in living standards as indicated in the table, and we raised a couple of questions about the - whether there needed to be qualification placed on the reasons to do with the recording of - well, for reasons related to on one hand the calculations of household disposable income by the Melbourne Institute, and on the other hand the movement in wages generally in the community. We thought that probably because of the increase in wages, even though they have been relatively flat over recent years, that the calculation of household disposable income hadn't picked up all of the increase. They were potential qualifications to the data but certainly - - -

PN621

JUSTICE ROSS: How do we deal with those?

PN622

MR LAWRENCE: Well, I think it's a lot like - well it's like a lot of other information that you get, you really need to accept that - - -

PN623

JUSTICE ROSS: We really need an expert to come along and tell us and call someone from the Melbourne Institute and cross-examine them about their figures.

PN624

MR LAWRENCE: Yes. It's not - well, we didn't put - when you have a look at the passages, your Honour, you'll see that we didn't make a big issue.

PN625

JUSTICE ROSS: No, no, you don't.

PN626

MR LAWRENCE: We're just alerting the Commission to what might explain, and we weren't trying to substitute another figure for what's in the table.

PN627

JUSTICE ROSS: Well, I think what might - what might explain the improvement in disposable income is they've received a real wage increase in 2017 and 2018.

PN628

MR LAWRENCE: Yes. Yes, I accept that, your Honour.

PN629

PROFESSOR RICHARDSON: Can I be clear, Mr Lawrence. Looking at that table 8.6, are you disputing that - what it appears to be saying that those receiving the national minimum wage, those family types, every one of them has had an improvement in their relative position between 2013 and 2014?

PN630

MR LAWRENCE: No, not disputing them.

PN631

PROFESSOR RICHARDSON: You're not disputing them?

PN632

MR LAWRENCE: Not disputing them. But as I say we raised the question about the figures but we don't dispute them. We've got no basis for disputing.

PN633

PROFESSOR RICHARDSON: But you take a general conclusion.

PN634

JUSTICE ROSS: But as I understand your point about this table, the paragraphs, but it's also that there are - on the C14 level there are five family types as at December 2018 who are below the 60 per cent relative poverty line. Your proposition is that a living wage should be struck such as to lift families out of poverty, so above that 60 per cent line.

PN635

MR LAWRENCE: Yes, we don't say that families with nine children should be lifted out of poverty but we've addressed that - - -



PN636

JUSTICE ROSS: No, no, but they're not the families - they're not the families in this table.

PN637

MR LAWRENCE: No. We say that should be the objective and we say that is the objective - that is the objective of a living wage but we've made it clear that because the gap is so significant at the moment, that the matter has to be addressed over time. We say the objective should be - the Commission's objective should be to see these people lifted to, we would say at least the 60 per cent relative poverty line, for reasons which I'll come to in a minute but we do not say, we never have said that it should be done in one leap, in one - - -

PN638

JUSTICE ROSS: No, I'm not suggesting that was your submissions.

PN639

MR LAWRENCE: Yes. But that should be the objective.

PN640

PROFESSOR RICHARDSON: Could I just follow that up? Does that include single parents working part-time? And does it include a couple who have no children?

PN641

MR LAWRENCE: First of all as far as the single - - -

PN642

PROFESSOR RICHARDSON: But one - a single income earner.

PN643

MR LAWRENCE: As far the single parents are concerned, working part-time, I heard a discussion earlier today about this issue. We would put it that it should be full-time, it is by reference full-time work. There is an issue which should be addressed at some stage in the future but sooner rather than later, but not - we're not asking for it to be dealt with this time. That is whether 38 hours per week is the appropriate basis upon which to set the national minimum wage, having in mind that many people - that people are regarded as working full-time but they're on 35 hours a week, for example. We don't want to get into that now. We think that's for another day and - - -

PN644

JUSTICE ROSS: Something to look forward in the future, Mr Lawrence.

PN645

MR LAWRENCE: Yes, yes, but we do say it's fair to - if you're looking for a reasonable and proportionate application of the right that's recognised in the covenant and the right to a decent standard of living, you can base it on full-time work. Now as far as couples without children are concerned, and again an earlier reference to this, we have not had the same position as was mentioned by the ACTU earlier today in relation to couples without children. That is, when we

have said that there should be a reasonable and proportionate application of the right, we have said that it should cover a variety of workers - it should be sufficient to provide a decent standard of living, it should have the objective of providing a decent standard of living for single workers, for sole parents, for couple parents with one or two children. We have said that it should be sufficient for those categories - - -

PN646

JUSTICE ROSS: Can you just go through those again for me?

