

How many children have to live in poverty before the Fair Work Commission takes decisive action to support working families?

Brian Lawrence 17 October 2018

This presentation on an aspect of child poverty is a contribution to Anti-Poverty Week, which will be followed by Children's Week. I thank Catholic Social Services Victoria for the opportunity to present the following views drawn from my experience since 2003 in drafting submissions for and appearing in national annual wage reviews on behalf of the Australian Catholic Council for Employment Relations (ACCER). ACCER is an agency of the Australian Catholic Bishops Conference.

Already this week we have had two major presentations on the extent of poverty, and child poverty in particular; Poverty, Social Exclusion and Disadvantage in Australia by UnitingCare and Poverty in Australia 2018 by the Australian Council of Social Service. This important research confirms the substance of what we have known for years.

Public commentary and empirical research in regard to poverty focuses on children in poverty, but despite a broad concern across the community, little, if any, progress has been made in recent decades to alleviate the scourge of childhood poverty. It is as if the more we talk about child poverty the less politicians and policy makers take notice. There is plenty of blame to share around. Part of it rightly lands on the Fair Work Commission (FWC) and its predecessor national wage-setting tribunals, the Australian Industrial Relations Commission and the Australian Fair Pay Commission.

The title of this paper comes from a question put in May 2017 to the FWC in its Annual Wage Review, when Fr Frank Brennan SJ and I appeared in support of the submissions made by ACCER. We referred to four matters: □ first, evidence that many children are living in poverty in wage-dependent families, even when there is a full-time worker in the family; □ second, the fact that low wages are a major reason for that poverty; □ third, the fact that wage increases targeted at the lowest paid workers would improve the lives of these children; and □ fourth, the fact that no such targeted action had been taken by in the past six decisions to address this state of affairs,

And we then asked: "How many children have to live in poverty before the Fair Work Commission takes appropriate action to relieve this poverty?"

The FWC avoided any response to the question in its decision; Annual Wage Review 201617, Decision [2017] FWCFB 3500 (June 2017 decision). Its silence was referred to by Fr Brennan later that year in the Rerum Novarum Oration, which was held on 8 November 2017 to mark the 110th anniversary of the handing down of the Harvester judgment by Justice Higgins. Fr Brennan said: "The Fair Work Commission in its annual wage review this year acknowledged that the modest increase proposed would not 'not lift all award-reliant employees out of poverty (measured by household disposable income below a 60 per cent median income poverty line), particularly those households with dependent children and a single-wage earner'. But to do so was 'likely to have adverse employment effects on those groups who are already marginalised in the labour market with a corresponding impact on the vulnerability of households to poverty due to loss of employment or hours'. The Government for its part submitted that the tax-transfer system was more efficient 'in equalising the distribution of income among Australian households'. The Commission conceded that 'the changes to the tax-transfer system in the past 2 budgets have reduced the financial assistance that is provided for low-income families with children'. Having acknowledged the problem and the

shortfall, the Commission handballed both back to society generally with the handwashing observation: ‘The high and continuing levels of child poverty indicate that the combination of wages and social welfare assistance, are not sufficient to ensure that the needs of all low-wage families are met. We view this as a serious matter for society. This conclusion is supported by the evidence that about one-third of people in poverty lived in households for which wages were the main source of income; and that about half of these families had children.’”

Fr Brennan rightly saw this as exposing the inconsistent positions of the FWC and the Government on, in the FWC's own words, "this serious matter for society". He said: "The Commission has decided that family poverty is the Commonwealth Government's responsibility to be addressed through the welfare system. But the Commission knows that the Government's budgetary strategy is to reduce the financial support for families, not increase it. There is now a standoff between the institutions setting the wages safety net and the social safety net, with a devastating effect on the lives of the working poor and their families."

ACCER took up this issue in its March 2018 submissions with the point that in past decisions "the FWC has recognised widespread poverty in wage-dependent families, but has not accepted the responsibility for alleviation of that poverty". It referred, in particular, to the following conclusions by the FWC in its June 2017 decision: □ "The high and continuing levels of child poverty indicate that the combination of wages and social welfare assistance, are not sufficient to ensure that the needs of all low-wage families are met. We view this as a serious matter for society. This conclusion is supported by the evidence that about one-third of people in poverty lived in households for which wages were the main source of income and that about half of these families had children." (Paragraph 66 and repeated at paragraph 487 of the June 2017 decision) □ “The rise in inequality has been tempered in recent years. But it has left Australia with a legacy of relatively high inequality in earnings and in household disposable income, and disturbing levels of poverty especially among families with children.” (Paragraph 68 and repeated at paragraph 489 of the June 2017 decision.)

