

APPENDIX A

Employees to whom training arrangements apply

Extracts from the 'Application by the Shop, Distributive and Allied Employees Association to vary the National Training Wage Award 2000 re the Safety Net Review - Wages May 2003 Decision National Training Wage Award 2000.

Transcript of Proceedings, (C2003/2533), 2 July 2003'

Full-time trainees

Rather than including the full amount of Safety Net Adjustment granted by the Full Bench in PRO02003 Safety Net Review - Wages May 2003 the rates in this award are adjusted for the Safety Net Adjustment. This is because the National Training Wage Award rates are based on a percentage of key award rates. The rates in the application have been adjusted the same way they have been adjusted for each Safety Net Adjustment since 1994 when the award was created.

This method of adjustment maintains the relativities in the award as initially set. The wage rates upon which the National Training Wage Award rates are based are all below the wage ceiling for the \$17 Safety Net Adjustment so the calculations are based on the \$17 level of Safety Net Adjustment. Specifically, for wages levels A, B and C, full time rates in subclauses 11.4, 11.5 and 11.6, the top rates are increased by 80 per cent of the Safety Net Adjustment. 80 per cent of the \$17 on this occasion is \$13.60 which is rounded to \$14.

All other rates increase by an amount which maintains their relativity to the top rate in the wage level, that is they increase by a percentage of the \$13.60, that percentage being the percentage that the rate is of the top rate so if a rate, for example, is 90 per cent of the top rate, it would increase by 90 per cent of \$13.60. The exception to this is the lowest rates at each wage level which are calculated at wage level B. All full-time rates are then rounded to the nearest dollar. For the school based full-time rates in subclause 11.7, the year 12 rate is equal to the wage levels A, B and C rate for school leaver plus one year out of school having completed year 10, that is the rate of \$227.

The year 11 rate is calculated as created at approximate to 80 per cent of the 16 year old Victorian Clerk which adjusted for the Safety Net Review 2003 Decision is \$258.80, 80 per cent of which is \$207. The certificate for [IV] traineeship rates in subclause 11.8.2(b) are calculated as follows: The first year of traineeship rates equal the wage level A, B and C top rates plus 3.8 per cent. The second year of traineeship rates are 3.8 per cent above the first year traineeship rates.¹

Part-time trainees

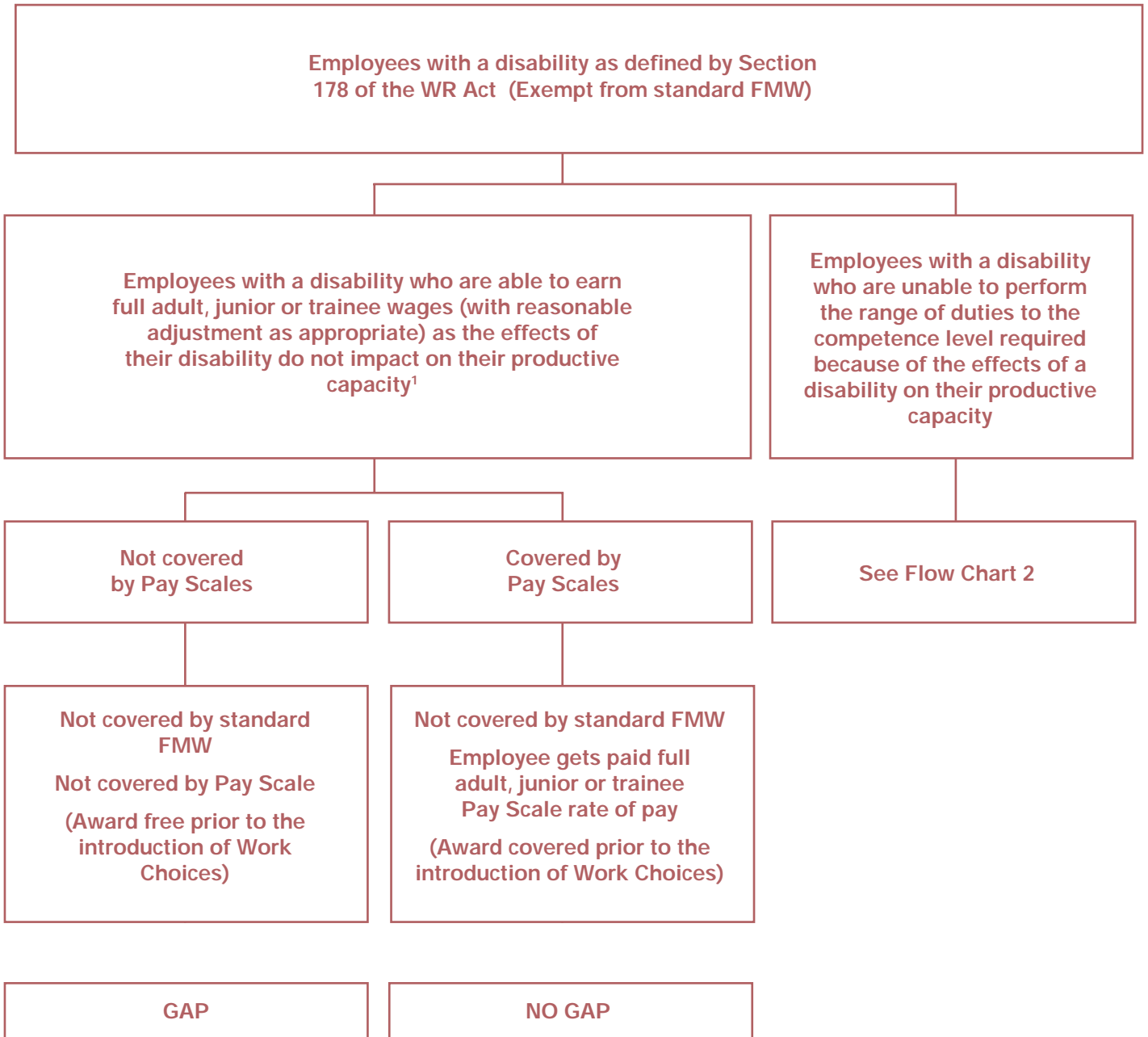
The part time hourly rates - the full time rates in clauses, sorry, paragraphs 4.11 - sorry, 11.4, 11.5 and 11.6 are based on four day's work and one day's training per week. To calculate the part time rates, the full time rates are converted to five day rates by multiplying by 1.25 and then divided by 38 to give an hourly rate.²

¹ AIRC, *National Training Wage Award 2000*, Transcript of Proceedings, (C2003/2533), 2 July 2003, paras 14-17

² AIRC, *National Training Wage Award 2000*, Transcript of Proceedings, (C2003/2533), 2 July 2003, para. 18

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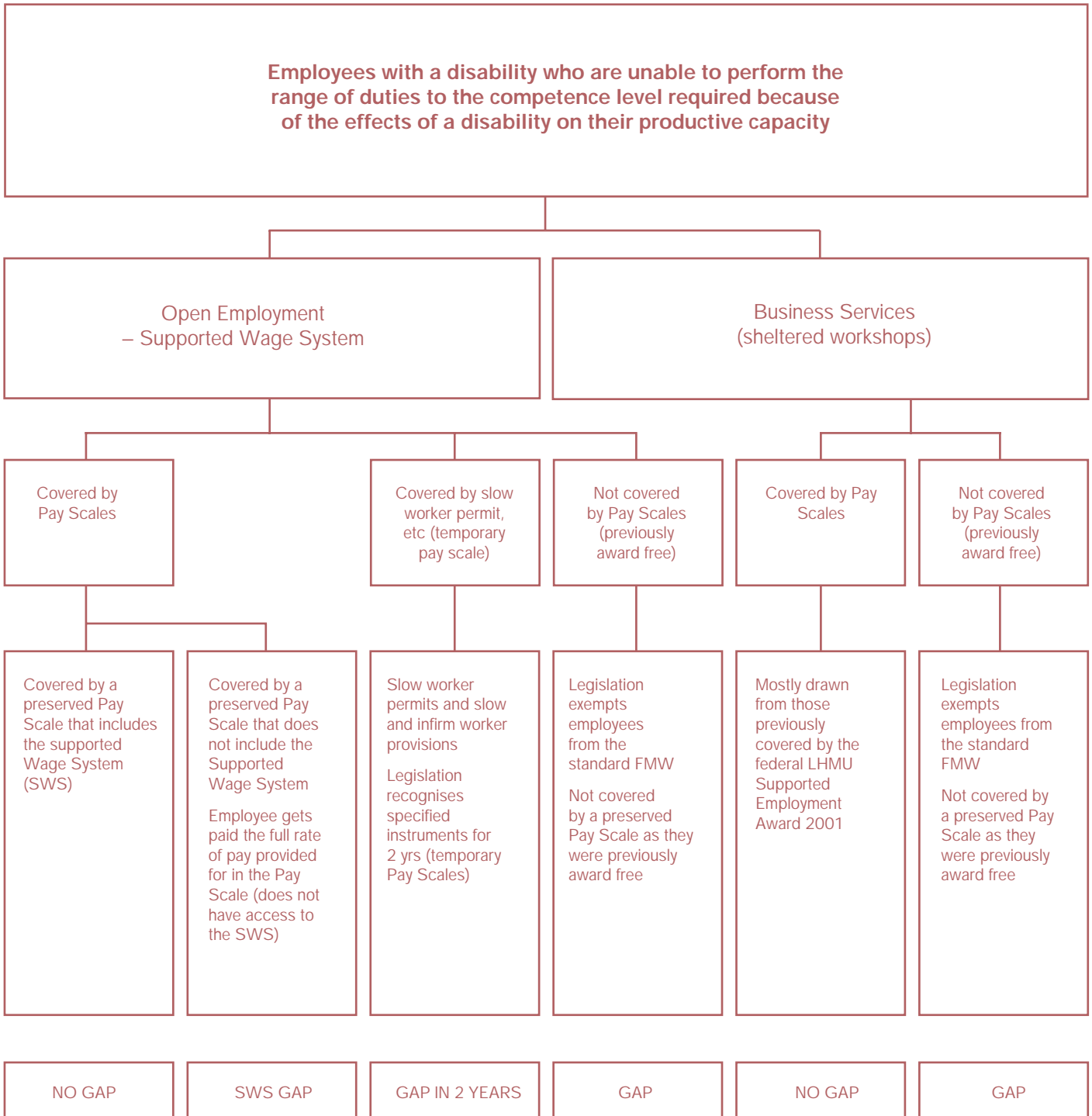
Flow Chart 1: Work Choices – Current Pay Scales



¹ The term 'reasonable adjustment' is not contained expressly in the *Disability Discrimination Act 1992* (DD Act). However, the DD Act has an implied requirement for employers to make reasonable adjustments. The implied requirement under the DD Act to make reasonable adjustment results from s. 6, on indirect discrimination. Section 6 defines discrimination as including the imposing of any 'requirement or condition' which a person with a disability cannot or does not comply with, if a substantially greater proportion of people without than with the disability can comply with it, and if it is not reasonable. A requirement or condition does not have to be a specific rule, policy, direction or action. For example, in *Waters v. Public Transport Corporation* (1992) 173 CLR 349 the High Court upheld a finding that a tram operator who ran trams and buses without conductors and with steps at the entrance had imposed conditions or requirements of being able to climb steps and being able to board without assistance from a conductor.