PN647

MR LAWRENCE: Well, we have said that the minimum wage - the national minimum - - -

PN648

JUSTICE ROSS: This part is also where I think you say couples with children and then you speak about the average of two, so I'd assumed you meant a couple with two children.

PN649

MR LAWRENCE: Yes.

PN650

JUSTICE ROSS: Yes.

PN651

MR LAWRENCE: Well, it should be sufficient to cover the single workers, it should be sufficient to cover workers in couple parent families with one or two children and workers who are sole parents with one or two children. They're the categories that we've said - - -

PN652

DEPUTY PRESIDENT ASBURY: Working full-time?

PN653

MR LAWRENCE: Sorry?

PN654

DEPUTY PRESIDENT ASBURY: Working full-time?

PN655

MR LAWRENCE: Working full-time, yes.

PN656

JUSTICE ROSS: I think the issue comes down to where you've got a single earner couple where the non-working partner is not seeking employment, is not on Newstart. So is not in the labour force.

PN657

MR LAWRENCE: We have not put that family or that household in the category.

PN658

JUSTICE ROSS: No, that's what I - - -

PN659

MR LAWRENCE: No, we haven't - - -

PN660

JUSTICE ROSS: Well, let me take you back to table 8.6.

PN661

MR LAWRENCE: Yes.

PN662

JUSTICE ROSS: So if you see the ones that are C14 December 2018, the ones that are below 1 on the ratio, so below the 60 per cent of median earnings, the first is the third one down.

PN663

MR LAWRENCE: Yes.

PN664

JUSTICE ROSS: Single parent working part-time - well we've dealt with that, the part-time work. The next one is single parent working part-time, two children, again that's part-time so we're not talking about that.

PN665

MR LAWRENCE: Yes.

PN666

JUSTICE ROSS: The next one down from that is the single earner couple and I didn't understand you to be talking about them either. Then you get to the single earner couple, one child, that's below and you have the single earner couple, two children is below - .95 and .91.

PN667

MR LAWRENCE: Yes.

PN668

JUSTICE ROSS: Do I take it it's those two categories that you're directing it to?

PN669

MR LAWRENCE: Yes.

PN670

JUSTICE ROSS: With those categories, they're single earner couples with children, one or two, where the non-working partner is not in the labour force, not in receipt of the Newstart allowance.

PN671

MR LAWRENCE: Yes.

PN672

JUSTICE ROSS: Right.

PN673

MR LAWRENCE: Yes, and this really relates to or begs the question which is an important one, that we've alluded to in the past. The Commission will recall I expect that in the past we have sought to elicit from the Commission its view on single breadwinner families by asking a question based on a key part of governmental policies on families over the past four decades. That is giving parents an effective choice as to how they balance work and family responsibilities. We asked the Commission in both 2016, 2017 what its view was on a particular question.

PN674

We have put the question again this year and it's at page 131 of the submission. We say:

PN675

*Given the importance of the question posed in earlier annual wage reviews, we submit that it should be explicitly addressed by the Commission in the current wage review.*

PN676

And the question is this:

PN677

*In regard to the setting of the national minimum wage, having regard to the fact that single breadwinner couple parent families with dependent children are living in poverty, or are unable to achieve a decent standard of living, in the Fair Work Commission's view is the sole breadwinner in these families expected to work overtime and/or find a second job, and/or is the primary carer of the children in these families expected to seek employment in order for the family to have an income that will enable it to escape poverty and to achieve a decent standard of living?*

PN678

That really is at the heart of this whole question of the protection through the safety net wage of families with children, and it relates to the question of poverty in working families. If the Commission's - - -

PN679

JUSTICE ROSS: The answer to that question would require us to make a social value judgment based on contemporary standards or expectations.

PN680

MR LAWRENCE: You would need - well first of all we say that you should follow what is clear government and bipartisan policy on this matter, which relates to the right of parents to make a choice as to - - -

PN681

JUSTICE ROSS: Do they finance the choice through the tax transfer system.

