

Productivity Commission Inquiry into the Workplace Relations Framework

Submission by Australian Catholic Council for Employment Relations

September 2015

This submission by the Australian Catholic Council for Employment Relations (ACCER) falls into three parts:

- A. Matters concerning the nature and purpose of minimum wage rates, including matters addressed in the public hearing on 17 September 2015. These are covered at pages 2 to 12 and cover recognised human rights, quantifying the right to a minimum wage, changes in the composition of the labour market, framing good public policy on family transfers and the possible introduction of an Earned Income Tax Credit scheme. Particular proposals are put forward at paragraphs 30, 31, 34 and 35.
- B. Specific responses to some of the Draft Recommendations published by the Productivity Commission in its Draft Report of August 2015. These are covered at pages 13 to 17. Particular proposals are put forward at paragraphs 49, 51 and 53.
- C. Revised Poverty Lines as a result of data published by the Australian Bureau of Statistics on 4 September 2015 in its report *Household Income and Income Distribution 2013-14*. These are covered at pages 18 to 26.

The ebook *Working Australia, 2015: wages, families and poverty*, which is referred to in this submission can be found at:

<http://www.accer.asn.au/index.php/submissions/tribunal-submissions/131-working-australia-2015-wages-families-and-poverty/file>

A. The nature and application of minimum wage rights

Recognised human rights

1. The *Universal Declaration of Human Rights* recognises that everyone who works has “the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection” (Article 23(3)). This declaration of rights has been given effect to by the United Nations’ *International Covenant on Economic, Social and Cultural Rights*. The International Labour Organisation’s *Minimum Wage Fixing Convention, 1970* identifies the matters that should be taken into account when setting minimum wages. Australia is bound by both conventions, and the terms of the *Fair Work Act 2009* concerning the setting of minimum wages are consistent with Australia’s international obligations.
2. The declaration regarding wages in the *Universal Declaration of Human Rights* reflects the purpose of what is widely called the “living wage”, a term that has been used in public advocacy and industrial relations in Australia and elsewhere since the late nineteenth century. A common feature of the declaration, the conventions and the living wage principle is that minimum wage rates have to be set after taking into account the position of workers with family responsibilities.
3. This fundamental obligation and entitlement requires the setting of a minimum wage that will apply to workers with and without family responsibilities. The wage that is sufficient for workers with family responsibilities will be more than the wage that is needed to provide a similar standard of living for workers without family responsibilities. In practice, the gap between the two will be reduced by family payments made by governments. Unless family payments cover the full costs of dependants, minimum wages that are set in conformity with these recognised rights will have a component for family support and, of necessity, the worker without family responsibilities will have a degree of overcompensation in his or her wage packet. This reality has been known since minimum wages were first sought and first provided by law; for example, when minimum wages were first set in Australia for adult male workers there were many adult men who were without family responsibilities. Some would have been living in single accommodation, but it is likely that most of them were living in shared family households. This extra cost is accepted because of the high value that is placed on the care and nurturing of children and the promotion and protection of family relationships.

Quantifying the right to a minimum wage

4. The application of the right to a sufficient minimum wage recognised in the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Minimum Wage Fixing Convention, 1970* and the living wage principle is not a simple one. Nor is the application of the statutory right that is found in the minimum wage provisions of the *Fair Work Act 2009*, a right which is consistent with these prescriptions. The quantification of a minimum wage required to give effect to the right has to be set in the economic context of the jurisdiction setting the wage. The right that is recognised does not extend to the setting of a minimum wage that is required in exceptional cases, such as the wage that would be needed to support a family with a dozen children.
5. The test for the proper application of the right that ACCER has argued for is based on the ordinary and expected circumstances, which would include the circumstances of couple parent families with two children and sole parent families with two children. Of course, single persons would fall into the ordinary and expected test. A minimum wage should be sufficient for all three. Where transfers do not cover the needs of dependants, a wage that is sufficient for a single person, but not for the others, would be inadequate and not in compliance with the recognised right.
6. The *Universal Declaration of Human Rights* recognises the right to “an existence worthy of human dignity”. This may be regarded as meaning a standard of living that is free of, and above, poverty. Poverty is more familiar and operational term because it is capable of adaption across countries and over time. It is a good reference point for discussion, but it does not provide a universally accepted measurement.
7. Poverty has been the reference point for discussion about the level of minimum wages in various decisions of the Fair Work Commission (FWC). In its June 2015 decision, for example, the FWC referred to its statutory obligation to take into account, among other factors, “relative living standards and the needs of the low paid” and said:

“Poverty entails an inability to buy the material resources required to meet basic needs. We accept that if the low paid are forced to live in poverty then their needs are not being met and that those in full-time employment can reasonably expect a standard of living that exceeds poverty levels. We also accept that information about the low paid and award-reliant employees at risk of poverty is relevant in assessing relative living standards, given poverty measures typically involve benchmarks of community incomes or expenditure standards. (*Annual Wage Review 2014-15, decision*, paragraph [383], footnote omitted.)

8. The FWC's statement that "those in full-time employment can reasonably expect a standard of living that exceeds poverty levels" is broad and needs some qualification. This point was made earlier in the decision when the FWC said it "...is not possible for changes in the NMW [National Minimum Wage] and modern award minimum wages to ensure that every employed family, whatever their composition, has sufficient income to meet their material needs" (paragraph [338]).
9. However, the FWC has given no indication as to which families can reasonably expect protection from poverty and be provided with a standard that exceeds poverty. After six decisions under the *Fair Work Act*, we still have no answer from the FWC as to which workers are to be supported at a standard of living that exceeds poverty. Nor has there been any serious discussion of this issue. This is a major omission in the jurisprudence of Australian minimum wage setting. ACCER has argued that the obligation to protect and provide for workers covers the ordinary and expected circumstances of workers, not the unusual or exceptional. This does not provide a certain answer, but it is preferable to the absence of any attempt to delineate the workers who "can reasonably expect a standard of living that exceeds poverty levels".