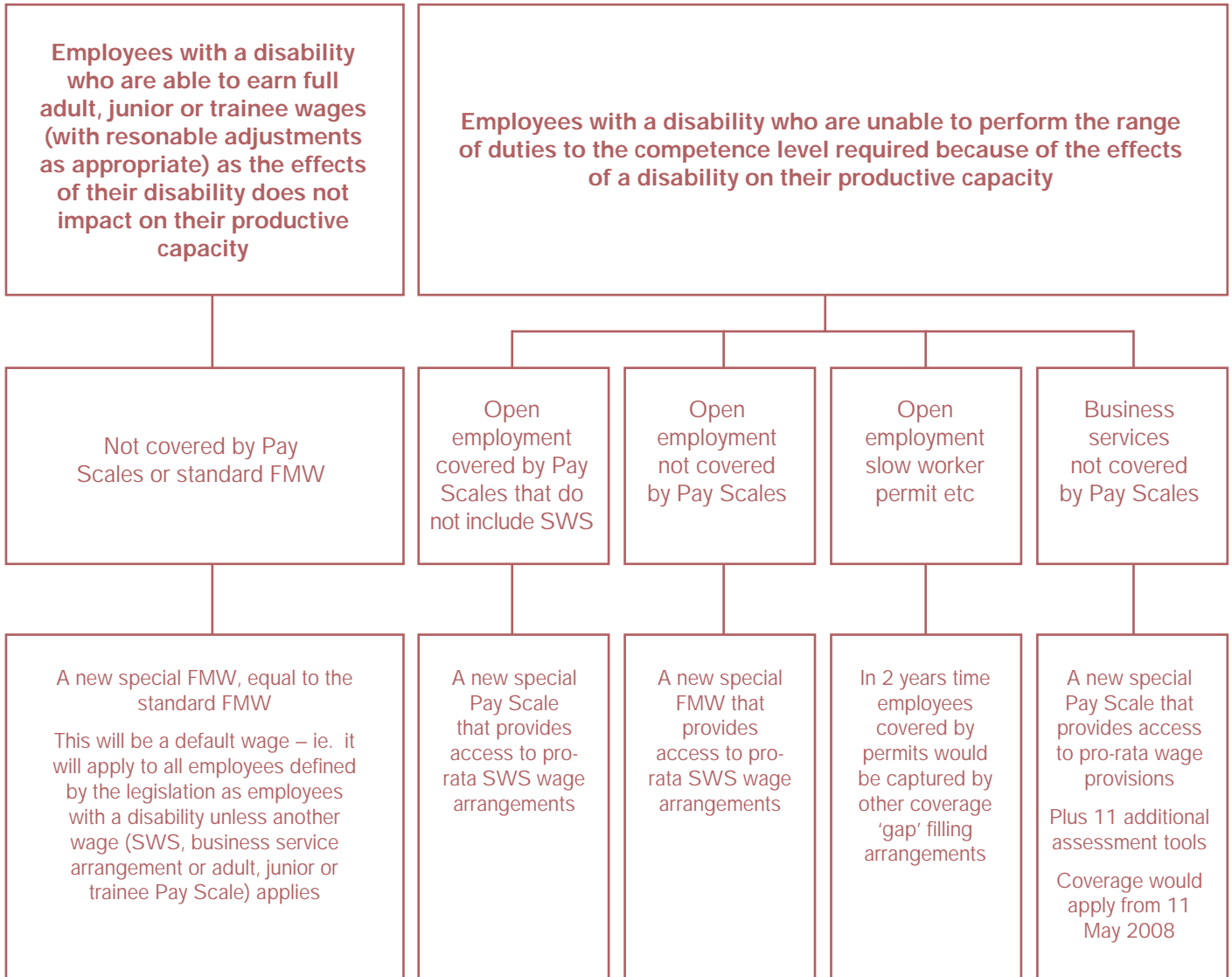
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Flow Chart 2: Work Choices – Current Pay Scales



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Flow Chart 3: Current Gaps in coverage



APPENDIX C

Pay equity and discrimination issues

1. Introduction

A number of submissions raise with discrimination issues, focusing mainly on the following vulnerable groups of employees (vulnerable groups):

- female employees;
- employees with disabilities;
- people from culturally and linguistically diverse (CALD) backgrounds; and
- indigenous Australians.

The submissions cover many of the economic and legal issues affecting these vulnerable groups. Some of the submissions also raise issues which:

- identify perceived deficiencies in the legislative structure;
- describe examples of non compliance with the *Workplace Relations Act 1996 as amended by the Workplace Relations Amendment (Work Choices) Act, 2005* (WR Act); or
- would be more properly considered under federal and/or state anti discrimination legislation.

As such matters are outside the remit of the Australian Fair Pay Commission (Commission), they are not covered in this Appendix.

2. The legislation and discrimination provisions

Submissions particularly focus on provisions of s. 222 of the WR Act which states: 222 Anti-discrimination considerations

- (1) Without limiting sections 176 and 177, in exercising any of its powers under this Division, the AFPC is to:
 - (a) apply the principle that men and women should receive equal remuneration for work of equal value; and
 - (b) have regard to the need to provide pro-rata disability pay methods for employees with disabilities; and
 - (c) take account of the principles embodied in the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004* relating to discrimination in relation to employment; and
 - (d) take account of the principles embodied in the Family Responsibilities Convention, in particular those relating to:
 - (i) preventing discrimination against workers who have family responsibilities; or
 - (ii) helping workers to reconcile their employment and family responsibilities; and
 - (e) ensure that its decisions do not contain provisions that discriminate because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

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- (2) For the purposes of the Acts referred to in paragraph (1)(c), and of paragraph (1)(e), the AFPC does not discriminate against an employee or employees by (in accordance with this Division) determining or adjusting rate provisions in an APCS that determine a basic periodic rate of pay, or by (in accordance with this Division) determining or adjusting a special FMW, for:
- (a) all junior employees, or a class of junior employees; or
 - (b) all employees with a disability, or a class of employees with a disability; or
 - (c) all employees to whom training arrangements apply, or a class of employees to whom training arrangements apply.

3. Indirect discrimination

Some submissions propose that the Commission must consider principles of both direct and indirect discrimination when making its decision.

In general, direct discrimination occurs when people are treated less favourably because of a characteristic which pertains generally to that group. Indirect discrimination tends to have a specific meaning which varies under different pieces of anti-discrimination legislation. At its most general level, indirect discrimination covers acts or policies which appear to be neutral or 'fair' on the surface but in practice have a negative effect on a higher proportion of people from one group.

Submissions also raise concerns about the potential for 'indirect discrimination' in the making of the Commission's decision:

In so far as s 222 exhorts the AFPC to observe anti discrimination principles, FECCA considers that this must necessarily contemplate a duty to ensure that decisions of the AFPC are neither directly nor indirectly discriminatory.

...

Indirect discrimination essentially involves the imposition of a facially neutral condition, which, in practice, operates to the detriment of a protected class and which is unreasonable in the circumstances. An example would be the setting of a wage or wage rate at a level so unreasonably low that, although it might apply uniformly to the working population, it would, in practice, operate in a disparate, negative fashion, to the disadvantage of those who were in poor bargaining positions by virtue of their race, gender, age or disability.¹

However, other submissions argue that s. 222(c) does not require the Commission to take this into account in exercising its wage-setting function:

The provisions in this new section largely replicate those under the pre-WorkChoices Workplace Relations Act 1996, which the AIRC was required to consider during its National Wage Cases.

...

The decisions of the AIRC did not detail how it discharged the requirements in [pre-Workchoices] s.93. There was no compulsion for it to do so.

...

The use of the phrase "*take account of the principles embodied*" does not connote the importation of the exact sections or provisions in those Acts or Conventions. Again, it is up to the AFPC to determine what those principles are and how it takes them into account.²

¹ FECCA, *Submission to the Australian Fair Pay Commission 2006*, pp. 16-7, paras 36-7.

² ACCI, *2006 Minimum Wage Review: ACCI Supplementary Submission*, August 2006, p. 34, paras 2.14-16.

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4. Equal remuneration and the role of the Commission

The legislation requires the Commission to apply the principle that men and women should receive equal remuneration for work of equal value in exercising any of its powers.³

While this concept appears to be a simple one, it does involve a variety of differences of opinion about what measures should be used. The extent of the gender wage gap depends not only on what measure is taken of wages but will also vary according to the method of wage determination (award or agreements), points in the wage structure, and whether the ratio includes wages data for different types of employees - full time, part time, casual, permanent.

...

The most generally accepted pay equity ratios in Australia use statistics from the Australian Bureau of Statistics quarterly survey of average weekly earnings. In February 2006 women's pay equity ratio compared to men's was:

84.4 per cent for full time adult ordinary time earnings;
80.8 per cent for full time adult total earnings; and
66.3 per cent for all employees total earnings.⁴

In addition, the Human Rights and Equal Opportunity Commission (HREOC) and a number of other submissions acknowledge that the issues associated with pay inequity are complex:

'The AFPC is not in a position to address pay inequities in Australia on its own. Clearly, many of the factors contributing to pay inequities are well beyond the scope of the AFPC's role.

However, it is important to consider the context of gender pay inequity in Australia if the AFPC is to be able to "...apply the principle that men and women should receive equal remuneration for work of equal value..."⁵

'Australia has come a long way since the Harvester Judgement of 1907 when family needs (a wife and three children) were used to justify why men were paid more than women. The principle of equal pay for work of equal value is now notionally supported in most jurisdictions (and in some cases enshrined in legislation) - even though it is difficult to achieve in practice.⁶

Submissions also differ regarding the approach the Commission is required to adopt:

'It is also clear that Parliament intended that the responsibility of the AFPC in relation to this section be significant. For example, while the Australian Industrial Relations Commission, in performing its functions, is required to take account of the principle of pay equity, the AFPC is actually required to apply the principle!⁷

'While the AFPC can consider the pay equity principle when setting wages rates, there is no obligation to do so.⁸

³ WR Act, s. 222(1).

⁴ HREOC, *Submission to the Australian Fair Pay Commission for Consideration in Determining the First National Wage Decision*, July 2006, pp. 25-6, paras 145 & 148.

⁵ HREOC, 2006, p. 29, paras 168-9.

⁶ WISER, *Submission to Australian Fair Pay Commission Inquiry into Minimum Wage Determination*, July 2006, pp. 5-6.

⁷ HREOC, 2006, p. 25, para. 141, citing WR Act, s. 104 and s. 222(a).

⁸ Victoria and Northern Territory Governments, *Joint Submission by the Victorian and Northern Territory Governments in response to: Australia Fair Pay Commission*, 28 July 2006, p. 61, para. 5.1.

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[Provided] the notion of equal pay is reflected in gender neutral minimum wage rates, it cannot otherwise be properly addressed through the setting of minimum wages.

...

Gender pay equity is an important consideration for any society and for policy makers. However, there is no necessary reason for this to be a consideration in fixing a safety net of genuinely minimum wages under a bargaining based system.

...

ACCI can see nothing in Section 23 of the Act, or in any other provisions which specifically directs the AFPC to have regard to this issue, and can see the express calling up of other non-gender related considerations.⁹

'Not surprisingly pay equity issues are not expressly dealt with in the statutory charter of the AFPC. This does not mean that the AFPC should not place pay equity considerations at the forefront of deliberations.'¹⁰

In addition, submissions refer to the problem of indirect discrimination in gender pay equity. In discussing this issue, some submissions focus on the legislative 'gaps', rather than proposing a particular approach the Commission should take:

'HREOC supports a significant and active role for the AFPC in addressing discrimination and pay inequities. However, HREOC is concerned that the WRA is silent about how the AFPC is to take these matters into consideration. There is a risk that complex issues such as indirect discrimination and pay inequity will go unaddressed.

The potential exists for indirect discrimination to permeate the setting of minimum wages if, for example, the parameters contain unstated bias about the value of certain skills or attributes. There is a risk that complex issues such as pay inequity will go unaddressed unless the AFPC develops a mechanism to address it.'¹¹

'The legislative framework within which the AFPC operates also fails to provide for anti-discrimination considerations in the wage setting parameters and does not specify how the AFPC will take such matters into consideration. Hence, there is potential for indirect discrimination, such as bias about the value of certain skills and attributes in feminised occupations and industries, to impact on the setting of wages and classifications.'¹²

'There is potential for indirect discrimination to impact on the setting of minimum wages particularly regarding the non-recognition of the value of certain skills or attributes of work performed in female dominated industries. It is essential that the AFPC clearly identify and consider the many skills involved in those occupations and industries where females represent a significant proportion of the workforce.'¹³

Submissions also suggest that other regulatory bodies face similar issues:

The current provisions of the WRA in relation to equal remuneration are limited both by their terms and their interpretation. Currently a key feature of the Australian Industrial Relations Commission's (AIRC) interpretation of the provisions is the imposition of a threshold test of discrimination. There is a lack of clarity as to the meaning to be afforded to the term "discrimination" in this context. A finding of discrimination requires that an application would need to establish a discriminatory cause for any earnings disparity that is the subject of an equal remuneration claim. This overlooks the fact that much of the pay gap results from systemic and often historical biases rather than specific sex based discrimination.¹⁴

⁹ ACCI, *2006 Minimum Wage Review: ACCI Submission*, July 2006, pp. 265-7. paras 12.3, 12.7 & 12.11.

¹⁰ ACTU, *Australian Council of Trade Unions Submission to the Australian Fair Pay Commission*, July 2006, p. 149.

¹¹ HREOC, 2006, p. 29, paras 164-5.

¹² NSW Government, *Submission to the Australian Fair Pay Commission on behalf of the New South Wales Government*, 28 July 2006, p. 74, para. 286.

¹³ SA Government, *Submission to the Australian Fair Pay Commission on behalf of the South Australian Government*, 28 July 2006, p. 17, para. 65.

¹⁴ HREOC, 2006, p. 28, para. 158.

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The Australian Government notes general issues with work value assessments under preserved Australian Pay and Classification Scales (Pay Scales) inherited from the award system:

The wage classifications within APCs are not the product of an over-arching, comprehensive or consistent process of determining wage rates which reflect notions of work value - even if the latter could be correctly assessed.

The lack of consistency across awards is understandable given the factors that were considered regarding the notion of work value.¹⁵

No submissions raise specific claims of gender based pay discrimination.