PN682

MR LAWRENCE: Beg pardon?

PN683

JUSTICE ROSS: Do they finance that choice through the tax transfer system?

PN684

MR LAWRENCE: Well, to a substantial extent they do through the family payments and through Family Tax Benefit Part B. Family Tax Benefit Part B is the critical one.

PN685

JUSTICE ROSS: I mean what we hear a lot more about is government supporting childcare so that presumably both parents can work.

PN686

MR LAWRENCE: Yes, well if you're to give parents an effective choice and I'm talking about couple parent families here at the moment. If you're to give parents an effective choice as to how they will reconcile their family and work responsibilities, then you need to have good childcare, affordable childcare options and you need to have a wage which will enable - a wage supplemented by transfer payments that will enable parents to - one parent to stay out of the workforce, so that they're given an effective choice.

PN687

When you have a look at the policy announcements which we referred to in the submissions, particularly that by Prime Minister Keating in 1993, you'll see that what governments have been striving for is to balance fairly the rights of families in which both parents work, couple parent family where both parents work, and families - couple parent families where only one works and we say - - -

PN688

JUSTICE ROSS: One part of the minimum wages objective is to take into account increased workforce participation. How does that gel with your submission?

PN689

MR LAWRENCE: Well, it doesn't mean that you should countenance a poverty wage that would force more people into the workforce. We say at the moment because the minimum wage and low paid award rates are too low, you've got economic pressure on families for either the breadwinner to take on extra work, a second job, and the ACTU's alluded to this. Or you've got pressure or and you've got pressure on the primary carer to take up part-time employment.

PN690

Now we don't think the legislation could be interpreted in that regard, your Honour, as requiring that the Commission put economic pressure on families for extra work to be undertaken. So - - -

PN691

PROFESSOR RICHARDSON: Mr Lawrence, could I raise one issue in relation to this. Of course it's hard not to be sympathetic to a view that says that people should be able to earn enough to be able to have a decent living. That's pretty uncontroversial. But if it was completely - if it was straightforward then of course

it would have been done. There are some - and I just draw your attention to table 7.3 and the statistical report.

PN692

MR LAWRENCE: Yes, I've got that. Sorry for the delay.

PN693

PROFESSOR RICHARDSON: That's fine. Just have a look at the second panel, the proportion of total weekly hours paid for of those earning at or below the C12 rate. Now what that's saying and the first number there is 40.3, and that's saying that 43 per cent of all the hours worked are people earning at or below the C12 rate are worked by people aged 15 to 19. Another 24 per cent of total hours worked are worked by people aged 20 to 24.

PN694

Now I'm not disputing that there are people of older ages also working on those rates but just bear those numbers in mind. You also in your submission and I'm paraphrasing it here, but correct me if I've got you wrong but the current level of the national minimum wage provides an adequate standard of living to a single adult. I think you said that. So quite a lot of the people who are working on national minimum wages, that rate, are single adults as well as this large number of very young people.

PN695

So if there was to be the large increase in minimum wages that you're proposing, all these young people without responsibilities and all the older adults without responsibilities would get a substantial rise in income that could not be justified in a needs basis, but would need to be paid for, of course, by their employers. Many of whom are small businesses on very thin margins and also have their own families to support. I'd just be interested in your response to that issue.

PN696

MR LAWRENCE: First of all, professor, that is the kind of argument that was used in 1907 and 1908 when Harvester was decided.

PN697

PROFESSOR RICHARDSON: That might have been why perhaps the decision was less than the needs of a family as determined by Higgins.

PN698

MR LAWRENCE: Yes. But the reason for a minimum wage that protects workers and their families, and that is the - you can't - the Commission can't get away from the fact that the recognised right that workers have is to a wage that provides them and their families with a decent standard of living. Now it has - the actual wage in the end has to be reasonable and proportionate to the right. Every generally expressed right has to be applied reasonably and proportionately or in a way that's reasonably appropriate, if we could another one of the legal tests that's been used. But the reason why that provision applies and the reason why wages have always had since at least from the time of Harvester, a component for the support of families, is the importance, the social importance of supporting children and not having children in poverty.

PN699

If children weren't living in poverty today in wage dependent families because transfer payments were sufficient, we wouldn't be here. I wouldn't be standing in front of the Commission.