Changes in the labour force

10. In recent years there has been increasing discussion and research concerning the profile of workers who depend on the wage safety net, either at the National Minimum Wage (NMW) level or at some higher award rate of pay. It can be accepted (at least for present purposes) that there has been an increase in the number of workers who do not have family responsibilities and who are not sole breadwinners in their households. The reasons for this change include the extension of trading hours in retail and hospitality and the need for students to pay for the costs of education that were once paid out of the public purse. Generally, juniors do not have family responsibilities. Over the last 50 years the proportion of full time junior workers has fallen, but the proportion of part time junior workers has risen. The net effect of this is uncertain: it may be that the proportion of total working hours worked by juniors may have actually fallen over this period.
11. This change in the labour force has been most pronounced in regard to low skilled workers who are entitled to a wage rate from the NMW through to a wage just below the wage rate set for trade-qualified workers, commonly referred to as the C10 rate. This low skilled group within the workforce is more likely to rely on minimum wage

rates than more skilled workers. An effect of the change in the labour force is to bring within this low paid group secondary income earners living in higher income households; for example, the sons and daughters of lawyers who work in retail on minimum wage rates in order to pay for their university fees.

12. As we have seen from past annual wage reviews, the submissions to the current inquiry by the Productivity Commission and the Commission's Draft Report, the fact that a large number of workers without family responsibilities are paid a minimum wage rate has entered into the debate about the level of minimum wages in Australia. Some argue that this should be a limiting factor on the setting of minimum wage rates. This argument ignores the fact that the fundamental purpose of setting a safety net is to provide a safety net for those who need it, not for those who do not need it. The fact that the son of a judge or a merchant banker is working in a bottle shop at award wages to pay his tuition fees, or a trip to Europe, should have no effect on the setting of a rate of pay for a cleaner who struggles to provide a basic education for his or her children. We can generalise this point: the fact that there are substantial numbers of workers in the wealthiest 20% of households who supplement their household income by work on minimum wage rates should not compromise the rights of those workers with family responsibilities living in the poorest 20% of households.
13. The fact that some workers do not have family responsibilities does not qualify or limit the right of workers with family responsibilities to a decent wage. A minimum wage cannot be reduced by an averaging across these two groups. The relative size of the cohorts of workers with and without family responsibilities cannot affect the obligation to set a wage that is appropriate for workers with family responsibilities. It would not matter if the proportion of workers with family responsibilities among the low skilled and low paid workforce has fallen from, let us assume, 65% to 45% over the last 40 years.
14. If the "overcompensation" of the better off sections of the community is unacceptable, the answer is not to penalise the poor, but to make changes that limit or remove the need for that overcompensation. This means the use of the tax/transfer system to target the needs of low paid workers with family responsibilities, so that the overcompensation is limited or removed and wages can be less than what would otherwise be needed in order to give effect to the recognised right of workers with family responsibilities.

Framing good public policy

15. This change in the labour force profile is relevant to the formulation of good public policy. Absent family transfers, the costs of family support are imposed on the community through the wages system. The wage rates impose costs on employers, which are passed on to the community through the price of goods and services. In an economy protected by a tariff system this might occur without undue impact on employment levels. Where an economy is globalised, to some extent or another, wage costs might affect the capacity of individual firms to operate and employ. In these circumstances there is good reason to transfer the costs of family support carried by the community from the costs of goods and services to the government's taxes and transfers systems. Good public policy does not require an either/or choice, but an informed balancing of the contributions of the wage packet and the public purse. We should expect that increasing globalisation will increase the contribution of the public purse relative to the contribution of the wage packet.
16. The transfer of family support to the family payments system has already occurred in Australia. In January 2015 a NMW-dependent sole breadwinner family with two children (aged 8 and 12) received 39.6% of its disposable income from government transfers; see *Working Australia, 2015: wages, families and poverty*, Table 28. (This figure applies to couple parent and sole parent families because the family transfers are the same in both cases.) If the sole breadwinner was paid the C10 wage rate, or its equivalent, the figure was a little lower: 36.7% (*ibid.* Table 30). These are very substantial figures, perhaps unimaginable 40 years ago. We know what the proportion at the lowest minimum wage rate was in 1973 from data published by the Commonwealth's Commission of Inquiry into Poverty (Poverty Commission) which operated in the early 1970s. In August 1973 the single person on the lowest award rate (averaged across the States) had a net income of \$54.00 per week, whereas the disposable income for a couple with two children and dependent on the same wage rate had a disposable income of \$58.50 per week (*ibid.* Table 11). The proportion of the family's income from the public purse was 7.7%, a small fraction of the 39.6% in January 2015.
17. This very substantial increase in family payments, which partly came through the increases in the "social wage" of the 1980s, has taken pressure off the wages system. This was intended: wage increases were moderated because of the targeting provided

by the increase in family transfers. It is often said in public discussion that family payments came under the Howard Governments. In one respect it is true. Under the Howard Governments there was a major extension of family payments into middle income households, but the impact on lower income families was limited.

18. The limited impact on low income families of the recent increases in family payments is evident from a comparison over the period January 2001 to January 2015. For the NMW-dependent family referred to earlier the proportion rose from 37.5% to 39.6%. For the C10-dependent family the proportion rose from 33.9% to 36.7% (*ibid.* Tables 28 and 30). In both cases family transfers increased by 93.4%, compared to an increase of 228.8% for families on Average Weekly Ordinary Time Earnings (*ibid.* Table 19). Substantial as they are, family transfers do not cover the costs of dependants in these, or any other, households. No government had adopted a policy to cover these costs.
19. We can see the impact of the changing proportions of wages and transfers by reference to the changes in minimum wages and in Household Disposable Income (HDI), as calculated by the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute). In January 2015 HDI per head was 15.23 times higher than in August 1973, compared to disposable incomes that were 15.16 times higher for the couple with two children family and 10.76 times higher for the single worker (*ibid.* Table 11). The position for families appears to be consistent with economic growth, but the family increase came off a very low base. The fact that so many low paid workers and their families were living in poverty in the early 1970s was a reason for the establishment of the Poverty Commission. HDI changes over such a long period may not be a perfect yardstick for measuring changes in wages, but they demonstrate the impact that transfers have had on wage increases over this period. These comparisons show that current minimum wage rates have a much smaller component of family support than they did in 1973.
20. It must be noted, however, that over the period January 2001 to January 2015, the HDI increased by 93.1%, but the net wage received by single NMW-dependent workers increased by only 68% and the disposable income of the NMW-dependent family increased by only 76%. These post-January 2001 figures highlight the complaint that ACCER has made about wage decisions in recent years: wage levels have failed to keep up with increases in community incomes and the inadequacy of low-skilled wage

rates to support working families has been compounded by this failure.