5. Overrepresentation of vulnerable groups among the low paid

Submissions generally argue that vulnerable groups are over represented among low-paid employees. Whilst this issue was mainly raised in relation to the vulnerable groups identified above, these were not the only groups identified:

'Evidence clearly demonstrates a number of groups of workers are overrepresented among the low paid - these are women, Indigenous employees, young people, people with disability, migrant workers, those employed in small business and non-unionised employees. These workers will be further disadvantaged should increases in the FMW lag significantly behind wage growth.'¹⁶

'Women, indigenous, migrant and young workers, those in small business, non-unionised [sic] are more likely to be low paid.'¹⁷

Submissions argue strongly that women were over-represented among the low paid:

In Australia 60% of low paid (Award dependent) workers are women, with women now constituting 45% of the workforce (ABS EEEH 2004) and the majority of workers on Awards being women. Award dependent women earn 83% of male Award dependent workers, while women on Australian Workplace Agreements earn 60% of men on Australian Workplace Agreements (ABS 6306.0 May 2004). Under existing legislative structures women have still not gained pay equity and Australia has amongst the highest rates of occupational segregation in the OECD, with female workers concentrated in a narrow band (namely service industry) of occupations.¹⁸

A number of submissions argue that employees with a disability, workers from CALD backgrounds and indigenous Australians were also disproportionately represented among the low paid:

'People with disability represent 16.6% of Australia's working age population.

...

While people with disability represent a significant proportion of Australia's working age population, they participate in the workforce at lower rates, they are less likely to be employed when they do

¹⁵ Australian Government, *Submission to the Australian Fair Pay Commission 2006*, 28 July 2006, p. 19, paras 1.52-3.

¹⁶ HREOC, 2006, p. 3, para. 4. HREOC cite P. Brosnan, 'Can Australia Afford Low Pay?', University of Sydney 2005.

¹⁷ WEL (Aus.) & NPEC, *Submission to the Australian Fair Pay Commission, 2006*, pp. 5-6.

¹⁸ NWWC, *Working Women's Centres Submission to the Australian Fair Pay Commission: Minimum Wage Decision, 2006*, pp. 2-3.

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attempt to participate, and they will earn less if they do get a job:¹⁹

'...it is statistically shown that people with disability earn lower wages, on average, than earned by workers without disability. People with disability also make up a disproportionately large group of people who receive a low wage or the minimum wage:²⁰

'Almost 20% of Australia's workers are on award wages and rely on increases in minimum awards rates of pay to maintain their standard of living.

Low paid workers include a disproportionate number of immigrant workers and women. Both groups are already concentrated amongst the low paid:²¹

'Predominately private sector industries such as hospitality (accommodation, cafes and restaurants), cleaning (property and business services) and manufacturing have high levels of award reliant workers in the federal industrial relations system. All of these industries employ a significant proportion of workers from non-English speaking backgrounds:²²

'The groups most likely to be low paid are the more vulnerable groups of women, indigenous people from Non-English speaking background [sic], workers with a disability, and younger and older workers:²³

In the case of indigenous Australians, some submissions argue that there was a greater likelihood of long term unemployment:

The social demographic characteristics most likely to be associated with long-term unemployment are:

- low levels of education
- low-skilled employment experience
- having some disability and
- coming from indigenous background²⁴

6. Why are vulnerable groups concentrated among the low paid?

6.1 Factors contributing to gender pay equity gap

Submissions identify a range of factors which contribute to the disproportionate representation of vulnerable groups among the low paid, focusing on the gender pay equity gap in particular. Factors identified include the concentration of women in certain types of employment:

The Australian workforce can be characterised as highly gender segregated, and women remain clustered in the low wage sectors of the workforce. Our labour market is one of the most sex-segregated among OECD countries which has important implications for the continuing of the gender wage gap.

¹⁹ HREOC, 2006, p. 13, paras 61 & 67. HREOC cite ABS, Disability, Ageing and Carers Australia, Catalogue Number 4430.0, 2003.

²⁰ PWD/DDLC, *Minimum Wage Determinations: Spring 2006*, p. 6.

²¹ What Women Want Consortium, *Submission*, 2006, p. 9.

²² SA Government, 2006, p. 16, paras 60 -1.

²³ Tas. Government, *Tasmanian State Government - Submission to the Australian Fair Pay Commission - Federal Minimum Wage Determination*, July 2006, p. 31.

²⁴ Tas. Government, 2006, p. 13.

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A 1999 study concluded that between 58 and 81 per cent of the gender pay gap was associated with working in feminised occupations, industries, workplaces or job-cells. It was found that the largest individual effect was for concentrations at the industry level with women working in industries that were close to 100 per cent female-dominated earning 32 per cent less per hour than women with otherwise identical characteristics in industries that were close to 100 per cent male-dominated.²⁵

A number of submissions identify the concentration of women in casual work as a contributing factor:

'Women make up 52.7% of all casual workers in Australia (ABS survey 6310 2004) and only one third of women who are in the workforce have access to leave entitlements (ABS year book: Labour earnings and benefits 2003) as this type of employment excludes female employees from all forms of paid leave apart from Long Service Leave.'²⁶

'Women currently comprise seventy-one percent (71%) of the part time and casual workforce and usually receive the lowest wages.'²⁷

'Data compiled for HREOC reveals a significant pay gap between men and women working casually. While men working casually as award workers earn an average of \$1.10 more per hour (\$17.50 compared to \$16.40) than the average for all male workers, women casual award workers earn an average 30 cents more per hour than the average female award workers (\$16.70 compared to \$16.40). This suggests that women are less well compensated for casual work.'²⁸

The Australian Chamber of Commerce and Industry (ACCI) questioned the relevance of these matters to the Commission's functions:

WorkChoices clearly retains scope for casual employment on an ongoing basis and asks the AFPC to set appropriate minimum wage arrangements. It does not in any way support the setting of minimum wages to discourage or eliminate scope for casual working if that is what organisations may be getting at.²⁹

A number of submissions identify the undervaluation of 'feminised work' as a contributing factor:

'Various labour surveys available from the Australia [sic] Bureau of Statistics illustrate the correlation between gender and work value by showing that workers in traditionally feminised industries are paid the lowest wages in Australia'³⁰

'Women are still concentrated in many areas of employment where their supposedly innate skills can be used most fully. This can be clearly seen in employment sectors where jobs involve such caring [sic] for people, communication skills, dealing with distressed people, fine dexterity and so on. The value attached to jobs and skills associated with female and male labour respectively is a key factor in explain [sic] the gender gap.'³¹

²⁵ HREOC, 2006, p. 39, para. 13-14. HREOC cite B. Pocock & M. Alexander, 'The Price of Feminised Jobs: New Evidence on the Gender Pay Gap in Australia', *Labour and Industry* 10(2), 1999, pp. 75-100.

²⁶ NWWC, 2006, p.4.

²⁷ WEL (WA), *Submission*, 26 July 2006, p. 1.

²⁸ HREOC, 2006, p. 42, para. 30.

²⁹ ACCI suppl., 2006, p. 142, para. 8.38.

³⁰ NSW Government, 2006, p. 72, para. 278.

³¹ HREOC, 2006, p. 45, paras. 42-3.

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'While traditionally female oriented skills are now more in demand, such as communication and relationship building and personal services, the growth of these industries as highly casualised employment, often means that these skills are not identified as highly desirable or attracting high remuneration.

...

However, even where women are highly qualified, fully mobile and require less flexibility (for example, young, single, newly qualified nurse or child care worker) pay is kept low because this type of work is seen as natural for women, rather than requiring additional learned skills and behaviour, as would be the case for men.³²

Submissions generally accept that women have a greater tendency to be award dependent than men. However, the effects of enterprise bargaining and, in particular, Australian Workplace Agreements (AWAs) on gender pay equity are raised in a number of submissions:

'Women also tend to be more reliant on awards and concentrated in jobs with less access to a range of over award payments and bonuses and in jobs affected by minimum wage regulation.'³³

'There is a gender dimension to the use of awards to determine pay. In May 2004 awards (and only awards) determined the pay for 24.4 per cent of all female employees and 15.7 per cent of all male employees. Award minimums are also more likely to be used to fix the wages of part-timers than full-timers. 34.3 per cent of all part timers (men and women) have their pay set by awards; the corresponding share amongst full-time workers is 12.6 per cent. (Table 13: ABS cat. 6306.0. May 2004)'³⁴

'Women are less likely to engage in enterprise bargaining than men. Nearly one third of women in the private sector depend on awards to determine their wages as opposed to only 17 per cent of men. For those women on enterprise agreements, the level of wages negotiated tends to be lower.

While wages for men on registered collective agreements and AWAs are not significantly different, women on AWAs (not including managers) currently earn 11 per cent less than women on collective agreements.'³⁵

ACCI, cite data which it argues:

..shows that:

- a. Participation in agreement making (collective or individual) is the key to higher earning for Australian women. Entering a federal agreement yields an average pay benefit of between \$46.60 and \$335.20 per week.
- b. Far from cutting pay and disadvantaging women, entering into an AWA yields a substantial earnings benefit.
 - (i) A woman on an AWA earns on average \$335.20 per week/60.5% more than the average for all women.
 - (ii) A woman on an AWA on average earns \$228.80/48.1% more than a woman under a collective agreement (including collective agreements with unions).³⁶

³² NWWC, 2006, p. 7.

³³ NSW Government, 2006, p. 72, para. 278.

³⁴ What Women Want Consortium, 2006, p. 10.

³⁵ HREOC, page 40, para. 17 & 18. HREOC cite: Victorian Pay Equity Working Party, 'Advancing Pay Equity: Their Future Depends On It' Report to the Minister for Industrial Relations Melbourne February 2005; D. Peetz, 'The Impact of Workers of Australian Workplace Agreements and the Abolition of the 'No Disadvantage Test', University of Sydney, 2005.

³⁶ ACCI, 2006, pp. 269-70, para. 12.18.

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The issue of relative bargaining power of vulnerable groups, and women in particular, is the subject of comment:

'Barron from the Graduate School of Management at the University of California has shown that men and women negotiate different salary amounts. Her study found that men made much larger salary requests than women. Neiderle and Vesterlund in their study of salary negotiations [sic] that many women find it difficult to negotiate for themselves - they undervalued themselves and their worth and they felt they lacked skills and experience.'³⁷

'No statistics exist for the number of indigenous Territorians on minimum award rates, however, it would be reasonable to assume that years of systemic disadvantage would mean that indigenous workers are less likely to receive over-award payments.'³⁸

ACCI questions the relevance of relative bargaining power to the setting of minimum wages:

Without responding further to the issue of relative bargaining "power" (see subsection 1.3) this is not germane to the setting of the minimum wage. Minimum wages apply where bargaining is not undertaken, whatever the cause.

In addition, it should not be accepted as a truism that women have less bargaining power. The labour market and women's working is becoming more complex, diverse and heterogeneous. As such, such assumptions would need to be drilled down and closely examined prior to being able to be accepted in this or subsequent reviews.³⁹

Submissions also trace historical developments in the gender pay equity gap to provide a context for the current gender pay equity gap:

The significance of the Harvester Case in establishing wage fixing principles in Australia based around the male breadwinner model can not be underestimated. This decision not only established normative assumptions about the needs of women employees, but meant that the value of women's work, and its appropriate remuneration has been considered in relation to the needs and skills of male workers. The first consideration of female wages in Australia was undertaken in 1912, with the basic female wage set at 54 per cent of the male wage in 1919 by Justice Higgins.

Although Australian has historically had small gender wage gap by international standards [sic], the most significant reductions in that gap occurred as a result of the 1969 and 1972 Equal Pay case in the (then) Australian Conciliation and Arbitration Commission.

The gender wage gap in Australia initially narrowed by about 17 per cent between 1969 and 1976 but has only narrowed slightly over the past two decades, from 82.3 cents in the male dollar in 1983 to 84.4 cents in the male dollar in 2006, despite the broadening of the range of work done by women.⁴⁰

ACCI dispute the level of progress which has been made and note that gender pay inequality is not unique to Australia:

Australia's gender pay gap in May 2005 was 14.9%, the lowest gap in the 22 years of available data (and almost unquestionably at its lowest level ever).

³⁷ WEL (Aus.) & NPEC, 2006, p.6.

³⁸ Unions NT, *Submissions to the Australian Fair Pay Commission*, 2006, p. 5.

³⁹ ACCI suppl., 2006, p.139, para. 8.21-2.

⁴⁰ HREOC, 2006, p. 37, paras 1-3.

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This gender pay gap of 14.9% is 1.4% points lower than November 1996 (16.3%) - prior to the commencement of the workplace relations amendments.

...