PN700

PROFESSOR RICHARDSON: I do understand that point and you've made it eloquently and you've made it repeatedly.

PN701

MR LAWRENCE: Yes.

PN702

PROFESSOR RICHARDSON: But I'm asking you a different question. The question is, in order to achieve that there are other consequences and the question is what weight, if any, should be given to these other consequences? The consequences of having many people who are on national minimum wages who receive an income substantially - who's employers are required to pay and anything substantially above their reasonable needs, and of course it has consequences for those, particularly small businesses, that are doing the paying. Do we give no weight to that?

PN703

MR LAWRENCE: No, we haven't said that and - - -

PN704

PROFESSOR RICHARDSON: That's my question.

PN705

MR LAWRENCE: - - - that's why we're saying that it needs to be an objective that's to take into account the economic impact. So that's the way it's to be approached. If it turns out that the judgment of the parliament is that the minimum wage system in Australia can be more targeted or the benefits can be more targeted, then that would be a basis upon which transfer payments might be adjusted. The parliament has always got the option of providing increased family payments, increase support to families, targeted support, as an alternative to wage increases. But for the last more than a - well decade generally speaking, it hasn't done so and in fact the trend over the last five years, perhaps since the May 2014 budget, has been a reduction in the transfer payments.

PN706

As the ACTU has pointed out in its submissions and ACOS have supported this too. What's happening in Australia now is that the social safety net is being reduced over time, putting more pressure on the wages system to carry the load. If it's decided that that's undesirable when it's up to the parliament to provide targeted benefits. But we have a situation where children are living in poverty and wage dependent families and we say something should be done to alleviate it, and there's a high social value that's put on that. If that has an economic cost then that has to be taken into account in the transition towards what we say is the objective a living wage.

PN707

PROFESSOR RICHARDSON: It's your implicit view that this would have no negative effect on prospects of these families in getting a job?

PN708

MR LAWRENCE: Well, if it's done in a measured way, it won't, and this is the position that the Commission has taken in relation to this whole question of the relationship between wage levels and employment opportunities. The Commission has said that if it's regulation measured and progress is made then it will not adversely impact. But we say that should be the approach that's taken with the national minimum wage. It's a balancing of poverty against adverse economic impact. There's no simple arithmetical trade off that you can formulate there. But, if you take the right seriously and the need to protect children against poverty or alleviate their poverty, then you have to push the increase so far as can be done without having demonstrable economic consequences.

PN709

Just on that, there is a passage in our submissions on the beneficial construction of legislation. This is at paragraphs 444 through to 448. I'll read if I might, just three paragraphs because it might highlight the point I'm making:

PN710

*The minimum wage provisions have the objective of providing a safety net that will provide a decent standard of living. But the capacity of the Fair Work Commission to realise that objective is constrained by the need to take into account economic factors. This is not a balancing of social objectives and economic considerations as if the legislation is neutral as between the two.*

PN711

*In practice, this means that an economic case should be made out in order to constrain the setting of a safety net wage. The burden will be a light one if, for example, a claim is made for a 15 per cent increase in one year. However, where the Fair Work Commission has evidence that workers within the protection of the legislation that is, those who are covered under the reasonable and proportionate application of the benefits of the legislation, are living in poverty and disadvantage and do not have a decent standard of living.*

PN712

*The economic constraint should be positively established and if not, the minimum wage rate should be adjusted in a "fair, large and liberal" manner.*

PN713

That picks up the words in the appropriate case law.

PN714

*Accordingly, once it is established that those within the intended protection of the legislation of suffering, poverty and disadvantage, the onus should pass to those who seek to establish that economic factors should constrain the increase sought.*

PN715



So, that's how we put it, that the Commission should move towards that objective and be deterred from it if a case is made out against it. It's not, for example, a case where the onus falls on those who would want to move to that point. We think that's the rational and proper way to approach the application of beneficial legislation.

PN716

Could I return to the 60 per cent relative poverty line. I foreshadowed this comment a little while ago. We emphasise that the 60 per cent relative poverty line does not identify an income that is sufficient to achieve a decent standard of living. The budget standards research of the social policy centre to which we've referred in the March 2019 submission, establishes that a disposable income in excess of the 60 per cent of medium poverty line is needed in order for a working family to achieve what we can regard as a decent standard of living by contemporary Australian standards.