21. The post-January 2001 developments are reflected in rising poverty levels to which we refer later in section C. If disposable incomes lag HDI to the extent that they have, you would expect that families will fall below, or closer to, poverty lines. ACCER has argued that, for families, wage rates have fallen too fast and transfers have not increased fast enough over the last decade and a half. For single workers, the fall in the relative value of their wages has been so great that there is now a real issue about the sufficiency of the NMW for a single person. The long term change has had a notable consequence: a single low skilled worker in the 1960s, even if only paid at the lower rate that then applied to most women, had significant capacity to save for a home and prepare for family life. This capacity to save has been lost and the rates now set for low skilled workers do not provide sufficient capacity to save for a home and prepare for family life.
22. There is a clear economic case in support of an increase in family transfers. It facilitates, and is needed by, the transition to a more open economy. A moral consequence of the application of the *law of comparative advantage* is that the businesses and people who are advantaged by the economic change have to make an appropriate contribution to the support of those who are disadvantaged by the wider impact of that change. It should also be a political consequence.
23. Despite the economic case for changing the respective contributions that the public purse and the wage packet make to the support of families, there has been, however, some resistance in Australia and elsewhere to increasing the public's contribution. Some argue that employers should not be allowed to shift the cost of their obligation to pay a decent wage. Perhaps the best-known example of this kind of argument is in the United States in respect of Wal-Mart where the wages paid have been so low that workers are forced to rely on government welfare. In an ideal world, low skilled workers would be able provide for their families by their own wages, but this will not be possible if we are to confront the challenges of globalisation.
24. Over the years various employer submissions in annual wage reviews have sought to limit wage increases on the basis that wage increases are a blunt instrument and that there are better targeted means available to meet the needs of the low paid. These arguments can be found in many minimum wage debates around the world. Not once, to our knowledge, has an employer body made formal representations to the

Government's budgetary process for an increase in transfer payments and the taxation that would support that increased expenditure so that there would be a basis for the wage tribunal limiting a wage increase.

25. We know that government support for families will decrease, not increase. The Schoolkids Bonus will finish at the end of 2016. This will mean the loss of \$23.57 per week for a family having a child in primary education and a child in secondary education. The proposed changes to Family Tax Benefits, Part B (FTB B) would be more substantial. The May 2014 Budget sought to withdraw FTB B weekly payments from families who do not have a child under 6 years of age and to convert the annual supplement into a Single Income Family Supplement of \$300 per year, or \$5.75 per week. The 2014 proposal is yet to pass the Senate and is now associated with the still unresolved matters in the May 2015 Budget. In most cases the proposal would cut the income of single breadwinner families with school age children by more than \$54.45 per week. Many low income working families are already living in poverty. The proposal would put more children into poverty; and those already in poverty would be in deeper poverty. Priority needs to be given to protecting children against poverty. There has been very little public discussion about the implications for wages arising from the implementation of the proposed FTB B changes.
26. The FTB B issue is not just about the quantum that the public purse contributes to household incomes. There is an important principle and a key plank of social policy involved in the issue. FTB B helps parents make an effective choice as to how they will balance work and family responsibilities. If implemented, the proposal would place economic pressure on couple parent families to abandon plans to have one of them stay at home to care for their children. In sole parent families, it would place more financial pressure on the parent to work more hours than they have had to in the past.
27. The need for families to have an effective choice as to how they balance their work and family responsibilities is discussed in the following extract from the report of the Poverty Commission:

“A further way in which many low income families are often placed under great stress is in relation to the freedom parents have to decide how they will divide their time between working, looking after children, and other activities. Because of financial pressures some parents are confronted with the choice of spending more time earning money and less time at home or struggling on an income below the poverty line....

Some fathers compensate for their low wages by working more hours or working two jobs. In many instances this may create considerable pressure on parents and their children....

Inadequate wages and pensions place considerable pressure on mothers to work...The mere fact of a mother working is not necessarily detrimental to the family. The relationship between a mother working and child development has been hotly debated in recent years, but the research on the subject has been inconclusive. The pertinent issue is the freedom of mothers to choose whether or not to work, so that each family can reach a solution which is satisfactory for its members. The pressure to work created by an inadequate income means that some mothers are less free to choose.” (*First Main Report, April 1975*, volume 1, page 204. Footnote omitted and emphasis added.)

28. The position articulated by the Poverty Commission 40 years ago has been an underlying principle of Commonwealth budgetary support for families. It has been a principle that has commanded support from both sides of Parliament for decades and remains just as relevant now as it was when articulated. The increasing budgetary support for families, through improvements in the social safety net, has been taken into account in wage setting decisions over recent decades, with the effect that wages are lower than they would otherwise need to be in order to provide the same standard of living. The proposed reduction in the social safety net would require increases in low income safety net wages and reverse the practice in recent decades of limiting wage increases by reason of successive increases in the social safety net.

The EITC and the Five Economists

29. The Productivity Commission’s Draft Report (at Chapter 10) canvasses the utility of the introduction of an Earned Income Tax Credit (EITC). At page 385 it notes that it “is difficult to reach a firm view on whether an EITC in Australia could be feasible or justified”. ACCER’s view is that basic goals of an EITC can and should be pursued through changes to the existing tax and transfer arrangements.
30. First, we propose that a case be made for the progressive elimination of income tax at the level of the NMW, on the basis that it could be factored into future annual wage review decisions. The imposition of income tax on a worker receiving the NMW, currently \$63.15 per week, or 9.6%, operates as a tax on employment. It is the NMW, net of tax, rather than before tax, which determines its level. For a given standard of living, the costs of employment will be lower if no income tax is payable. The progressive reduction of income tax on the NMW would move the costs of job creation to the community as a whole.