*'No country has 'solved' the gender pay gap between male and female earnings (and it is far from clear what this might actually mean). Across a range of regulatory models, award systems, collective bargaining systems and more or less regulated systems, gaps between male and female earnings persist. Gender pay disparity is also persistent across national systems at various stages of economic and social development.'*⁴¹

6.2 Vulnerable groups face additional barriers to attending work

Submissions identify barriers to entering the workplace and job progression as further reasons for the increased representation of vulnerable groups among low-paid employees. In the case of women, barriers include family responsibilities:

'Legislative and policy reforms have generally supported the corresponding demand for female participation and for flexible models of work. However Australia has amongst the lowest workforce participation rates in the OECD for women with two or more children.

While the profile of work-life balance and the need for organisations to provide more flexibility has received unparalleled attention in recent years, women have reported to the NWWC's that balancing work and family responsibilities is becoming increasingly difficult.

Women who are unable to balance paid employment with their family responsibilities and who do not earn a high enough wage to justify or validate their employment are at risk of being unable to maintain their paid job.⁴²

'Australian women continue to shoulder the major responsibility for unpaid work in the home with the significant impact on their earnings.

...

In short *Striking the Balance* found that women still carry out around 70 per cent of all household work in Australian families including traditionally male tasks such as lawn mowing, rubbish removal and maintenance. For both men and women unpaid work almost doubles with the birth of the first child and having one child ensures women undertake just under eight hours of unpaid work per day.

...

Women are also largely responsible for other family commitments in addition to children and this is an increasing problem with Australia's ageing population.⁴³

Submissions argue that this problem was compounded for indigenous women:

Indigenous women are often carers not only for immediate family but for large extended family members and members of their skin [sic] or community group. Indigenous women play significant leadership roles in their communities and give their time to support their community through things such as; supporting at risk young people, offering their homes as unofficial safe houses, organising funerals and talking to school students about culture and language. For such women, low paid employment, in the context of other community commitments, is sometimes not worth it.⁴⁴

⁴¹ ACCI, 2006, pp. 269-70, paras.12.16 & 12.22. ACCI cite ACCI Position Paper, 'Workplace Reform - Working for Australian Women', 2005, p. 15.

⁴² NWWC, 2006, p. 5.

⁴³ HREOC, 2006, p. 43-4, paras 32, 33 & 38.

⁴⁴ NWWC, 2006, p. 6.

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For employees with a disability, barriers to entering and remaining in the workplace include additional transport and other financial costs associated with the individual's disability:⁴⁵

'People with disability face significant costs in negotiating their daily lives, which are not faced by people without disabilities. These are often described as the non- discretionary costs of disability and include items such as transport, equipment and personal assistance.'⁴⁶

'As [the examples provided] show, even with significant Government support in the form of the Pensioner Concession Card, Pharmaceutical and Telephone Allowances, Mobility Allowance and Health Care Card, people with disability in employment face substantial out-of-pocket costs associated with their disability.

Many people with disability who are employed are already close to 'break-even' point, when their additional costs are held against their earnings. Adequate cost of living adjustments are essential in these cases as any decline in real earnings can be enough to tip the balance, forcing the individual out of the work force.'⁴⁷

A substantial number of both financial and non-financial barriers are identified in submissions dealing with employees from a CALD background. These barriers include:

- geographic dislocation,
- lack of English language proficiency
- different levels of education and literacy
- unfamiliarity with a new culture and customs,
- heavy responsibility to provide financial support for family in the country of origin
- difficulties with having qualifications recognised
- skills atrophy
- difficulty accessing services which are predicated on a "white Anglo-Celtic" paradigm.

Many of these barriers exist even for people who may appear at first glance to be in a strong bargaining position, for example, skilled migrants, but who in fact due to employer discrimination or lack of recognition of qualifications, are in a powerless position:⁴⁸

'These workers face additional difficulties including:

- Difficulty in having overseas qualifications recognised in Australia, therefore being forced to take jobs as unskilled workers;
- The reluctance of some employers to employ people from NESB backgrounds;
- Lack of formal education and training opportunities in their country of origin;
- Language barriers that are not overcome due to the inadequacy of the 510 hours of free English language classes provided to new arrivals by the Federal Government; and
- The inaccessibility of these English language classes to migrants and refugees required to work long hours to support their family.'⁴⁹

⁴⁵ e.g. ACOSS, *Submission to the Fair Pay Commission on Minimum Wages 2006*, July 2006, Attachment B.

⁴⁶ HREOC, 2006, p. 18, para. 95.

⁴⁷ AFDO, *Supplemental Briefing for the Australian Fair Pay Commission*, July 2006, p. 2.

⁴⁸ FECCA, 2006, pp. 5-6.

⁴⁹ Victorian Multicultural Commission, *Australian Fair Pay Commission Minimum Wage Decision*, 28 July 2006, p. 2.

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In the case of indigenous Australians, the barriers are particularly complex:

'In 2002, almost half (47%) of the unemployed Indigenous women in Australia had been unemployed for less than 3 months while 10% had been unemployed for two years or more. The difficulties in finding work were similar for Indigenous women and men. The most common difficulty was insufficient education, training or skills, reported by 29% of unemployed females and 25% of unemployed males. This was followed by transport problems and/or distance, which were reported by 14% of unemployed women and 16% of unemployed men.

Approximately 10% of unemployed women indicated the main difficulty was the lack of any jobs at all while a similar percentage indicated there were no jobs in the local area or in their own line of work.⁵⁰

'Aboriginal and Torres Strait Islander women find it difficult to obtain paid work due to discrimination and, especially in regional areas, frequently have poor levels of education due to limited opportunities, culturally inappropriate training, and low socio-economic backgrounds.⁵¹

'The NT Government readily acknowledges the ABS estimates that operating expenses in the NT are clearly higher here than in any other jurisdiction in Australia. For Indigenous Territorians this is an additional burden on improving our regional capacity for economic growth.

"This acts as a barrier to increasing skills and employment opportunities for regional NT and the Indigenous population." "Wages for apprentices can be low and if there are other schemes that pay similar or more money for less effort there is less incentive to take on the apprentice role" (DEET 2004:215)⁵²

7. What regard should the Commission take to the position of vulnerable groups ?

7.1 Disproportionate effect of the Commission's decision on vulnerable groups

Whilst submissions differ as to the extent and reasons for pay inequity, many submissions argue that the Commission's decision would have a greater impact on vulnerable groups:

'Because women are more dependent on minimum wages, upward adjustment of minimum wages will have an impact on male - female inequality.⁵³

'The higher level of award dependence and lower wages for women mean that increases in the minimum wage will have a much more significant effect for women's average earnings, and will therefore contribute to an improvement in pay equity for women and men. As women are more reliant on the minimum wage and award rates of pay than men, women will benefit from an increase to the FMW and APCS and are particularly vulnerable should the real value of the minimum wage decrease.⁵⁴

This is also argued in the case of employees with a disability who are not covered by a special Federal Minimum Wage (see Section 8):

⁵⁰ WEL (WA), 2006, p. 4, para. 5.

⁵¹ WEL (WA), 2006, p. 2, para. 4.

⁵² Unions NT, 2006, p. 7.

⁵³ ACTU, 2006, p. 149.

⁵⁴ ACT Government, *ACT Government Submission to the Australian Fair Pay Commission*, p. 15, para. 53. ACT Government cite P. Brosnan, 'Can Australia Afford Low Pay?', Griffith University, 2005, pp. 5-6.

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These employees with disability will instead be directly affected by the Commission's setting and adjusting of the Standard Federal Minimum Wage (Standard FMW) and of the Australia Pay and Classification Scales (APCSs) presently applying to them. The setting and adjusting of wage rates in these areas is of particular significance to these many people with disability given their over-representation amongst Australians in receipt of a low wage.⁵⁵

Similar arguments are made in relation to people from CALD backgrounds:

'Workers from a CALD background and particularly those who have arrived in the country as refugees, are amongst the most marginalised groups in the workforce due to linguistic and cultural barriers. They are often the ones employed on minimum wages.'⁵⁶

'ECCV notes that many people from culturally and linguistically diverse (CALD) backgrounds are disproportionately represented in minimum wage positions due to language difficulties, a lack of formal education and training, non-recognition of overseas qualifications by Australian employers and discrimination against people from multicultural backgrounds.'⁵⁷

In the case of remote indigenous groups, the argument focuses on relative purchasing power:

Indigenous Territorians are more likely to live in remote locations than non-indigenous people. Approximately 96% of communities are classified as 'very remote' or 'remote' with none of them being classed as 'highly accessible'. In the communities, non-indigenous employees are likely to be covered by a collective certified agreement (in the case of public sector employees) or a common law contract (for example CEO of a community) that would provide for a wage well in excess of a minimum award rate. It follows that a failure to increase minimum rates of pay will result in the purchasing power of Indigenous workers being further reduced relative to their non-indigenous counterparts.⁵⁸

7.2 Need to prevent further discrimination

Submissions argue that the Commission should act to prevent further discrimination against vulnerable groups:

We have concerns that your future adjustments to the minimum wage will fail to recognise both historical and gender residues that result in women often earning less than men on an hourly rate, even when other issues of training and experience are taken into account. We are worried that failure to maintain the relative value of the minimum wage may increase the inequalities of remuneration between men and women.

...

A significant factor in achieving gender equity in the workforce is a decent and fair minimum wage. Any reduction in real terms will have a deleterious impact on achieving pay equity. All international studies of gender pay equity highlight the importance of a decent minimum rate in closing the gender pay gap.⁵⁹

⁵⁵ PWD/DDLC, 2006, p. 6.

⁵⁶ Victorian Multicultural Commission, 2006, p. 1.

⁵⁷ Ethnic Communities' Council of Victoria, *Submission*, 28 July 2006, p. 1.

⁵⁸ Unions NT, 2006, p. 4.

⁵⁹ WEL (Aus.) & NPEC, 2006, pp. 2 & 6.

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In the case of employees with a disability, submissions argue that the questioning of an employee's productivity level can further entrench discrimination:

The use of the terminology contained in the WRA in the context of discussing or determining a Special FMW that is set will, in HREOC's view, entrench negative employer attitudes and reinforce myths and stereotypes about people with disability, including that:

- Separate and different treatment is needed for people with disability
- People with disability are to equate with junior or trainee employees
- People with disability who are as productive as people without disability deserve a lower rate of pay irrespective of experience, skills and qualifications.

...

Where a person's disability does not impact upon their productivity in the workplace, there is no justification for any departure from the standard FMW. People with disability are entitled to receive a wage commensurate with their experience, skills, training and qualifications like all other workers.⁶⁰

Similar submissions are made in the case of people from CALD backgrounds:

The AFPC's first decision will send an important message to the community about the attitude of that body to the concerns of people from CLDB [sic], about the AFPC's consciousness of its duty to protect such groups in the community and its obligations to observe the principles under anti-discrimination laws (and in particular, the *Racial Discrimination Act 1975*).⁶¹

Other submissions go further and argue that a form of cost benefit analysis should be applied to justify any form of discrimination:

For an act of discrimination to be 'legitimate [sic] there must be a real tangible benefit to those discriminated against. For employees with intellectual disability the benefit must be:

- an increase in disposable income
- an increase in employment hours
- an increase in the length of time that an employee has a job.⁶²

7.3 Encouragement of labour force participation by vulnerable groups

The encouragement of labour force participation is the subject of different views, particularly in relation to female labour participation rates. Submissions differ regarding the approach the Commission should take:

'Australia's continued economic prosperity depends in part on securing a suitably sized and skilled labour force into the future. With an ageing workforce, it is important to ensure that women are not deterred from workforce participation by barriers such as pay inequity, discrimination and the difficulties of managing paid work and family responsibilities. Ensuring that these barriers to women's workforce participation are removed will assist in securing Australia's economic future.

The AFPC should take account of the overall pay equity gap and ensure that the overall gap between men and women's incomes in Australia does not widen. Removing barriers to women's workforce participation depends in part on ensuring that the FMW keeps pace with wage growth across the economy.⁶³

⁶⁰ HREOC, 2006, p.9, paras 31 & 35.

⁶¹ FECCA, 2006, p. 21, para 51.

⁶² National Council of Intellectual Disability, *Our Voice Committee - Submission to Australian Fair Pay Commission - Minimum Wage Decision 2006*, 2006, p. 2.

⁶³ HREOC, 2006, p. 24, paras. 136-7.

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'The best the AFPC can do for women (and especially for mothers) seeking to participate in work, is maximise demand for their labour, including through not pricing them out of work opportunities.

Dampening job demand through excessive minimum wages will do nothing to advance workforce participation by women, scope to balance work and family, or pay equity. Indeed, ACCI's experience is that the best thing for balancing work and family is the chance to bargain with one's employer, and to pursue personal priorities in regard to hours of work (for example).⁶⁴

'BPW believes the women with a disability should be encouraged to participate fully in the workforce. Therefore we believe a minimum wage must take into account additional costs that these members of the community may face in their transition into full time employment.'⁶⁵

For all vulnerable groups, these issues are strongly linked to work incentives and disincentives.