Fr Brennan's point about the standoff between the FWC and the Government was also taken up in ACCER's March 2018 submission:

"It is as if the FWC has decided that poverty in working families is the Commonwealth Government's responsibility and one to be addressed through the welfare system. But the severity of the problem has been caused by the failure of the national minimum wage system over the past two decades or so to adjust minimum wage rates to reflect rising community-wide incomes. Furthermore, the FWC knew, from the evidence before it, that the Government's budgetary strategy is to reduce the financial support for families, not increase it. We have a standoff between the institutions setting the wages safety net and the social safety net, with a devastating effect on the lives of the working poor and their families. This standoff is unacceptable because the FWC's statutory obligation to set fair safety net wages does not allow it to constrain its decisions on the basis that the Parliament should provide for the support of workers with family responsibilities. If the FWC is not prepared to take poverty seriously through its wage setting decisions, no Government will feel impelled to address the matter through its budgetary policies. There is an economic case for increased family payments and their trade-off against wage increases. In the 1980s it was the basis of the strengthening of the social safety net in exchange for limited wage increases." (Emphasis added)

The question posed in May 2017, about how many children need to live in poverty before appropriate action is taken, was asked again in 2018 in the context of the intent of the minimum wage provisions in the Fair Work Act and sound public policy. ACCER argued that the FWC's decisions were "at

odds with the general intent of Australian public policy to give priority and preference to those most in need". It said that this kind preference is not just found in public policy, but is also found in the widespread sense of fairness within the country and in the tradition of giving the battler a "fair go". The submission continued: "The lack of this kind of fairness is more concerning when we consider that the FWC's decisions impact on the lives of hundreds of thousands of children who are living in poverty. This is why these battlers who struggle on low wages to support their children are entitled to ask "How many children have to live in poverty before the Fair Work Commission does something to alleviate our poverty?"

The question wasn't answered explicitly, but it was answered implicitly, as I will explain.

ACCER's submissions were made in support of a claim for an extra \$32.00 per week in minimum wage rates up to the C10 wage rate (which applies to trade-qualified workers and was then \$809.10 per week), with that money amount being converted at the C10 rate to a percentage increase of 3.9% for higher paid classifications. In addition, ACCER sought a further increase in the National Minimum Wage (NMW) of \$8.10 per week. ACCER's objective has been to progressively move the NMW up to the lowest minimum wage set for cleaners under the Cleaning Services Award so that no award rate for unskilled work would fall below that rate. It proposed a review at a later date to determine the sufficiency of that rate. At present, the base rate for a cleaner is \$768.10 per week, \$48.90 per week more than the NMW of \$719.20 per week. The minimum wage rates set for unskilled work in a range of awards are inconsistent. ACCER's claims in 2018, as in earlier years, were designed to provide relatively more to the low paid. I refer later to the claims made by the Australian Council of Trade Unions (ACTU).

The claim for relatively greater increases for lower paid workers was rejected, with the FWC awarding a uniform 3.5% increase to all minimum wage rates; Annual Wage Review 2017-18, Decision [2018] FWCFB 3500 (June 2018 decision). The uniform increase was consistent with each of its decisions from 2011, which have seen the application of a policy of maintaining existing award relativities and the rejection of claims that have sought relatively greater increases for low paid classifications. The FWC's wages relativities policy requires a uniform percentage increase across all wage rates from the NMW to the highest paid award classification, which applies to captains of "Wide body aircraft–double deck" aircrafts in the Air Pilots Award. The FWC will not compress existing wage relativities by providing relatively greater increases to lower paid workers. In each decision since 2011 the FWC was not prepared to give an extra dollar to the lowest paid so that those with family responsibilities might be better able to provide for their children.

In any discussion about the ability of the Australian minimum wages system to provide for low income workers and their families, by lifting them out of poverty and providing them with a decent standard of living, we must first recognise that, under the FWC's wages relativities policy, the maintenance of existing award relativities will always trump the interests of the low paid. When confronted by poverty in working families, the FWC effectively resorts to the view that the wages it sets need only be sufficient for the single person, with the handwashing described by Fr Brennan.