31. Second, we propose that the level of family payments be increased, at least for lower income levels, so that these changes can be taken into account in annual wage review decisions.
32. Both of these initiatives are within the scope of the kind of proposals by the Five Economists, which are discussed in the Draft Report.
33. One of the issues that would need to be considered in the context of a proposed trade-off is the inadequacy of the NMW to meet the needs of workers with family responsibilities. ACCER would oppose a trade-off that does not recognise and take appropriate account of this matter. To be effective, any change in the relative contributions would need to be accompanied by a framework for identifying and quantifying the needs of low income families, including poverty lines and other measures of disadvantage. Aspects of this matter are set out in section C, below.
34. In order to set the ground for this kind of public discussion, we propose that the Productivity Commission include in its final report an assesment of the advantages and disadvantages of changing the relative contributions of the wage packet and the public purse in their support of the living standards of low income working families. We believe this would be an important contribution to the public debate and cause closer attention to be given to the level of family transfers.
35. Chapter 10 of the Draft Report refers to various ways in which the non-wage costs of employers might be reduced. One of the arguments that has been used in public advocacy urging a cut in the corporate tax rate is that it will promote employment. Rather than using corporate tax rates for this purpose, ACCER proposes the introduction of a rebate on statutory superannuation contributions, now at 9.5% of wages, in order to provide a more targeted and effective means of cutting the costs of employment and promoting employment. ACCER asks that the Commission gives close consideration to the feasibility and effectiveness of this proposal.
36. We return to the concluding paragraphs of ACCER's March 2015 submission:

“89. ACCER submits that any policy proposal in regard to minimum wages has to be tested and considered by reference to its impact on the common good and the protection of workers and their families against poverty and social exclusion. The best way out of poverty is a job that pays a living wage.

90. This task cannot be undertaken unless and until an assessment is made of the needs of workers and their families and an assessment is made of the actual and minimally acceptable relative living standards of those workers and their families

who depend on the lowest minimum wage rates. They are entitled to be treated fairly and to live in dignity.

91. The kind of objectives in the previous paragraph cannot be supplied by wages alone in a developed and globalised economy. There are two realities that must be addressed in the formulation of a fair and sustainable wages policy: first, wages have to be supplemented by transfer payments and, second, governments need to promote employment by carefully scrutinising the non-wage costs of businesses. The first of these tasks requires the consideration of the balance between the public purse and the wage packet in the support of families. It is clear that, at least in the foreseeable future, the public purse cannot provide for all of the needs of the dependants of low paid workers with family responsibilities and that their wages must have a component for the support of dependants. The second, like the first, requires an acceptance that the costs of job creation and the maintenance of employment is a task of government, based on a fair tax system where burdens and benefits are shared according to capacities and needs. To reduce wages to unacceptable levels in the hope of creating and maintaining jobs is morally unacceptable because there are other ways in which employment can be promoted and protected.”

37. The last part of this passage is based on the Statement by the Australian Catholic Bishops in November 2005 regarding aspects of the then proposed *Work Choices* legislation, which included the following: “It is not morally acceptable to reduce the scourge of unemployment by allowing wages and conditions of employment to fall below the level that is needed by workers to sustain a decent standard of living”; see *Working Australia, 2015: wages, families and poverty*, page 205. The various ways in which employment can be promoted without an imposition on low paid workers shows why it is morally unacceptable to reduce wages to below the level that is needed to attain a decent standard of living. The costs of job creation are costs that should be carried by the community as a whole, not the poorest sections of it. A morally acceptable and economically sustainable wages policy depends on a morally acceptable national budget, with the burdens and benefits being shared according to needs and capacities.

B. Responses to Draft Report

Introduction: the importance of the Fair Work Commission's role

38. For more than a century, the resolution of industrial disputes and the setting of minimum terms and conditions of employment have been in the hands of various kinds of independent industrial tribunals. Their independence from governments has been critical to their public standing. These bodies have been obliged by the rules of natural justice and/or statutory provisions to give the relevant parties the opportunity to present evidence and argument and to decide the matters in issue free of bias. These tribunals have played a significant role in the promotion of social cohesion and confidence in our general system of government. It is a form of government of which Australia can be very proud. We should be very wary of introducing changes that would reduce this role. Rather, the emphasis in any changes to the system should be on the promotion of the independence of these tribunals and the strengthening of their decision-making processes.
39. The functions and powers that are now conferred on the FWC under the *Fair Work Act 2009* are critical to the promotion of social justice and harmony. Many poor and marginalised workers, and their families, are entirely dependent on the decisions of the FWC. It is vital to the health of our society that the FWC operates within what is seen as a fair statutory framework and that its decisions are fair. In order for this to occur, it is necessary for the tribunal to be, and be seen to be, independent of government and vested interests (including those interests that are particularly championed by governments of different political persuasions) and that it makes its decisions fairly, on the basis of evidence and argument, and is transparent in the way that it hears and determines matters.
40. ACCER is a strong supporter of the current regulatory system, but accepts that some changes could be introduced to enhance the effectiveness of the system.

Transparency in decision-making

41. Section 577(c) of the *Fair Work Act* requires the FWC to "perform its functions and exercise its powers in a manner that ... is open and transparent". Most decisions made by the FWC are made at first instance and, should there be a failure to be open and transparent, an appeal bench can rectify the failure on a merits review. A failure to deal with matters raised at first instance can be corrected on appeal.

42. On the other hand, there is no merits review from a decision of the FWC in an annual wage review. This means that the FWC can simply respond to a matter by saying, for example, that it is "not persuaded" on a matter which it has merely recorded as having been put forward. Over the past few years ACCER has sought an extra increase in the NMW of \$10.00 per week in order to target poverty among low income working families. Apart from the FWC's passing reference to this claim, the most we have seen in response has been that the FWC was not persuaded to award the claim. No reasons have been given.
43. In other cases, the FWC might simply ignore a matter of substance raised by a party. For example, for the last five years, the Australian Council of Trade Unions has sought a combination of percentage and dollar wage increases so that lower paid workers, those under the C10 rate, would receive a dollar increase that would deliver slightly higher percentage increases than those fixed for other workers. Each time the claim has been rejected without reasons being given; and in the face of evidence demonstrating poverty among low paid workers and their families.
44. This is not just a matter of acknowledging and dealing with claims lodged by the parties. It extends to the paucity of reasoning in the published decisions. ACCER has raised its concerns about the failure of the FWC to provide transparent reasoning; for example, in regard to the FWC's failure target poverty see *Working Australia, 2015: wages, families and poverty*, paragraphs 417-51.
45. The Australian Chamber of Commerce and Industry (ACCI) has also raised its concerns about the reasoning in the FWC's decisions.