7.4 Other issues

A range of other issues are raised in submissions on behalf of vulnerable groups. These include an argument that wage subsidies have little impact on employer decisions to hire people with disabilities – rather such decisions are affected by fears of other associated costs and a lack of understanding of abilities:

'Joe Graffam suggests that wage subsidies have little impact on employer decisions to hire a person with disability:

"Research on financial incentives to the employer has found that subsidies have little impact on an employer's decision to employ a person with a disability. Factors such as ability to perform the job and a low risk of absenteeism are more powerful determinants for employers than financial incentives".

...

Wage costs were not identified as a major barrier to employers in the National Inquiry in to[sic] Employment and Disability last year.

Rather, fears of other costs related to employment were identified as one of the main barriers, although they are often not as large as one might think. These included costs associated with workplace modifications and insurance. The submissions also suggested promotion of the existence of those schemes.⁶⁶

'The major barrier to employment of most unemployed people with disabilities is reluctance among employers to consider their particular skills and abilities. This is usually due to a combination of lack of understanding of disability on the part of employers, and a general concern that it is 'risky' to engage people with disabilities. For example, many employers fear that they will face workers compensation claims.'⁶⁷

⁶⁴ ACCI suppl., pp. 134-135, paras 8.6-7.

⁶⁵ BPW Australia, *Submission to the Fair Pay Commission July 2006*, 2006, p. 5, para. 4.2.

⁶⁶ HREOC, 2006, p. 12, para. 52 & p. 20 paras 108-9. HREOC cite J. Graffam, K. Smith, A. Shinkfield, U. Polzin, 'Employer benefits and costs of employing a person with a disability', *Journal of Vocational Rehabilitation*, 17, 251, 2002, p. 257.

⁶⁷ ACOSS, 2006, p. 47.

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Similarly, submissions argue that additional incentives are needed to encourage vulnerable groups to enter the workplace:

HREOC believes that the following initiatives will encourage people with disability to enter the workplace:

- A guarantee that people with disability will not be worse off financially by entering the workforce
- Increased support in the workplace to improve retention and eliminate “churning” between jobs, casual employment and not working
- Stigma reduction campaigns to decrease discrimination in the workplace, improve workplace relations and increase the rate of career progression for people with disability.⁶⁸

The Victorian Multicultural Commission has also heard strong and consistent concerns by Victoria’s CALD communities that the minimum wage must be significantly above the level of welfare payments provided by the Federal Government. This is not only to provide an incentive to work but also to adequately provide a living wage, factoring in the hidden costs of work including the necessity for appropriate clothing, travel to and from work and childcare.⁶⁹

A further argument is that wage inequality is costly not only for vulnerable groups, but for society as a whole:

There is a growing body of international research and evidence, as outlined by Richard G Wilkinson, that suggests wage inequality is costly not only for those people directly affected but for society as a whole. This is due to the deepening social inequality and social division within our community that inevitably occurs through an increasing divide between rich and poor. This inequality can lead to the experience of greater levels of violence, poorer community relations and adverse health outcomes for society at large.

As a result there are additional costs for governments at all levels needing to address these consequences in the area of law and order, health and community relations to name but a few. The Commission therefore believes it is necessary for the AFPC to take into consideration this hidden social cost when determining the minimum wage for workers.⁷⁰

⁶⁸ HREOC, 2006, p. 20 para. 107

⁶⁹ Victorian Multicultural Commission, 2006, p. 3.

⁷⁰ Victorian Multicultural Commission, 2006, p. 2.

APPENDIX D

Summary - Award Review Taskforce (Taskforce) Final Report on Rationalisation of Wage and Classification Structures

RECOMMENDATIONS

Overview:

'The Taskforce considers that a future national minimum wage and classification system cannot continue to be based on existing award structures.'¹

'While the WR Act requires the preserved Scales to include pre-reform award coverage, the Taskforce expects that any new Scale established by the Fair Pay Commission will contain more general coverage provisions as they are incrementally broadened as a result of rationalisation. The Taskforce is of the view that a modern, national classification structure should be capable of providing industry wide Scales in place of the inherent difficulties involved in maintaining a residency-based classification structure.'²

'The Taskforce proposes that a number of general issues arising from the work done by the Taskforce be addressed before any rationalisation model is considered.'³

The Taskforce's recommendations to this effect are outlined below.

1. Classification Rationalisation

Wage and Classification Diversity:

Recommendation 1

The adoption of any simplified or rationalised system of minimum classifications and wage rates for inclusion in Scales should recognise the diversity which exists in preserved Scales and include a process for clarification of definitional uncertainties.

'[T]he Taskforce has confirmed its initial observations regarding the extent of wage and classification diversity. In particular, it has found evidence of:

- a high level of definitional and wage diversity for apparently similar jobs;
- classification definitions which did not enable those jobs to be easily compared to others; and
- diversity in terms of the classifications that attract a particular wage rate.'⁴

'The degree of definitional uncertainty and the level of wage disparity between apparently like definitions identified by the Taskforce ... limit the ability to immediately introduce a simplified and rationalised classification structure without significant additional research and stakeholder consultation. Consequently, the Taskforce reaffirms it [sic] recommendation that the Fair Pay Commission use preserved Scales as the basis for its first wage decision in Spring 2006 and undertake further research into classifications and the reliance on classifications amongst businesses.'⁵

¹ Task Force, *Award Review Taskforce Final Report on Rationalisation of Wage and Classification Structures*, July 2006, p.105 para 341.

² Task Force, 2006, p. 106, para. 342.

³ Task Force, 2006, p. 70, para. 245.

⁴ Task Force, 2006, p. 35, para. 129.

⁵ Task Force, 2006, p. 71, para. 249.

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'The Taskforce recognises that the development of an approach by the Fair Pay Commission to more extensive rationalisation will require that the Government consider legislative changes. Any changes will need to recognise the degree of wage diversity and the time that may be required to address this diversity in a fashion which does not necessarily disadvantage low paid employees. It will also require that the Fair Pay Commission adopt a wage determination strategy consistent with a rationalisation approach as these two initiatives are inherently related.⁶

Relevance of awards in the workplace:

Recommendation 2

That the Fair Pay Commission undertake further consideration of the relevance and use of classifications to underpin the development of a rationalised classification structure.

'Aside from ... anecdotal information there is little reliable data on the relevance of awards in the workplace. For example, it is not known how many employers and employees rely solely on awards to set pay and conditions. For those employers and employees who rely on collective agreements or Australian Workplace Agreements (AWAs) there is little information as to whether awards are of significance in the wage negotiation process.⁷

2. Safety Net Adjustment Increases and Redundant Scales

Safety Net Increases:

Recommendation 3

That the Government undertake research to establish the current data relating to the safety net status of awards which should include any available information about the currency of those awards and provide this information to the Fair Pay Commission.

The Government might indicate its preferred position relative to the updating of specific awards to take account of previous safety net adjustments, or, if it considers it necessary, regulate pursuant to s. 219 of the WR Act to direct the attention of the Fair Pay Commission to the adjustment of those classifications derived from non-federal pre-reform wage instruments so as to take account of earlier safety net adjustments from 2000.

Recommendation 4

That the Fair Pay Commission adopt as a general principle, the adjustment of preserved Scales so as to ensure that its ongoing wage adjustments take account of any safety net adjustments from 2000 which have not already been applied to classifications, unless it has information specific to a particular classification or group of classifications that indicates that this approach would be inappropriate.

⁶ Task Force, 2006, pp. 6-7, para. 21.

⁷ Task Force, 2006, p. 54, para. 196.

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'An analysis of the wage and classification data drawn from the pre-reform awards has confirmed the extent to which there are a significant number of awards which have fallen behind in the application of safety net adjustments.'⁸

'[An] employee may be disadvantaged when making a new agreement if the Fair Pay Commission has not notionally adjusted the wage rate in their Scale to incorporate those safety net adjustments.'⁹

'The Taskforce considers that additional research needs to be undertaken to clarify the status of classifications where the Safety Net status is unclear. In many cases these classification appear to be derived from awards which have no effect as determinants of wage rates or are redundant. Where award wage variations have not been sought over the last six years the Taskforce considers that there is little likelihood that the award performs an active role in any wage determination process. This research should be undertaken prior to consideration of the effect of the adjustments of the nature proposed.'¹⁰

Redundant Scales:

Recommendation 5

That the Fair Pay Commission give consideration to removing Scales, drawn from pre-reform awards which clearly have no continuing application. Further, the Fair Pay Commission and the AIRC should exchange information about the extent to which the award rationalisation process discloses awards which have no effect so that Scales derived from these awards can also be removed.

'Examination of federal awards discloses some awards which are clearly redundant and have no continuing effect. ... Examples of awards with no ongoing application relate particularly to enterprise specific awards where the relevant enterprise no longer exists.'¹¹

'Where possible, the Taskforce has identified classifications drawn from these awards and suggests that there is little utility in retaining them in the Scales.'¹²

'...it appears likely that the process of award rationalisation, to be undertaken by the AIRC [Australian Industrial Relations Commission] will identify other pre-reform awards which have no continuing application.'¹³

3. State and Territory-Based Differences

Recommendation 6

That the Government review and extend the timeframe established by s. 206 of the WR Act for the elimination of wage differentials based on state or territory boundaries, so as to ensure that actions taken by the Fair Pay Commission to comply with the current obligation do not have an unintended and counterproductive effect on employers and employees.

⁸ Task Force, 2006, p. 71, para. 250.

⁹ Task Force, 2006, p. 73, para. 255.

¹⁰ Task Force, 2006, p. 74, para. 259.

¹¹ Task Force, 2006, p. 75, para. 260.

¹² Task Force, 2006, p. 75, para. 261.

¹³ Task Force, 2006, p. 75, para. 262.

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'Section 206 of the WR Act requires that, by 27 March 2009, the Fair Pay Commission ensure that the coverage of wages and casual loadings within Scales are not determined by reference to state or territory boundaries. However, ...the Taskforce does not consider this timeframe is achievable.'¹⁴

'In its interim report the Taskforce noted evidence of preserved Scales applying different wage rates for very similar work in a sample of preserved Scales applying to entry level baking/bread industry employees and first level enrolled nurses in the aged care industry. For example, hourly wage rates for entry level baking/bread industry employees ranged from \$12.75 in Queensland and Victoria, to \$14.66 in the Northern Territory. If the Fair Pay Commission was to attempt to remove state and territory-based differences in preserved Scales in a manner consistent with the legislative wage guarantee, it would, (using the above example) need to award the employees in Queensland and Victoria a pay rise of almost 15 per cent. This may have significant cost and employment consequences in certain industries, which in turn are relevant considerations for the Fair Pay Commission given that it its [sic] legislative objective in setting wages is to (among other things) consider employment generally, as well as the capacity of the low paid to remain in employment.'¹⁵

4. Casuals

Loading percentages:

Recommendation 7

That the Fair Pay Commission consider seeking legislative amendments to the casual wage guarantee in s. 192 of the WR [Act] to allow for rationalisation of casual loadings.

'The Taskforce considers that the only way casual loading percentages can be rationalised to a single casual loading without breaching the wage guarantee in s.192 of the WR Act is to rationalise to the highest loading in each industry.'¹⁶

'Research conducted by the Taskforce confirmed that this could result in a significant increase in wage costs for employers of casual employees, particularly in the retail and hospitality industries.'¹⁷

Monetary Rates:

Recommendation 8

That the Fair Pay Commission treat monetary casual rates in a similar way as basic periodic rates or basic piece rates of pay.

'Some awards specifying flat rates of pay for casual employees do not have an ascertainable casual loading. The Taskforce has assessed these rates as either basic periodic rates or basic piece rates of pay for the casual employee. On this basis the default casual loading would not apply to these rates.'¹⁸

¹⁴ Task Force, 2006, p. 76, para. 263.

¹⁵ Task Force, 2006, p. 76, para. 264.

¹⁶ Task Force, 2006, p. 77, para. 266.

¹⁷ Task Force, 2006, p. 77, para. 267.

¹⁸ Task Force, 2006, p. 78, para. 271.

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'The Taskforce proposes that these monetary casual rates be rationalised in the same way as basic periodic rates or [sic] pay or basic piece rates of pay, however they should be treated separately as monetary casual Scales.¹⁹

5. Apprentices and Trainees

Recommendation 9

That the Fair Pay Commission specify in the Scales the capacity for recognition of competency based increments on the basis that in the absence of agreement in this respect, time based increments drawn from pre-reform awards would apply. Further, that the Fair Pay Commission monitor the development and trialling of competency based wage progression models for apprenticeships through workplace bargaining. The objective of the monitoring would be to identify the emergence of any model that does not impair the competitiveness of apprentices in the labour market, attracts widespread acceptance and is capable of providing a basis for rationalising apprentice wage structures.