The wages relativities policy is not required by the terms of the legislation under which the FWC makes its decisions. ACCER has argued that it is contrary to the terms of the section 284 of the Fair Work Act 2009. This argument has been rejected by the FWC on the basis that the policy and practice is open to it within the broad discretion conferred upon it. The problem is that the discretion is exercised against the people who most need support. The FWC prioritises the maintenance of

existing relativities over the needs of the low paid and, in particular, the interests of children in low paid working families.

Given the FWC's policy on maintaining wage relativities, it doesn't matter how many children are living in poverty in wage-dependent households.

The kind of research already released this week by UnitingCare and the Australian Council of Social Service on the extent of child poverty will leave the FWC unmoved, as it has been in previous years when provided with similar evidence. Nothing that will be said this week, through the variety of Anti-Poverty Week events, about child poverty will make any difference to the FWC for so long as it maintains its wages relativities policies.

As we said in the March 2018 submission, if the FWC is not prepared to take poverty seriously through its wage setting decisions, no Government will feel impelled to address the matter through its budgetary policies.

Can this change? Leaving aside a successful challenge by way of judicial review in the Federal Court or an amendment to the legislation, change can only occur if the policy and its implications are better known and if the FWC hears from parties who are opposed to the policy. Those who have a different view about the way in which the FWC's discretion should be exercised must be more proactive.

Industrial tribunals charged with exercising statutory discretions are influenced by the parties who appear before them and the way in which they put their cases. They take notice of what the parties have to say about community concerns and values. Decisions are made in a social context. That is not a criticism of the decision-making process. After all, the essence of setting "fair" safety net wages, as the tribunal is commanded to do, means that it should take into account community concerns and values.

As I said earlier, there is plenty of blame to go around for the current state of poverty in Australia. I include the Catholic Church in this assessment. As one of the biggest employers in the country, with about 220,000 employees, we should be making a bigger contribution to research and advocacy. It is not just practical experience that we can bring to the debate. Catholic social teaching requires that we focus on the poor and disadvantaged and that families be supported by good economic foundations. If the general public knew that the FWC was putting wage relativities ahead of support for the working poor, which means preferring higher paid employees over lower paid employees, there would be profound discontent and, I expect, a change. The Church's social justice groups, for example, could take this up as a campaign. We haven't done enough.

We also need to look at the ACTU's record in advocating on behalf of low income working families living below or near the poverty line and in advocating for a living wage that is sufficient for workers with family responsibilities.

From time to time we hear commentary from the ACTU about "working families", but search that term on its website and you will find very little. More importantly, search the submissions of the ACTU over the past decade or so and you will not find any or any substantial reference to poverty among working families and the wages they require for a decent standard of living. It is as if those drafting the submissions are unaware that workers have families and family responsibilities.

In its 2014 Annual Wage Review decision the FWC explicitly adopted the single person criterion for wage setting and the ACTU accepted it with equanimity. ACCER, and not the ACTU, challenged

that decision in 2015 and the FWC backed off. The success was shortlived because, as the June 2017 and June 2018 decisions show, the single person criterion has been adopted implicitly. In its March 2015 submissions the ACTU accepted the single person criterion, which caused ACCER to write to the ACTU pointing out that, among other matters, the single person criterion was contrary to established worker rights and that the single person wage was inconsistent with the living wage. No change was made to the ACTU's position. The ACTU seems incapable of formulating a wages policy that addresses family living standards.

There have been changes in the ACTU's wage claims over the years. For most of the two decades to 2010 the ACTU made claims for flat or tiered money increases, and not percentage increases, on the basis that these claims would best assist low income workers. Usually the tribunals accepted these claims, but at lower money rates than those claimed. The effect of these decisions was the compression of previously established award relativities and the relativities between award rates and the NMW (and its predecessor rates).

In each year from 2011 to 2017 the ACTU sought a percentage increase for higher paid award classifications, with the percentage being converted to a money amount at the C10 wage rate and applied to all lower paid classifications. The purpose was to provide relatively more to the lower paid while maintaining the existing relativities between the higher paid classifications and their connection with community wage levels. ACCER usually supported these claims, with a further claim in respect of the NMW. The ACTU's claims over this period were not based on any assessment of the wage that would be required to keep workers and their families out of poverty and provide them with a decent standard of living. Rather, the claims were based on macroeconomic factors and arguments that the FWC should reverse the earlier cuts in the relativities of minimum wage rates to median and average wages.