“Given that a broad exercise of judgement guides the determination of the Panel, detailed explanation of the factors that most significantly influenced the Panel's decision making would assist the parties in approaching future annual wage reviews. To ensure that all statutory considerations are appropriately taken into account, it is very important to justify how these considerations have been interpreted and operationalised and how judgements have been formed about the relationship between these considerations and changes in minimum and award wages, both in general and in relation to prevailing circumstances.” (ACCI submission, March 2015, page 12)
46. The FWC responded to this submission at paragraphs [7] to [12] of its decision, where the substance of its response is “it is not feasible to quantify the weight given to particular factors in balancing the various considerations prescribed by the Act” (paragraph [12]). However, this did not address the substance of ACCI's submission.
47. The FWC cannot be expected to cover every matter raised before it, but fairness in

decision-making requires that matters of significance should be addressed in an open and transparent way.

48. The judgments of the Full Court of the Federal Court of Australia in *Minister for Immigration and Citizenship v Khadgi* [2010] FCAFC 145 and *Lafu v Minister for Immigration and Citizenship* [2009] FCAFC 140 provide a guide as to how the FWC should approach the wage setting provisions in section 284(1) of the *Fair Work Act*. The principles stated in those judgments require the FWC to engage in “an active intellectual process” in which each of the prescribed matters receives “genuine” consideration. They mean that, using the words of *Lafu*, the FWC must “genuinely have regard to each and every one of those considerations [in section 284(1)] and must engage actively and intellectually with each and every one of those considerations by thinking about each of them and by determining how and to what extent (if at all) each of those criteria might feed into the deliberative process and the ultimate decision”. This requires a manifest testing of the arguments and material advanced.
49. ACCER is opposed to a merits appeal from FWC to some other tribunal, as some have suggested. However, in order to emphasise the application of the requirement to be open and transparent to annual wage reviews ACCER proposes that a new subsection be added to section 289 which would require that, in publishing its reasons for decisions, the FWC set out in an open and transparent way the matters it has taken into account when determining the minimum wages it has set and the way those matters were taken into account.

Recommendations on the structure and governance of the FWC

50. *Draft Recommendation 3.1* proposes the splitting of the FWC into two separate divisions. ACCER believes that the current structure of the FWC is sound and the establishment of two divisions as proposed would be undesirable. The proposal to have two divisions would mean that members of the FWC with practical experience in day to day workplace relations would have no responsibility for awards, while experts in other disciplines would be charged with setting and amending award terms and conditions. The nature and scope of awards, for example, the setting and variation of award classifications, requires the practical experience of members who could only be appointed to the Tribunal Division under the Draft Recommendation.
51. A more appropriate course would be to transfer some award functions to the Expert Panel on a case by case basis. ACCER proposes that the President of the FWC should

have the power, on the President's own motion or on the application by a party, to refer an award matter to the Expert Panel.

52. *Draft Recommendation 3.2* proposes a new system for limited term appointments to the FWC, with a form of oversight that is effectively placed in the hands of the government of the day. This would be a fundamental weakening of the independence of the FWC. This is particularly important because, at times, the FWC stands between the sectional interests that governments generally support and parties that come to the FWC for justice. The dangers are compounded by the fact that the government of the day is a regular party in the FWC. The legislation's appeal provisions and section 581A are sufficient to protect the public interest.
53. *Draft Recommendation 3.3* proposes a new system for appointments to the FWC. ACCER is opposed to the establishment of the proposed panel as it would add another level of bureaucracy. However, it would support the establishment of a system for advertising positions, consultations between jurisdictions and external advice if needed.
54. *Draft recommendation 3.4* proposes different qualifications for appointment to each of the proposed Divisions. Lawyers are excluded from the Minimum Standards Division. The exclusion of lawyers appears to reveal an intention that members from other professions would rely on their own expertise to make a decision. While experience in one or more of the nominated disciplines would be of substantial general assistance, it is the evidence and not a member's own expertise that should determine decisions. The essential skill in performing this function is the ability to understand and evaluate evidence and argument dispassionately. The proposal for a requirement that a person be "widely seen as having an unbiased and credible framework" for making decisions is, in our view, impractical and unnecessary.

Response to penalty rates recommendation

55. ACCER is opposed to Recommendation 14.1 and 14.2. It is important that penalty rates are set, and co-ordinated, on the basis of the relevant principle. The principle underlying penalty rates concerns the need to compensate workers for the disabilities associated with work in unsociable hours. The proposal to introduce lower Sunday penalty rates for particular classes of workers (who are largely low paid workers) is contrary to principle and to the fair and equitable treatment of workers. The disabilities are the same and different levels of compensation should not apply. The

Attachment to ACCER's March 2015 submission sets out this position in more detail. Furthermore, the proposal that these classes of workers only receive the Saturday penalty for Sunday work is inconsistent with the general acceptance in the community, as reflected in current penalty rates, that the various amenities and disabilities of Sundays are not the same as those of Saturdays.

C. Poverty Lines Updated

56. ACCER's submissions in March (recorded as Submission 232) drew attention to the development of relative poverty lines and argued that they provide the most useful tools for analysing relative living standards and estimating needs; see paragraphs 62 to 82. In our supplementary submission of April 2015 (recorded as Submission 254) we provided further information on this aspect, see paragraphs 19 to 21. The latter material was drawn from ACCER's submission to the Annual Wage Review 2014-15 and was based on data prepared by the FWC and published in its then most recent edition of its *Statistical Report*.
57. The poverty lines used by the FWC and referred to in ACCER's submissions were based on data published in *Household Income and Distribution, 2011-12*, published by the Australian Bureau of Statistics (ABS) in August 2013 and supplemented by changes in per capita household disposable income (HDI) as calculated by the Melbourne Institute to update its poverty lines in its quarterly editions of *Poverty Lines, Australia*.
58. Relative poverty lines are an important tool in analysing disadvantage at a point in time and over time, but they need to be supplemented by other forms of inquiry and evidence. As we have said in our submissions to the Annual Wage Review 2014-15:

"Relative poverty lines do not measure actual needs, but, as poverty is a relative concept to be determined in an economic context, they have been widely used. The 60% of median relative poverty line is widely used in Europe, but the OECD's main relative measure of poverty is the 50% of median. There is no *a priori* reason for accepting either the 50% or the 60% relative poverty lines, or any percentage in between. Each has to be tested against experience and relevant research. One way of dealing with this issue is to treat the 60% relative poverty line as being a line where a person is "at risk" of poverty (as some do), with the 50% of median being the "deep poverty" line.