'[T]he diversity of apprentice and trainee wages ... makes the rationalisation of wage and classifications difficult. A number of stakeholders called for the introduction of competency based progression to replace time based increments. However the Taskforce considers that a generally acceptable model for the introduction of competency based progression has not been developed to a high enough level that would warrant its wide spread unilateral introduction.²⁰

'It should be noted that there are currently no restrictions on the use of competency based arrangements.²¹

6. Disability Wages

Recommendation 10

The Taskforce recommends that the Fair Pay Commission in its first wage review considers whether the SWS should apply across all industries and to all employers.

In relation to minimum wages for workers with a disability employed by business services, the Taskforce understands that key industry stakeholders are developing an agreed approach to establishing a safety net for the sector, and this would need to be considered by the Fair Pay Commission before determining a final approach to any rationalisation for the sector.

'The Supported Wage System (SWS) appeared to be widely supported amongst submissions to the Taskforce. The Taskforce examined the incidence of the SWS and found that all industries had at least one pre-reform award which provided access to the SWS.²²

'Given the support for, and acceptance of the SWS ... it seems reasonable that the SWS be made available to all employees with a disability who are unable to earn the full wage rate in open employment.²³

¹⁹ Task Force, 2006, p. 78, para. 272.

²⁰ Task Force, 2006, p. 78, para. 273.

²¹ Task Force, 2006, pp. 78-9, para. 274.

²² Task Force, 2006, p. 52, para. 184.

²³ Task Force, 2006, p. 79, para. 275.

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7. 38 Hour Week

Recommendation 11

When adjusting classifications the Fair Pay Commission should have regard to decisions of the AIRC in relation to the implementation of the 38 hour week.

'Under the Standard, an employee must not be required or requested by an employer to work more than 38 ordinary hours per week. This may, by written agreement, be averaged over a period of not more than 12 months. The Standard also permits an employer to require or request an employee to work 'reasonable additional hours':²⁴

'Where an employee is bound by either a federal award or a NAPSA [National Agreement Preserving State Award], the 38 hour per week requirement does not apply until 27 March 2009. However, if before the end of that three year period, those employees become covered by a rationalised award, from that point onwards the 38 hour per week maximum provision operates. Awards with less than 38 ordinary hours will continue to operate unchanged.'²⁵

'...299 pre-reform awards have been identified as having classifications that are required to work more than 38 hours per week.'²⁶

'The implementation of the 38 hour week has a number of possible implications for the Fair Pay Commission. Where any employee works a 40 hour week, for example, the implementation of the 38 hour week may lead to a reduction in their specified number of hours. If the employee's hours per week change, their weekly pay may also reduce. Unless the employee continues to work a 40 hour week, the employer loses the productivity of the 40 hour week and the employee would lose two hours pay per week.'²⁷

8. Arrangement of Scales in an ANZSIC Format

Recommendation 12

That the Fair Pay Commission adopt the proposed arrangement of Scales on the basis of the ANZSIC divisions as a means of complementing other information delivery mechanisms.

'ANZSIC is used by the ABS to classify businesses into 19 divisions according to their primary activity. ANZSIC classifies industries using a hierarchical structure of divisions, subdivisions, groups and classes. ANZSIC was recently updated to incorporate emerging industries and provides a contemporary and internationally comparable industrial classification system.'²⁸

'The Taskforce acknowledges the difficulties created by developing Scales based on pre-reform awards with their complex coverage clauses. The Taskforce considers grouping Scales under the 19 ANZSIC divisions as the most effective way of presenting both preserved Scales and any new Scales that are created as a result of rationalisation.'²⁹

²⁴ Task Force, 2006, p. 80, para. 276.

²⁵ Task Force, 2006, p. 80, para. 277.

²⁶ Task Force, 2006, p. 80, para. 278.

²⁷ Task Force, 2006, p. 80, para. 279.

²⁸ Task Force, 2006, pp. 59-60, para. 213.

²⁹ Task Force, 2006, p. 81, para. 280.

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9. Access to Wage and Classification Information

Recommendation 13

The Taskforce proposes that Scales be published by the Fair Pay Commission in a user-friendly electronic format enabling easy access as outlined ...[below].

'The Taskforce agrees that employers and employees will need to be able to easily access new Scales as they are made over time by the Fair Pay Commission, and should be able to track changes made to those Scales. To a lesser extent, they will also need to be able to identify preserved Scales that applied to them at the commencement of the reforms:³⁰

'The wage guarantee requires the Fair Pay Commission to ensure that its wage-setting power does not result in employees receiving less in terms of their basic periodic rate of pay, basic piece rate of pay or casual loading than they were entitled to at the date of reform commencement. Given the significance of this guarantee, preserved Scales which, in part, form the basis of the wage guarantee should remain generally accessible even after rationalisation. Ongoing access to this information will ensure public confidence in the wage-setting process undertaken by the Fair Pay Commission:³¹

'Electronic publishing, together with the use of a comprehensive set of search options, will provide the most effective method of organising and presenting the large volume of complex data that will initially form preserved Scales. To ensure user-friendly access by a wide range of clients, the Taskforce recommends Scales be available on a publicly accessible web site created in line with the following principles:

- the web site must provide access to all preserved Scales, special Scales and any new Scales created by the Fair Pay Commission grouped on the basis of ANZSIC divisions;
- information must be fully searchable with clients being able to be search [sic] by employer name, pre-reform award code or title, industry or classification;
- Scales should be structured in a consistent and logical manner, and should be expressed in plain English;
- Scales should be identified with a unique code so that a current Scale can be linked to earlier versions;
- all information contained in a Scale must be able to be printed in hard copy;
- the web site should contain links to the Standard outlining other mandatory minimum conditions of employment; and
- the web site should contain a link to WageNet where clients can access awards containing information about other terms of employment including allowances, penalty rates and loadings, incentive-based payments, hours of work and public holidays:³²

³⁰ Task Force, 2006, pp. 66-7, para. 237.

³¹ Task Force, 2006, p. 67, para. 240.

³² Task Force, 2006, pp. 68-9, para. 244.

APPENDIX E

APPENDIX E - Public Consultation

1. Public consultations

1.1 Overview

The Australian Fair Pay Commission (Commission) undertook a series of public consultations as part of fulfilling its legislative remit to inform its first decision. The purpose of the sessions was to reach a broad cross section from the Australian community, in particular those living on the minimum wage or those impacted by decisions about minimum wages.

Thirteen general public consultation sessions were held. These were complemented by ten focus groups concentrating on key target groups including the indigenous community, the unemployed, people with a disability, apprentices and juniors, casual and piece workers and those who employ them.

The focus groups were commissioned in response to feedback from public consultation participants who considered that these groups may not be fully represented at the public consultations.

The public consultations were conducted as roundtable discussions. Following participant's feedback, the format was altered slightly with a reduction in the number of questions and an increase in the time allotted. The consultation sessions were conducted over two hours and centred on the five key legislative criteria the Commission was required to have regard to in reaching its decision. There was an opportunity for general questions and discussion at the end of each session.

The sessions were open to any interested Australians but were closed to the media to protect individuals who attended and information about their personal circumstances. They were advertised widely in local media and the Commission incorporated a grassroots marketing approach as well with posters sent to local organisations such as schools, job network offices, Centrelink branches and libraries.

Summaries of each consultation session, by location, were posted on the Commission web site. Below is an overview of the issues raised. The comments, views and perceptions are those of participants as expressed at the public consultations and focus groups. Issues raised by participants were often outside the remit of the Commission and included such issues as access to medical care in regional and rural areas, access to training or availability of public transport.

As mentioned earlier, consultation focused on the five legislative criteria the Commission was required to have regard to in making its decision on minimum wages.

1.2 Promotion of economic prosperity

There were few comments on this issue - participants' overwhelming concerns were for individual circumstances rather than the economy. However, it was clear that people felt there should be a balance and this was where the notion of fairness often came in- that a good economy should be enjoyed by all:

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Economic prosperity is important, as economic growth creates more jobs but the benefits of this should be spread across society.

1.3 The capacity for the unemployed and low paid to obtain and remain in employment

A major barrier identified to entering the workforce was that the level of pay available may not make employment worthwhile, in comparison to receiving benefits or pensions. This was particularly in reference to costs associated with being employed, such as transport and child care which may reduce the level of discretionary spending available to a level that was similar to being on unemployment benefits. There were also issues raised around the loss of benefits such as health care cards. In particular, it was suggested that these could be phased out as the person enters employment rather than cancelled immediately:

'Interaction with welfare - in a new system it is a tough decision to 'try' employment because it may jeopardise the welfare payments.'

'Connection between safety net items eg. health card can be a disincentive to go beyond part-time work.'

'the consideration of flow on effect e.g. if a person is receiving benefits (medical card) allow a time of transition when obtaining a job. Perhaps leave benefits in place either for a time or advice on level of salary.'

The costs of entering the workforce were another common issue raised with people asserting that child care, clothing and transport costs may be prohibitive to moving from welfare to work:

Very hard to get started (in a new job) on low wages as expenses are high. Transport, food and clothing are initial set up costs.

The advantages of being in paid work were seen as marginal where the only work available was low-skilled, casual and/or temporary.

Another barrier to work mentioned was the lack of affordability of training for low-paid workers:

Inability to engage in any education or career development training due to cost.

There was also a perception of entrenched prejudice against the unemployed, that they were seen by employers as 'unemployable' and therefore unlikely to be offered work, or at best only the lowest paid and lowest skilled positions.

A number of people considered that increases in the minimum wage rate should be regular and needs to take into account increases in the cost of living and the Consumer Price Index (CPI):

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The minimum wage requires an annual review by the Commission that includes an adjustment that includes inflationary measures such as CPI and is committed to delivering a "living" minimum wage that supports a family and does not drop below the real wage currently at \$12.75 an hour.

1.4 Employment and competitiveness across the economy

There were some views that measures of economic competitiveness should not be applied when making decisions about the wages of workers with a disability.

It was noted that the minimum wage can affect employers and that while the minimum wage should be sufficient to live off it should not be of a level where employers are forced to downsize staffing levels.

1.5 Providing a safety net for the low paid

While there were differences of opinion about the definition of a safety net, there was strong agreement that its primary purpose was as a mechanism to protect workers and to prevent them from 'falling through society's cracks'. Furthermore it was also regarded as a temporary facility, that is, to assist people in times of transition between unemployment and employment, rather than being seen as an appropriate long-term solution. Some felt that if an appropriate minimum wage was set there would be no need for a safety net:

'Very important (minimum wage) is that it provides a standard (albeit low) of living that people should not be allowed to slip below.'

'If people were paid a decent and fair wage, there would be no need for a safety net.'

There was a strong consensus that a safety net should be based on a minimum standard of living and take into account the effects of inflation and increases in the CPI.

A number of comments were made that the Commission needs to recognise the idea of a 'living wage', that is, a minimum level of income that reflects the 'true cost of living'; provides sufficient power to purchase acceptable housing; allows for basic needs and for some discretionary spending as well:

'Ensuring that all workers regardless of age and level of experience are able to earn a wage that allows them to live in dignity - not on the cusp of the poverty line.'

'The critical importance of the minimum wage (and any other wages set) to rise with indexation to ensure it enables people to meet living costs.'

'Ideally any wage, including the minimum wage should allow for spending power beyond basic essentials - currently minimum wage is not allowing people to sustain stable housing, increasing risk of homelessness and associated problems.'

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The area in which people live was seen to be of significance also with a number of participants commenting on the regional differences in the cost of living and the need for these to be taken into account:

Regional differences in cost of living should be considered and incorporated into the structuring of a possible varied minimum wage.

It was also generally agreed that the minimum wage was only one component of a safety net, which should also include a package of benefits such as taxation and health care; that this package should be sufficient to prevent people from becoming 'working poor' and that it provide incentives for people to come off welfare.

Numerous effects of living on low wages were cited. All of these highlighted the difficulties of survival where insufficient money is available to pay for basic needs and leads to a poor standard of living. Health was a key focus for many people, who said the cost of medication, dentistry and lack of access to bulk billing doctors in regional areas led to difficult choices for people with very little discretionary income and that often they would not choose to spend on their health.

Limited choices were seen in turn to lead to lower life expectations, were a root cause of isolation, social stigma and ultimately a cause of psychological problems. The theme of relationship breakdown due to the stress of being financially disadvantaged was also raised repeatedly:

People on lower income suffer depression and anxiety - health related issues - no money to take part in the community leads to social issues. Social isolation.

Another issue that was raised consistently was that of saving for retirement and the ability to accrue superannuation.

'The ability to save and contribute to superannuation.'

'That the rate accommodates and considers those that don't have a superannuation pool to dip into or rely on for the future.'

1.6 Providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market

The majority of discussion in this area centred on the conditions of workers with disabilities, with a predominant view that they should be seen as productive workers and that an individual's wages should be linked to their level of productivity:

Commission must equally recognise the unique skills these groups bring to the workplace, not just look at limitations.

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In terms of juniors and trainees, there were some views that wages should be a percentage of the adult wage, but equally there was support for not having a junior wage at all:

'If people are capable of doing the job, they should earn the minimum wage.'