PN717

Earlier today on behalf of the ACTU, it was said - I'm not sure of the way in which this was expressed, but Professor Saunders didn't get it right, or Professor Saunders had got it wrong in relation to a particular matter that is in table 5.17 of the report.

PN718

JUSTICE ROSS: The comment was about the disposable income point.

PN719

MR LAWRENCE: Yes, that's right.

PN720

JUSTICE ROSS: I don't think anyone disputes that.

PN721

MR LAWRENCE: Yes. We've addressed this in - - -

PN722

JUSTICE ROSS: He's acknowledged - not the error that you've raised, but he's acknowledged that the disposable income numbers are wrong.

PN723

MR LAWRENCE: Yes. And it was error that came from the Department of Social Services. As we've explained in chapter 4(d)(v) how that came about, why it appears.

PN724

JUSTICE ROSS: I don't think we need to spend any time on that.

PN725

MR LAWRENCE: In order to address these matters, the Australian Catholic Bishop's Conference has proposed a process for increasing the national minimum wage so that it will progress towards a living wage on a proper basis upon which award may be said and processes for reviewing award wage rates to determine

whether they're level and fair and relevant and for the giving effect to the findings of that review.

PN726

These processes, as I mentioned before, are explained in chapter 2 of the March 2019 submission. If they are accepted, they will extend over several years or possibly more. These proposals for the reform of the minimum wage systems are made with the knowledge that the Fair Work Commission must take appropriate account of relevant economic factors when setting the national minimum wage and award wage rates, and that these factors may affect the timing of the implementation of the reforms that we seek.

PN727

We seek the progressive alleviation of poverty and disadvantage among working families by progressive steps towards a living wage and a decent standard of living for low paid working families. We also seek the progressive adjustment of wage rates set for award classifications so that they reflect a fair level of remuneration for the skills and responsibilities of the workers covered by those classifications.

PN728

The first step in this process I've already alluded to and that's the claim that's made in this particular case. I don't repeat that, but it's set out in chapter two. I emphasise the point that the claimed amount for the national minimum wage is an increase of \$40.80 per week over the current level for the national minimum wage. And \$9.80 per work more than the claim in respect of award wages for lower paid workers.

PN729

The claim for a further increase of \$9.80 per week in the national minimum wage is made on the basis that it would be the first step in a process of reform of minimum wage rates and a step towards securing a living wage for the protection of low paid and vulnerable workers.

PN730

That's all that I have to put to the Commission.

PN731

JUSTICE ROSS: Thank you. How long are you likely to be Mr Fernon?

PN732

MR FERNON: I note the time. I think I can be quite brief to make the points that we wish to make.

PN733

JUSTICE ROSS: All right.

PN734

MR FERNON: I'll truncate a little bit what I was going to say, but I think I can cover the ideas.

PN735

JUSTICE ROSS: Sure.

PN736

MR FERNON: What we submit is of course that the safety net and the idea of a fair minimum wage is not defined by the Act. So, it's appropriate to look to outside extrinsic materials to give content to those terms, meaning to those terms. What we've submitted is that one should look to first of all the international convention on economic social and cultural rights, which through in particular, article seven, identifies as a decent standard of living for workers and their families, as being a primary right of a worker.

PN737

That gives content to the idea of the safety net and that gives content to the idea of the minimum wage because it's a relevant extrinsic material and because of section 3A of the Act.

PN738

JUSTICE ROSS: You put it differently and Mr Lawrence has put it differently. It's put they have a right, or they don't. It's not been translated directly into domestic law. It's in the international convention. As I understand what you're putting, it's that it's a factor - the existence of the convention, and Australia being a signatory, is a factor which would take into account, as part of the broad context in construing the obligation to create a fair minimum wage.

PN739

MR FERNON: A safety net.

PN740

JUSTICE ROSS: Yes. But it's a very different point to say they have a legal right. Are you putting that the convention gives rise to the legal right in article seven, as in domestic law?

PN741

MR FERNON: I'm not putting it quite like that; what I'm putting is that that gives content to the meaning of the safety net.

PN742

JUSTICE ROSS: What does it mean by content to the meaning of it?