The 60% relative poverty line was the relative poverty line used by the Australian Fair Pay Commission (AFPC) prior to its abolition in 2009 and is still used by the Fair Work Commission (FWC). Neither tribunal treated it as the fixed benchmark for the setting of wages, presumably because a range of factors need to be taken into account in the setting of minimum wages. Given that working families should have a margin over poverty the 60% of median relative poverty line is the most appropriate measure for understanding needs and the setting of wage levels in the absence of research suggesting another percentage or range of percentages.

Relative poverty lines are also an important tool in the setting on wage rates with reference to relative living standards, as the FWC is required to do under the minimum wages objective in section 284(1) of the *Fair Work Act*, because they enable the positioning of various income groups relative to each other and to a community average. They enable,

for example, the positioning of low income households relative to households which rely on unemployment benefits or pensions. (Now at e *Working Australia, 2015: wages, families and poverty*, paragraphs 597-9)

59. The fundamental task in setting a median-based relative poverty line is identifying the median equivalised disposable household income (MEDHI) and its changes over time. MEDHI is the foundation stone for poverty lines based on the median: the 60% relative poverty line is simply 60% of MEDHI. Like poverty lines, MEDHI can also be plotted on a graph. In Australia, data on disposable incomes is collected by the ABS in accordance with internationally recognised standards.

New data from the ABS

60. On 4 September 2015 the Australian Bureau of Statistics published *Household Income and Distribution, 2013-14*, catalogue no. 6523.0. This enables the updating of relative poverty lines as at January 2015. These appear below.
61. ABS surveys of household income in the *Household Income and Income Distribution* series are available back to 1994-95. As a result of this ongoing ABS data series we can collate MEDHI figures to show the changes in the circumstances of workers and their families since 2001. However, there is a note of caution about the comparability of the material. The following appears in the Explanatory Notes of the latest publication:

"In 2007–08, the ABS revised its standards for household income statistics following the adoption of new international standards in 2004 and review of aspects of the collection and dissemination of income data. The income estimates from 2007–08 onwards apply the new income standards, and are not directly comparable with estimates for previous cycles. The change in income level in 2007–08 is partly due to the change in methods but also partly due to real change in income. To the extent possible, the estimates for 2003–04 and 2005–06 shown in the time series tables also reflect the new treatments." (*Household Income and Distribution, 2013-14*, Explanatory Notes, paragraph 8)

62. The ABS usually collects the relevant data for this purpose every two years. Because the data will be out-dated by the time of its publication it is necessary to adopt an appropriate adjustment process to generate contemporaneous MEDHI and poverty lines. The FWC uses the method used by the Melbourne Institute to update its poverty lines in its quarterly editions of *Poverty Lines, Australia*, i.e. the quarterly changes in per capita Household Disposable Income (HDI).
63. In Table 1 we have calculated changes in MEDHI over the period January 2001 to January 2015. The MEDHI figures are taken from ABS surveys over the relevant

period, with the non-survey years being calculated by the use of the Melbourne Institute's calculations of HDI.

64. The median equivalised figures for January 2015 are based on the ABS figures adjusted by changes in HDI per head published in *Poverty Lines Australia, March 2015*. For each of the years between the ABS surveys, i.e. 2002, 2005, 2007, 2009, 2011 and 2013, MEDHI is calculated by the proportionate changes in the HDI over the two year period. If, for example, 70% of the increase in HDI over the two year period occurred in the first 12 months, the MEDHI figure for the mid-point would be calculated at 70% of the difference between the ABS figures at the start and the end of the two year period.

Table 1
Median equivalised disposable household income
January 2001 – January 2015
(\$ per week)

	Median equivalised disposable household income (ABS)	Household Disposable Income per head (Melbourne Institute)	Median equivalised disposable income
January 2001	413.59	415.65	413.59
January 2002	-	457.27	436.58
January 2003	435.48	454.41	435.48
January 2004	499.98	480.81	499.98
January 2005	-	516.98	544.20
January 2006	568.43	536.80	568.43
January 2007	-	576.68	620.43
January 2008	687.42	628.07	687.42
January 2009	-	691.32	716.28
January 2010	714.27	688.04	714.27
January 2011	-	730.15	756.09
January 2012	790.16	764.52	790.016
January 2013	-	776.91	809.30
January 2014	844.00	800.05	844.00
January 2015	-	811.35	855.92

Household Disposable Income (HDI) per head figures are taken from *Poverty Lines Australia, March 2015*, published by the Melbourne Institute. The figure used for each January is the published figure for the immediately preceding December quarter.

The financial year figures calculated by the ABS have been used for each January within the survey periods. The median equivalised disposable household income figures for 2001, 2003, 2004, 2006, 2008, 2010 and 2012 are respectively taken from the calculations for 2000-01, 2002-03, 2003-

04, 2005-06, 2007-08, 2009-10 and 2011-12 in *Household Income and Income Distribution, Australia, 2013-14*, cat. no. 6523.0, at Table 1.1 As the published figures for all of those years are in 2013-14 prices, the earlier years have been re-calculated in accordance with the disclosed price adjustments in Table 1.1.

Constructing relative poverty lines

65. In this section we have four tables which present the data for the construction of relative poverty lines for three low income families over the period January 2001 to January 2015. The basic data is in Table 2, which shows the poverty lines for single workers, couples with two children and sole parents with two children. This table uses the modified OECD equivalence scale used by the ABS, which sets the single person at 1.0, a second adult at .5 and each child at .3. In January 2015 the 60% poverty line for a single adult was calculated on a median equivalised disposable household income of \$855.92 per week and was \$513.55 per week. For a family of two adults and two children the 60% poverty line was \$1078.46 per week, or 2.1 times the poverty line of the single adult. The 60% poverty line for the sole parent and two children was \$821.68 per week, or 1.6 times the single person's.

Table 2
Poverty lines for workers and families
January 2001 – January 2015
(\$ per week)

	Median equivalised disposable household income	Poverty Line Single	Poverty Line Couple and 2 children	Poverty Line Sole parent and 2 children
January 2001	413.59	248.15	521.16	397.04
January 2002	436.58	261.95	550.09	419.12
January 2003	435.48	261.29	548.70	418.06
January 2004	499.98	299.99	629.97	479.98
January 2005	544.20	326.52	685.69	522.43
January 2006	568.43	341.06	716.22	545.69
January 2007	620.43	372.26	781.74	595.61
January 2008	687.42	412.45	866.15	659.92
January 2009	716.28	429.77	902.51	687.63
January 2010	714.27	428.56	899.98	685.70
January 2011	756.09	453.65	952.67	725.85
January 2012	790.16	474.10	995.60	758.55
January 2013	809.30	485.58	1,019.72	776.93
January 2014	844.00	506.40	1,063.44	810.24
January 2015	855.92	513.55	1,078.46	821.68

66. Tables 3, 4 and 5 respectively cover workers paid at the NMW and the C12 and C10 wage rates in the *Manufacturing and Associated Industries and Occupations Award 2010* and its predecessor awards.