'If we have a minimum wage, it should apply to all workers irrespective of age, experience or disability.'

'Junior trainees are the future and there should be no constraint on wages. They should increase at the same time as the minimum wage ruling.'

'Why is there a separate scale for 'special' groups? These groups require exactly the same expenses as anyone else.'

However there was agreement that the expenses of juniors and trainees incurred through being in the workforce were no different from those of adults, so their wages needed to be 'liveable':

Young people are not a homogenous group - they have real financial responsibilities and diverse needs.

Similar to the view expressed in relation to piece workers, concerns were also raised about the potential for exploitation of these groups.

Students were also mentioned with a participant highlighting the costs of study and the difficulties in balancing study and work.

Apprenticeships were widely perceived to be underpaid and not attracting enough young people. Participants thought apprentices should be paid a 'living' wage that took into account the cost of their training such as transport, TAFE fees and equipment:

Getting young people into trade - not worth being an apprentice - perhaps a subsidy to promote apprenticeships.

1.7 Rates for piece workers and casual loadings

While there was not a great deal of discussion on these issues, there was some support for having a base rate minimum wage that also supports incentives for piece work.

There was also a common concern expressed that piece rate and casual workers were vulnerable to exploitation because their positions were temporary.

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2. Individual business submissions

2.1 Overview

In May 2006, the Commission called for interested individuals and organisations to lodge a written submission outlining their views on the setting of the minimum wage with a closing date of 28 July 2006.

There was no set format or length for submissions however organisations and individuals intending to lodge submissions were directed to the five key legislative criteria the Commission was required to have regard to in making its first decision.

Anonymous submissions were not accepted but authors could elect for their submission to remain confidential and not be published. In total the Commission received 182 submissions, 74 of which were from individuals. Of these, 10 requested confidentiality.

The submissions covered a range of issues, many of which were out of the Commission's remit or not relevant to the role of the Commission. There was also a great deal of commentary regarding what the Commission's role should and should not be.

The following summarises the main points from the submissions from individual businesses. Not all submissions covered all key criteria and many were only relevant to the businesses' experiences and circumstances. The full submissions are available on the Commission's web site www.fairpay.gov.au

The Commission received five submissions classified as individual business submissions.

2.2 Promotion of economic prosperity

One of the submissions addressed this point by emphasising the need to recognise the economic differences between regions within Australia and asked that the decision does not place undue pressure on weaker economic areas in rural and regional Australia.

2.3 The capacity for the unemployed and low paid to obtain and remain in employment

There was consensus in views expressed in the submissions that the Commission's decision should have a positive impact on the capacity of the unemployed and low paid to get and keep a job.

Businesses considered that interest rates could affect employment levels and so any reduction in wages in real terms would not guarantee more jobs. It was claimed that this is supported by the fact that historic wage increases awarded by the Australian Industrial Relations Commission lead to increased labour costs but not a reduction in the demand for labour.

2.4 Employment and competitiveness across the economy

One of the businesses mentioned the economic principle of non-accelerating inflationary rate of unemployment and said this is not taken into account in the claim that lower wage rates will create more jobs.

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The particular business mainly employed piece rate workers and stated that a piece rate needed to encourage productivity and if piece rates were set to a minimum rather than the industry average pick profitability could fall due to lack in productivity, leading to reduced employment.

2.5 Providing a safety net for the low paid

The notion of a safety net included broad themes such as the cost of living and raising a family for those earning minimum wages in Australia.

One business said wage rates and working conditions at the lowest levels need to provide for a worker's responsibility to care for their family and said if this was not given regard there would be very serious long term consequences for society. They also asserted that labour is not a commodity and that low-paid workers have reduced bargaining power to enable them to meet their needs, such as maintaining their family and social responsibilities. In addition, they highlighted the current strength of the economy and implied that any reduction in living standards would be irresponsible in a time of strong economic growth.

2.6 Rates for piece workers

Two of the individual business submissions dealt almost exclusively with piece rates. One author wrote from the point of view of an employer, while another was received from six subcontractors who outlined their particular circumstances and points of view.

The employer was concerned that setting a minimum wage for piece rate workers would be a disincentive for productivity and would lead to reduced profits and job losses. He also mentioned that piece rates enabled people who were prepared to be more productive than the average could earn more through higher productivity.

The subcontractors wanted costs of travel to be taken into account in rates for piece workers who provide their own transport. These costs include all fuel, insurance, registration and depreciation.

3. Individual submissions

3.1 Overview

The following summarises the main points from the submissions from individuals. Not all submissions covered all key criteria and many were only relevant to the authors' personal experiences and circumstances. The full submissions are available on the Commission's web site www.fairpay.gov.au

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3.2 Summaries

Social factors were important to the majority of submission authors and they have asked that the Commission take into account general lifestyle and economic factors that affect Australians today. Rising fuel prices, housing costs and transport costs rated highly as key factors the Commission should consider when setting minimum wage rates. The notions of fairness and dignity were also mentioned in multiple submissions.

Other costs of living seen as important issues for the Commission to consider included education, health, and the ability to purchase basic goods within the context that rising costs impact on the low paid the hardest as they are the group with the least economic capacity to cope. Submissions also contended that the low paid had reduced bargaining power in both the economy and the job market.

A number of submissions contended that the minimum wage should provide for more than just basic survival and should avoid the creation of an underclass of 'working poor'. Some submissions stressed that the minimum wage should enable low-paid workers to maintain their dignity and to provide for their families in a manner that reflects the strength of our economy and the high standard of living available in Australia.

The Henderson poverty line was also discussed several times with a view that this was a benchmark which should not be forgotten. The idea that a living wage needed to provide for a family, not just a single worker, was also raised, often in relation to comment on the Harvester decision.

3.3 Promotion of economic prosperity

The current prosperity of Australia was raised in a number of submissions with a shared view that the low paid should benefit from this as well as the high paid. Many submissions considered the low paid are finding it difficult to meet their needs and those of their families.

A number of the submissions theorised that higher wages would lead to increased spending which they contended, in turn stimulates the economy and leads to more tax revenue for the Government. The authors stated this has flow-on benefits in addition to allowing the low paid a decent quality of life. It was also suggested that if wages were not increased sufficiently, economic prosperity would suffer as spending would decrease.

Training the workforce of tomorrow was also highlighted as essential to maintaining a good economy. A number of submissions were concerned that there are not enough incentives for people to enter into training and that the low paid could not afford to up-skill through further education:

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'It is in the national interest that wage levels for those in training should be sufficiently high as to attract potential trainees.'

'Australians have always believed, since the days of Robert Menzies, and in the main continue to believe, that our capitalist system can be modified to provide a fair living wage to all breadwinners and still continue to prosper.'

'Our current wealth is more than enough to ensure that everyone can and should be paid sufficient to live on.'

3.4 The capacity for the unemployed and low paid to obtain and remain in employment

The need for a wage to be an incentive was a common theme with an understanding that it also needs to be affordable for employers:

The motivation to continue in low paid employment is tested when an employee could receive an equivalent amount of money from Centrelink without the physical, social and economic challenges that can be associated with employment in low paid work.

One submission examined the costs of an unemployed person to the Australian Government compared to the cost of employing them. The submission suggested that a wage/tax trade off should be implemented, aimed specifically at reducing the cost of employing low-income workers. It was claimed this would reduce the cost of employing low income workers and result in reduced unemployment. This same submission asserted that the pool of unemployed people has a higher proportion of unskilled workers than skilled; consequently job creation needs to focus on unskilled labour.

Two submissions mentioned the cost of transport as a barrier to entering the workforce and the cost of job seeking was also highlighted. Access to transport was seen as an issue with comments about the lack of public transport leading to job seekers being forced to rely on a privately owned car which may be price prohibitive.

Other submissions contended that job seekers incur a number of expenses whilst job hunting including travelling to and from interviews, internet access, printing and postage. It was also argued that if they are successful and then move from welfare to work the individual loses benefits including a health care card which provides significant discounts on basic living expenses.

Submissions argued that juniors and apprentices have no incentive to work if the benefits they can receive from Centrelink are close to the amount they would earn in a low paid job. Submissions stated that this is compounded by the fact that they are working in physically demanding jobs and not earning as much take home pay, meaning many remain reliant on their parents. Another submission stated that the closer the minimum wage is to the dole, the less incentive there is for some people to work.

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There was also a view that businesses needed to have the capacity to pay the minimum wage and that for people to be kept employed the business must be profitable, otherwise unemployment will rise. One business owner said propping up an unviable business to help people keep their job is untenable:

if a business cannot afford to pay a fair wage it should simply not exist.

3.5 Employment and competitiveness across the economy

A consistent theme was that Australia cannot compete with lower cost countries such as India and China so Australia must rely on productivity to remain competitive. Submissions also argued that Australians need to safeguard the quality of living and not become like those low-cost labour market countries. They maintained people need to be paid enough to have a decent life according to contemporary Australian standards.

Also raised was the reality of different economic conditions in different regions and the need to allow for this. One submission mentioned the high costs of living in cities in particular, while others highlighted the high costs of transport in regional areas where people largely rely on private motor vehicles, commute long distances and travel to access basic services such as health care.

3.6 Providing a safety net for the low paid

Four of the submissions stated a safety net needed to be in place to protect workers. One compared a reduction in real wages to a reduction in the safety net. Another said very low wages are unacceptable without a significant social security safety net to back it up. This submission suggested people would be better off being paid low wages which are topped up by government assistance than being on the dole.

Many of the submissions covered issues that could be taken into account under the umbrella of a safety net such as the rising proportion of take home pay which is now used to cover basics such as petrol and energy costs.

The theme of affordability came under the safety net question in one submission which said that if the minimum wage is to be a safety net it needs to cover basic costs including food, clothing, shelter, education and health.

Submissions were concerned to point out that there needs to be greater benefits to avoid the creation of an underclass of 'working poor', saying loss of benefits was a barrier to entering the workforce. One suggested that people on a low income should have a health care card to help them cope with the expenses of day to day living. Another said the post-tax pay should not be below the poverty line:

'Please use your power to ensure that those whose labour bargaining power is weak are not treated as second class citizens and that the wages paid to them are sufficient for dignity and also for hope.'

'The FPC must attempt to bring the lowest paid workers in Australia whereby they are not working poor.'

'The wage must enable every worker to live their lives in dignity and financial independence.'

Other submissions saw the welfare system as the safety net, rather than the minimum wage.

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3.7 Providing minimum wages for junior employees, employees to whom training arrangements apply and employees with a disability ensuring they remain competitive in the labour market

Two submissions expressed the view that workers with a disability should be paid the minimum wage.

One said having a disability does not necessarily mean they are less productive than their able bodied colleagues, for example, a wheelchair does not affect productivity in a desk job. Another said they should be treated on an individual basis as disabilities and levels of disability differ greatly between individuals:

'The question of a minimum wage for the disabled is perhaps best left determined by who are professionally trained to assess the individual's degree of disability and their capacity for 'normal' function:'

'The definition of a disability should be based on the individual's ability to do a type of work:'

There was concern expressed in a number of submissions that juniors need to be on liveable wages, especially when they are self supporting as opposed to living at home. There were also views expressed that junior wages leave young people open to exploitation and that practices such as employing young people and sacking them once they reach adult wages were common. There was also a view that it is possible to earn and learn at the same time but that current wage rates make this very difficult.

The notion that unskilled adults competing with unskilled, lower-paid juniors comprised an additional barrier to employment was also raised while two submissions stated that all ages should classify for the same minimum wage:

I believe the minimum wage for juniors should be the same as the standard minimum wage, as quite often there are persons working alongside juniors doing the same work, and yet getting paid a higher rate due to being older.

The submissions concerning apprentices had similar themes to one another and were concerned that these wages needed to be a living wage. They agreed that for apprentices, costs of going to work are high and pay is low. There was agreement that higher petrol prices are impacting on low-paid Australians more, as a greater proportion of their take home pay is spent on petrol.

There was a view that low rates of pay in apprenticeships made them a less attractive career path and that low pay rates were leading to less apprentices:

The rate of pay that they then receive (on completion of a four year apprenticeship) does not reflect the commitment they have made.

One submission suggested that in addition to the minimum wage, apprentices should receive a training subsidy.

3.8 Casual loadings

Casual work was of concern for one submission:

The wage premium for casual labour should be increased to the point that it is no more attractive to transfer business risk to employees via casual employment, than it is to retain the risk and economic rewards associated with those risks.

APPENDIX F

Appendix F

1. Research

The Australian Fair Pay Commission (Commission) undertakes and commissions research as part of its wage-setting function. The Commission will also monitor the impact of its wage-setting decisions.

The Commission directs the research programme and the research is commissioned by the Australian Fair Pay Commission Secretariat.

Research reports are published in full on the website at the same time as the Commission's decisions are announced.