PN743

MR FERNON: What is a safety net and who is a safety net for?

PN744

JUSTICE ROSS: What provision of the Act are we actually construing, just as a starting point?

PN745

MR FERNON: Section 284.

PN746

JUSTICE ROSS: 284.

PN747

MR FERNON: I'm sorry, I was endeavouring to truncate, but section 284 is the section by which the Fair Work Commission is required to establish and maintain the safety net of fair minimum wages. Those terms, which are the critical terms of the section, are not defined.

PN748

JUSTICE ROSS: Sure, and it says we take into account a range of factors.

PN749

MR FERNON: Yes.

PN750

JUSTICE ROSS: There's no express reference of the convention there, is there?

PN751

MR FERNON: No, but what - - -

PN752

JUSTICE ROSS: But you're wanting to elevate the convention to provide content to the meaning of the safety net of fair minimum wages - - -

PN753

MR FERNON: Yes, and - - -

PN754

JUSTICE ROSS: - - - when the Parliament hasn't even listed it as one of the factors that we must take into account.

PN755

MR FERNON: Well, we list it through section 578 which provide - - -

PN756

JUSTICE ROSS: Sure, regarding to the objects of the Act, yes.

PN757

MR FERNON: Yes, and so it's expressly enlisted through section 578 and by reference to section 3A.

PN758

JUSTICE ROSS: Yes. Does the safety net include award wages as well the national minimum wage? See when the section refers to the safety net, it's referring to award wages as well as the national minimum wage?

PN759

MR FERNON: In section 284, it's referring to fair minimum wages.

PN760

JUSTICE ROSS: Yes, well answer my question. Is it referring to award wages as well as the national minimum wage? And having regard to what subsection (2) says.

PN761

MR FERNON: It applies to award minimum wages.

PN762

JUSTICE ROSS: See Mr Lawrence has made a submission that, as I understood it, that you have this national minimum wage as a foundation based on concepts of employee need and then you have award wages on top of that based on increments for skill, based on work value, if I understood the proposition, but it seems to me that's not the way the Act is constructed at all. It has a national minimum wage for award free workers as a minimum and then alongside that it has award wages and I can't identify any provision in the Act which says that award wages have to be the same or above the national minimum wage.

PN763

Can you help me with that? I mean, the closest you get, I think, is section 285(3) which says that when we make determinations to vary minimum award wages in an annual review we have to take into account the rate of the national minimum wage but it doesn't say anything about it forming some sort of foundation for award wages, does it?

PN764

MR FERNON: Well, perhaps not in express terms but through the idea of it being a minimum wage, it's a wage below which you would not go.

PN765

JUSTICE ROSS: Well, there's a wage which is one award we have gone.

PN766

MR FERNON: I'm sorry, your Honour?

PN767

JUSTICE ROSS: It's a rate, at least in one award, in which we have gone below, that is for disabled employees in supported employment, which is currently a subject of controversy, but leaving that aside, it's this proposition that the national minimum wage is the foundation stone of the award system and it seems to me that the national minimum wage has a discreet function of setting a minimum for persons who are not covered by awards.

PN768

MR FERNON: Yes.

PN769

JUSTICE ROSS: It doesn't appear to have any broader function than that.

PN770

MR FERNON: Save that the minimum wage's objective is part of what is taken into account in the fixing of an award minimum wage.

PN771

JUSTICE ROSS: Yes.

PN772

MR FERNON: So that there would be a disconnect between the application of the minimum wage's objective if it were providing for a system where award wages were less than the minimum wage.

PN773

JUSTICE ROSS: Right.

PN774

MR FERNON: Also giving content to the meaning of the safety net, we've submitted that the forward with fairness policy needs to be taken into account, which referred the various challenges of working families, noted that Labor's been supporting working families and stated that the government would guarantee a safety net of decent, relevant and enforceable minimum wages for working Australians and the reason why that is relevant is because that gives the policy that's referred to in the explanatory memorandum for the 2008 bill, which became the Act, as the means of fulfilling the election commitment set out in the forward with fairness policy.