Table 3
Wages, taxes and family payments for NMW-dependent workers and families
January 2001 – January 2015
(\$ per week)

Year	NMW	NMW per year	NMW net	Medicare exemption	FTB A	FTB B	FTB A Supp.	FTB B Supp.	Rental assist. max.	Disposable income
2001	400.40	20,893	346.38	6.00	116.20	34.79	-	-	50.43	553.80
2002	413.40	21,571	354.76	6.20	122.92	36.82	-	-	52.46	573.16
2003	431.40	22,510	366.37	6.47	126.70	37.94	-	-	53.93	591.41
2004	448.40	23,397	377.93	6.73	130.48	39.06	-	-	55.40	609.60
2005	467.40	24,389	396.78	7.01	133.56	39.97	23.50	2.87	56.80	660.49
2006	484.40	25,276	412.84	7.27	139.06	41.02	24.06	5.88	58.27	688.40
2007	511.86	26,709	449.93	7.68	140.84	42.14	24.76	6.02	60.58	731.95
2008	522.12	27,244	467.59	7.83	147.46	43.54	25.60	6.23	61.84	760.09
2009	543.78	28,374	494.29	8.16	151.34	44.87	26.20	6.44	64.63	795.93
2010	543.78	28,374	497.17	8.16	156.94	46.55	27.28	6.65	65.61	808.36
2011	569.90	29,737	521.86	8.55	160.30	47.53	27.84	6.79	67.57	840.44
2012	589.30	30,750	537.49	8.84	164.64	48.79	27.84	6.79	70.02	864.41
2013	606.40	31,642	556.87	9.10	193.25	50.53	27.84	6.79	71.16	915.54
2014	622.20	32,466	569.44	9.33	199.74	52.26	27.84	6.79	72.84	938.24
2015	640.90	33,442	581.11	12.820	204.51	53.66	27.84	6.79	74.97	961.70

Table 4
Wages, taxes and family payments for C12-dependent workers and families
January 2001 – January 2015
(\$ per week)

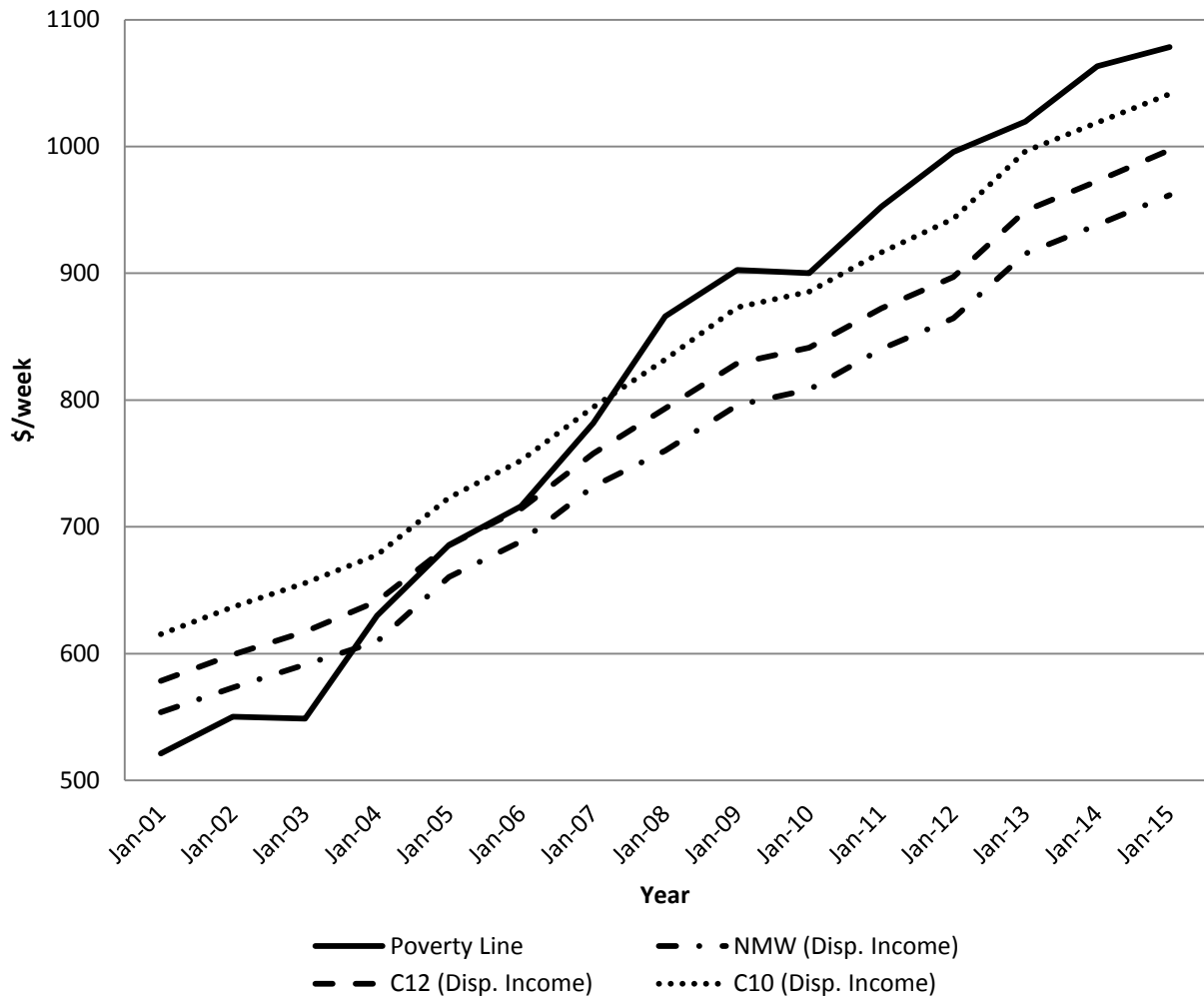
Year	C12	C12 per year	C12 net	Medicare exemption	FTB A	FTB B	FTB A Supp.	FTB B Supp.	Rental assist. max.	Disposable income
2001	439.60	22,938	370.50	6.59	116.20	34.79	-	-	50.43	578.51
2002	452.60	23,617	380.05	6.79	122.92	36.82	-	-	52.46	599.04
2003	470.60	24,556	391.74	7.06	126.70	37.94	-	-	53.93	617.37
2004	487.60	25,443	408.93	7.31	130.48	39.06	-	-	55.40	641.18
2005	506.60	26,434	421.18	7.60	133.56	39.97	23.50	2.87	56.80	685.48
2006	523.60	27,321	438.14	7.85	139.06	41.02	24.06	5.88	58.27	714.28
2007	551.00	28,751	475.17	8.26	140.84	42.14	24.76	6.02	60.58	757.77
2008	561.26	29,287	500.28	8.42	147.46	43.54	25.60	6.23	61.84	793.37
2009	582.92	30,417	526.67	8.74	151.34	44.87	26.20	6.44	64.63	828.89
2010	582.92	30,417	529.54	8.74	156.94	46.55	27.28	6.65	65.61	841.31
2011	609.00	31,778	553.15	9.14	160.30	47.53	27.84	6.79	67.57	872.32
2012	629.70	32,857	569.59	9.45	164.64	48.79	27.84	6.79	70.02	897.12
2013	648.00	33,813	589.96	9.72	193.25	50.53	27.84	6.79	71.16	949.25
2014	664.80	34,689	603.31	9.97	199.74	52.56	27.84	6.79	72.84	972.75
2015	684.70	35,727	615.71	13.69	204.51	53.66	27.84	6.79	74.97	997.17