2. Commissioned research 2006

The following research projects were commissioned to inform the current decision of the Commission.

2.1 Interactions between wages and the tax/transfer system

Ann Harding, Alicia Payne, Quoc Ngu Vu and Richard Percival, National Centre for Social and Economic Modelling (NATSEM), University of Canberra.

This research consists of economic modelling of the interactions between earnings and the tax/transfer system, to determine the Effective Marginal Tax Rates (EMTRs) experienced across the working-age population and by a range of family types.

In summary, this research finds that:

- around two-thirds of working-age employees face an EMTR of between 30 and 40 per cent, with around 9 per cent experiencing EMTRs of more than 50 per cent and less than 1 per cent facing EMTRs of more than 80 per cent;
- women are slightly more likely to face high EMTRs than men and people with children are more likely to face high EMTRs than people without children;
- about two-thirds of the 714,000 employees facing EMTRs of more than 50 per cent are partnered people with children, while another 105,000 (15 per cent) are single parents;
- parents with young children in child care face the highest EMTRs, especially if they are the secondary earner in a couple; and
- on average, people earning low wages (up to \$15.50 per hour) face an EMTR of around 30 per cent, so would keep around 70 per cent of any pay rise awarded. Around 10 per cent of low wage-earners would retain less than half of their pay rise and only 2.5 per cent (around 50,000 workers) would retain less than 30 per cent.

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2.2 Work decisions and the tax-transfer system

Colmar Brunton Social Research Pty Ltd

This research involved a series of focus groups and explores:

- the extent of knowledge about tax and transfer provisions that affect the net financial return from paid work;
- the extent to which changes in net income affect decisions to enter or leave paid work or to change their hours of paid work; and
- other key (non-financial) factors that affect employment decisions.

Focus group participants represented a cross-section of people who were unemployed or in low-paid employment (including unstable or intermittent work), living in urban and regional locations and with a variety of demographic characteristics.

Colmar Brunton's research finds that:

- participants had some knowledge of the names of government benefits, but little detailed knowledge unless they were currently receiving payments. They had limited understanding of how benefits are affected by changes in income;
- participants generally believed that government benefits provided incentive for paid work, as they did not provide sufficient income for a comfortable standard of living;
- some benefits (eg Health Care and Pensioner Card concessions) were highly valued and could provide a disincentive to leaving benefit completely;
- participants considered that factors other than the effect on transfer entitlements were usually more important in their work decisions; and
- once exposed to detailed scenarios illustrating the interaction between earnings, tax and transfer payments, many focus group participants expressed a preference for work choices that enabled a combination of earnings and income support.

2.3 Minimum wages and employment

Professor Philip Lewis, Centre for Labour Market Research, University of Canberra

This research reviews the existing research literature on the relationship between minimum wages and employment. It:

- provides an overview of Australian and international evidence from selected countries;
- discusses the theoretical context in which these results can be considered; and
- identifies gaps in the literature and some suggestions for future research.

The research finds that:

- while there is agreement that increased wages reduce the demand for labour, there is no consensus about the extent of that effect; and
- there is evidence that changes in relative wages can affect the degree of substitution between different groups of labour - this is an area identified as requiring more research.

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2.4 Characteristics of minimum wage employees

S. McGuinness, J. Freebairn and K. Mavromaras, Melbourne Institute of Applied Economic and Social Research, University of Melbourne

This research provides an overview of the likely coverage of the standard FMW and the typical characteristics of workers earning around or below the standard FMW, using data from the Household, Income and Labour Dynamics in Australia Survey (HILDA) and from the Australian Bureau of Statistics (ABS). The analysis also compares the characteristics of this group to the characteristics of the group 'well above' the standard FMW.

Key findings from the research include:

- an estimated 9 to 11 per cent of employees earned below or around the standard FMW equivalent in 2004;
- minimum wage workers are more likely to be single, young or old, with less than Year 10 education, with shorter occupational tenure and/or on casual employment contracts;
- women and migrants from non English-speaking countries were over-represented among those who worked full-time;
- many minimum wage workers did not live in low-income households. The majority of those working full-time lived in middle-income households, while part-time minimum wage workers were somewhat more concentrated in the lower deciles of household income;
- most full-time workers earning around or below minimum wage appeared to be in stable employment, but part-time workers were much more likely to experience changes in labour force status from year to year; and
- between 2001 and 2004, some 60 per cent of full-time minimum wage workers and 40 per cent of part-time workers made a successful transition to higher paid employment. Almost one quarter of part-timers also left the paid workforce.

2.5 An updated profile of the minimum wage workforce in Australia

Josh Healy and Sue Richardson, National Institute of Labour Studies, Flinders University, Adelaide.

This research provides an updated profile of workers receiving the adult standard Federal Minimum Wage (standard FMW). The report examines:

- the number and proportion of workers paid up to or slightly above the standard FMW;
- the characteristics of these workers; and
- the relative income positions of their households.

The bulk of the analysis is based on data from Wave 4 of the HILDA Survey, supplemented by data from the 2003-04 ABS Survey of Income and Housing.

Key findings of the report are:

- up to 10 per cent or 1.4 million adult employees (excluding juniors and other non-employees) receive an hourly wage less than or equal to the standard FMW, and are potentially directly or indirectly affected by standard FMW decisions;
- when compared with other adult employees, standard FMW employees are more likely to be young, lacking in post-school qualifications, part-time or casual workers in low-skilled jobs, unmarried (especially if male) and classified as non-dependent children.

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They are disproportionately located in outer regional areas but no more likely than other employees to be migrants from non-English speaking countries. They are less likely to be satisfied with their pay but are no more dissatisfied than other workers with other aspects of their work or with their lives in general; and

- when compared with other employees, they are disproportionately found in the lowest deciles of the distribution of equivalent household disposable income. However, their concentration in lower deciles is less pronounced in a distribution that includes all adults in the labour force, and when compared with the Australian population as a whole, they are mostly found in the middle of the household income distribution.

2.6 Characteristics of employers of the low paid

Australian Centre for Research in Employment and Work (ACREW), Faculty of Business and Economics, Monash University.

The research involved a pilot survey to identify issues that will affect future surveys to gather information about the characteristics of employers who predominantly engage 'low-paid' employees.

Forty-eight per cent of respondent employers (631 employers) indicated that they did not pay any of their adult employees between \$12 and \$16 per hour, while 18 per cent (235 employers) indicated that at least 50 per cent of their workforce is paid between \$12 and \$16 per hour.

Key implications for future research include the following:

- there is a lack of research into employers of the low paid, and further research should aim to provide a more comprehensive understanding of the economic, organisational, and work-related factors associated with low-paid work;
- the Australian Bureau of Statistics Business Register (ABSBR) is a taxation-based register updated quarterly to take account of new businesses, businesses which have ceased employing, etc. The ABSBR is an ideal sampling frame for this type of survey;
- two major limitations with the ABSBR are that it is limited to private sector employers, and parliamentary approval is required to use it; therefore, it is not feasible to use the ABSBR within a short time-frame;
- using a large stratified random sample will reduce sampling error and increase precision;
- this survey is limited by the short response times allowed, a particular concern in remote areas; and
- consideration of the use of multiple methods of data collection, such as face-to-face or telephone interviews to overcome the limitations of self-completed, written questionnaires and to provide the opportunity for probing of responses.

2.7 What are the characteristics of the employers of the low paid in Australia?

S. McGuinness, E. Webster, K. Mavromaras, Melbourne Institute of Applied Economic and Social Research, University of Melbourne.

This research examines both the incidence of low-wage employment and the distribution of employers of the low paid in Australia, using data from the May 2004 Survey of Employee Earnings and Hours.

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Key findings include:

- the proportion of employees earning less than \$12 per hour (which was close to the federal minimum wage in May 2004) averaged across all employers is approximately 7 per cent. When the hourly wage rates of casual staff are adjusted for casual loadings, this number increases to about 14 per cent;
- the percentage of employers of the low paid that paid the majority of their workforce less than \$12 per hour was 5.2 per cent. After removing estimated loadings for casual employees, this increases to 11.4 per cent;
- most employers of the low paid were in the Retail trade, Construction, manufacturing, Accommodation, cafes and restaurants and Property and business services industries;
- the majority of these employers are in the non-traded sector;
- firms in Queensland and Tasmania have, on average, larger proportions of low-paid workers than the other states and territories, while the ACT and Northern Territory have lower proportions. Queensland has the highest percentage of employers of the low-paid when the wage rates are adjusted for casual loadings; and
- employers of the low-paid are more likely to be in sectors that have low labour costs relative to turnover and have relatively high rates of businesses recording a loss. Geographical differences in the incidence of employers of the low paid remain even when industry effects are accounted for.

3. Forward Research Agenda

A number of public submissions suggest topics for further research and/or analysis. These suggestions fall into five broad subject areas (summarised in Table F.1):

- the role and structure of minimum wage provisions;
- characteristics of the low-paid workforce, including the relationship and movements between low-paid and other jobs;
- the economic effects of minimum wages, both micro-economic (supply of, and demand for, low-paid employment, industry effects) and broader macro-economic effects;
- the effect of minimum wages and minimum wage decisions on the labour market performance of vulnerable groups, such as young and mature-aged, women, people with disability, long-term unemployed; and
- the adequacy of the wages/tax/transfer safety net.

The Secretariat will undertake further consultation with stakeholders and seek advice on priority areas of research to assist in informing the Commission's decisions on research for the next minimum wage decision.

APPENDIX F

Table F.1: Research priorities and proposals identified in public submissions

Community/Welfare Sector

	Minimum/Award wages	Low-paid workforce	Economic effects	Vulnerable groups	Safety net
Australian Council of Social Service					Benchmarks of adequate living standards, including update of Budget Standards research.
Australian Catholic Council for Employment Relations					Research on needs of single-income couple and single parent families with children.
Australian Young Christian Workers				Annual statistics on labour force participation, wages and incomes of young people, including casuals, apprentices, trainees.	Analysis of the cost of living for young people, including costs of work.
Brotherhood of St Laurence/Anglicare		Low pay/no pay dynamics	Australian research on relationship between minimum wage and employment		
Caxton Legal Centre				Effects of low pay on housing affordability for vulnerable young people.	Research on true costs of living, including costs of supporting children before and after separation.
Disability Discrimination Legal Service		Comprehensive longitudinal study to measure the true effects of the FMW decision.			
Family Services Australia					Post-separation finances of minimum-wage households.
Mission Australia					New research into 'decent' standard of living.
National Employment Services Association		Movement from minimum pay to higher paid positions (career path progression)		Additional costs of long term unemployed/ disadvantaged job seekers moving from welfare to work.	
South Australian Council of Social Service					Benchmarks of adequate living standards, including update of Budget Standards research.
Youth Affairs Council of WA					Develop comprehensive 'safety net' benchmarks

APPENDIX F

Employer representative organisations

	Minimum/Award wages	Low-paid workforce	Economic effects	Vulnerable groups	Safety net
Australian Chamber of Commerce and Industry	Develop most appropriate basis for international comparisons of minimum wages.	Detailed analysis of unreleased EEH data on minimum wage coverage. Longitudinal study of longer-term outcomes of people on minimum or award wages		Econometric analysis of relationship between minimum wage and teenage employment. Research on options for further rationalisation of piece rates and junior rates.	
Australian Industry Group		Further analysis of the low paid – e.g long hours working, cash economy, life-cycle stages vs persistent low pay.	Relationship between pay increases and costs to employers. Do EMTRs really affect labour supply? Effects on the overall economy, including inflation, employment, participation rate.	Differential impacts of wages rises on various groups - people with disability, women, mature-aged, young, apprentices, trainees.	Extent to which the low paid have access to other resources (family, retirement income, etc)
Australian Hotels Association			Investigate current and anticipated economic conditions and likely impact on employment.		
Employers First			Importance of minimum wage among factors affecting employers hiring decisions. Employer reactions to increases in minimum wages.		
Printing Industries Association			Industry by industry analysis to determine economic sustainability of wage increases.		
Australian Council of Trade Unions		Tripartite research on numbers and demographic characteristics of low-paid workers.			
National Working Women's Centres				Analysis of women's wages and pay inequity in Australia. Impact of wage decisions on CDEP participants. Link between financial independence of low-paid women and their capacity to leave violent relationships.	

APPENDIX F

Government

	Minimum/Award wages	Low-paid workforce	Economic effects	Vulnerable groups	Safety net
Australian Government	Casual loadings.				
Victoria/Northern Territory Governments			Research on the effects and impact on firms of minimum wages, esp. on hiring decisions and internal structures.		
Human Rights and Equal Opportunity Commission					Costs for people with different disabilities to enter and remain in open employment. Pay gap between men and women in Australia and the role of the FMW. Comparative work value in female-dominated occupations.
NSW Commission for Children & Young People					Extent and impact of removal of penalty and allowance rates in AWAs on wages of children and young people.