PN775

The Commission has, on a number of occasions, stated that the notion of fairness was at the heart of the objective, and that is fairness as assessed from the perspective of both employees and employers covered by the national minimum wage, and that the Commission was required to set the national minimum wage that is fair to both employers and employees. In our submission, the notion of the perspective of employers and employees is a factor that may be taken into account but it's overstating or distracting from the fundamental proposition of the safety net which is to provide a decent standard of living for workers and their families.

PN776

The true statutory objective is that rather than identifying fairness in that way as the heartland of the statutory objective.

PN777

VICE PRESIDENT HATCHER: But the statute doesn't refer to families, does it?

PN778

MR FERNON: That's the point of the submission, with respect, but it doesn't, it refers to a safety net of fair minimum wages. Question for us is what does that mean, and so we say that we go to the international convention and we go to the explanatory memorandum, which are conventional ways of interpreting the legislation, to give content to those ideas and so when one is trying to assess what is a fair minimum wage in providing for a safety net, one looks to workers and their families because that is the way in which the convention refers to it and that is the way that the explanatory memorandum, by referring to the forward with fairness policy, includes it.

PN779

JUSTICE ROSS: The fairness with - the forward with fairness policy's incorporated by reference in totality, you say, into the explanatory memorandum?

PN780

MR FERNON: Well, certainly where it's referring to the minimum wage idea, it's expressly referred to in both the policy and in the memorandum. The other issue that the Commission has identified from time to time is that the idea of providing a decent living for workers and their families is to elevate one of the statutory considerations in paragraphs (a) to (e) above all other considerations and that that is a - and so that would be an erroneous approach. In our submission, when one construes the section, one must identify the function or the duty of the Commission being to establish and maintain a safety net of fair minimum wages.

PN781

It takes into account the various matters in paragraphs (a) to (e), one of which includes relative living standards and the needs of the low paid but it would be, in our submission, to conflate the ideas of the setting of the safety net with one of the paragraphs to approach it in the way of suggesting that the provision of a safety net is merely one of the considerations. It is the object, the statutory object, that is required to be established and maintained and in reaching that statutory object, one takes into account the various matters in the paragraphs, so that one of those matters should not, in our submission, derogate from or qualify what is the proper statutory objective.

PN782

We've referred in our submission, and this is in paragraph 551, to a passage from the Federal Court's judgment in the penalty rates decision, and in our submission it's consistent with the approach that we are suggesting in this submission. Whilst it's concerned with a different section and whilst it was concerned with a different argument, what the Full Court said in criticising the submission that section 134(a) to (h) provided for a code, the Full Court said that that submission failed to recognise that the modern award's objective, or read minimum wage's objective, requires the Commission to perform two different kinds of functions, albeit that the modern award's objective embraces both kinds of functions.

PN783

The Commission, it said, must ensure that modern awards and the National Employment Standards provide a fair and minimum safety net of terms and conditions and in so doing must take into account the various paragraphs set out in section 134. In our submission, the function of the Commission in dealing with section 284 is to set a safety net and in so doing, take into account the various factors and other matters, as the Full Court's decision also recognises, which means that the primary object is to provide the decent standard of living.

PN784

The Commission has a broad discretion in how to achieve that safety net in applying a fair minimum wage taking into account the various matters.

PN785

JUSTICE ROSS: Is a decent living condition the same as a frugal one?

PN786

MR FERNON: Well, the discretion is very broad. It's a fair minimum standard taking into account the matters that are, in themselves, broad in consideration.

PN787

JUSTICE ROSS: The word decent, did you say you got that from the convention, is that?

PN788

MR FERNON: Yes.

PN789

JUSTICE ROSS: But you don't actually say that it's a broad discretion. You say that it gives - that the convention gives rise to a legal right that families must be able to have a decent standard of living.

PN790

MR FERNON: Yes, and - - -

PN791

JUSTICE ROSS: Sounds like a pretty dis-constrained discretion.

PN792

MR FERNON: As an objective - - -

PN793

JUSTICE ROSS: But no, no, when you say as an objective, that's the content you give to the word fair and safety net.

PN794

MR FERNON: Yes, that's correct. That's correct. I've gone slightly longer than I intended to. In the circumstances, they're our submissions.

PN795

JUSTICE ROSS: Thank you, Mr Fernon. Anybody else? No? Thank you very much for your submissions. We're adjourned.

**ADJOURNED INDEFINITELY**

**[1.13 PM]**