Table 5
Wages, taxes and family payments for C10-dependent workers and families
January 2001 – January 2015
(\$ per week)

Year	C10	C10 per year	C10 net	Medicare exemption	FTB A	FTB B	FTB A Supp.	FTB B Supp.	Rental assist. max.	Disposable income
2001	492.20	25,683	406.53	7.38	116.20	34.79	-	-	50.43	615.33
2002	507.20	26,466	416.81	7.61	122.92	36.82	-	-	52.46	636.62
2003	525.20	27,405	429.14	7.88	126.70	37.94	-	-	53.93	655.59
2004	542.20	28,292	444.77	8.13	130.48	39.06	-	-	55.40	677.84
2005	561.20	29,283	457.78	8.42	133.56	39.97	23.50	2.87	56.80	722.90
2006	578.20	30,170	475.40	8.67	139.06	41.02	24.06	5.88	58.27	752.36
2007	605.56	31,598	510.94	9.08	140.84	42.14	24.76	6.02	60.58	794.36
2008	615.82	32,133	538.06	9.24	147.46	43.54	25.60	6.23	61.84	831.97
2009	637.48	33,263	570.03	9.56	151.34	44.87	26.20	6.44	64.63	873.07
2010	637.48	33,263	572.90	9.56	156.94	46.55	27.28	6.65	65.61	885.49
2011	663.60	34,627	596.56	9.95	160.30	47.53	27.84	6.79	67.57	916.54
2012	686.20	35,806	614.52	10.29	164.64	48.79	27.84	6.79	70.02	942.89
2013	706.10	36,844	636.14	10.59	193.25	50.53	27.84	6.79	71.16	996.30
2014	724.50	37,804	648.47	10.87	199.74	52.56	27.84	6.79	72.84	1018.81
2015	746.20	38,936	658.72	14.92	204.51	53.66	27.84	6.79	74.97	1041.41

67. Tables 3 to 5 reproduce Tables 28 to 30 in *Working Australia, 2015: wages, families and poverty*. The figures are at 1 January of each year. The tables provide the detail of the various kinds of family transfers, with the total disposable income calculated for each year. The disposable incomes of single workers are those in the “net” columns. The breadwinner in each family is employed full time and is paid the safety net rate. The family comprises a couple where one parent stays at home to care for two children or a working sole parent with two children. The calculations are based on the children being aged 8 to 12. (These are the ages used by the FWC in its Statistical Reports.) In each case the Schoolkids Bonus is included in the FTB A figure on the basis that one child is in primary school and the second child is in secondary school. Rent assistance, is calculated on the basis of 52.18 weeks per year. The “net” amount includes the Medicare levy. The Medicare family exemption is treated as a family transfer.
68. Figure 1 shows how the disposable incomes of each of three couple parent families in Tables 3, 4 and 5 have moved in comparison with the 60% relative poverty line over the period January 2001 to January 2015.

Figure 1
Disposable Incomes of Safety Net-dependent Families Relative to Poverty Line
(Couple and two children)
January 2001 – January 2015



69. Comparing the changes over the years January 2004 to January 2015, we find:

- the NMW-dependent family of four fell further into poverty: from 3.2% below the poverty line to 10.8% below it, with a poverty gap in January 2015 of \$116.76 per week;
- the C12-dependent family of four fell into poverty: from 1.8% above the poverty line to 7.5% below it, with a poverty gap in January 2015 of \$81.29 per week; and
- the C10-dependent family of four fell into poverty: from 7.6% above the poverty line to 3.4% below it, with a poverty gap in January 2015 of \$37.05 per week.

70. The position of single workers over this period is worse because their falling wage levels have not been partly offset by increased family payments. In January 2004 the single C12-dependent worker was 36.3% above the poverty line, but by January 2015 had fallen to 19.9% above the poverty line.
71. The position of sole parent families has followed a similar downward trend to the couple parent family of four. Because they are in receipt of the same tax and transfer arrangements as the couple parent family, the equivalence scales put sole parent families on a higher standard of living. At January 2015 the NMW-dependent sole parent family with two children was 17.0% above poverty, with a margin over poverty close to the single person's. However, this figure gives a misleading picture of the living standards of sole parents because the equivalence scales take no account of child care costs. The equivalence scales treat the children in a single breadwinner family of four with a stay at home parent in the same way as the children in the sole parent family.
72. It should be pointed out that there has been some improvement in the position of these safety net workers by reference to the poverty lines. From January 2014 to January 2015 the disposable income of the NMW-dependent family, for example, increased by 2.5%, while the poverty line rose 1.4%. The NMW-dependent family of four moved from 11.8% below the poverty line to 10.8% below it.