In each year from 2011 to 2017 the ACTU's claims were rejected, with the FWC awarding uniform percentage increases across all minimum rates. Not one extra dollar was received by those most in need. The FWC treated the maintenance of award relativities as more important than the needs of low paid workers, many of whom were living in poverty. Unlike ACCER, the ACTU did not complain about the unfairness to low paid workers.

In 2018 the ACTU changed course. It sought a uniform 7.2% increase in all award rates, which equated to a \$50.00 per week increase in the NMW. This kind of claim was consistent with the FWC's decisions of the previous seven years. It meant that the dollar value of a wage increase at the lowest level would be determined by a global assessment across all minimum wage rates.

It might be said that the ACTU was accepting the reality of the FWC's wages relativities policy; but that would be running up the white flag on its traditional advocacy on behalf of the low paid. Because most of the members of the ACTU's affiliates are higher paid workers, there may have been some blindness to the interests of the very low paid. But the ACTU has a broader social role to protect workers and working families even in areas where organising and recruiting members is difficult.

The ACTU's March 2018 submission was also surprising because in November 2017 it had commemorated Harvester with, among others, a detailed paper on the living wage entitled Living up to the Promise of Harvester: Time for a Living Wage. The ACTU's media release of 2 November 2017 read, in part: "The ACTU is calling for the minimum wage to be raised to the level of a living wage, on which a low-paid worker could support themselves and their family, after ABS figures released last week show that soaring cost of living is driving millions of workers into poverty. ACTU

Secretary Sally McManus will give a major speech on the 110 year anniversary of the landmark Harvester decision on Thursday night, and release a new report “Living up to the Promise of Harvester: Time for a Living Wage” which argues for all people to be paid a living wage, as part of the campaign to Change the Rules for working people. A living wage must be sufficient to ensure that all working people are able to afford rent in a suitable dwelling, a healthy diet, a good quality education, healthcare, transport, electricity and other energy costs, adequate clothing, entertainment and a contingency for unexpected expenses. The current minimum wage leaves 3 million people in Australia below the poverty line. The promise of the Harvester Judgement, which established a world-first living wage in Australia, has been completely eroded by decades of neo- liberal policies. The living wage paper was good, as was the media release. It suggested a change in the way in which the ACTU would argue its wage claims. However, the contents were not reflected in the ACTU's claim and submission in March 2018. As in the past, the ACTU relied on macroeconomic, not social, considerations and did not address poverty among wage-dependent families. It was not about the living wage. It was not about a modern Harvester, where its fundamental principles, particularly in relation to families, are applied in contemporary circumstances.

Despite that glaring omission, the ACTU's March 2018 submission presented a compelling case for a very substantial increase in the NMW and the award rates set for low paid workers; but it was based on the decline in the relativity of the NMW to average and median wages over the past couple of decades. The loss of relativity to median wages over the past two decades has cost NMW-dependent workers more than \$50.00 per week. This is an important matter. Not only is the FWC effectively standing by while working families are living in poverty and unable to achieve a decent standard of living, but the national wage setting system (for which the FWC now has responsibility) has brought about a substantial amount of the loss that has been suffered by low paid workers and their families.

However, the ACTU's case for increases of 7.2% for higher paid classifications was based on the expectation that primacy would be given to maintaining existing relativities between low paid and higher paid wage classifications regardless of the relative needs and the unmet needs of those who depend on them. The reality was that the FWC's wages relativities policy would not deliver wage increases of this size to higher paid workers. Instead, it would compromise the ability of the lowest paid workers to get the wage increases that they need. This gave the impression that the ACTU was using the circumstances of the low paid to leverage its claims for higher paid employees.

In order for the most needy of low paid workers to have received a pay increase of \$50.00 per week, the highest paid captains covered by the Air Pilots Award had to get a 7.2% increase in their award rate. It was never going happen in that case or in regard to any other higher paid award classification. The ACTU's headline claim of \$50.00 per week could not be achieved and, given the wages relativities policy and the ACTU's acceptance of it, the ACTU was misleading low income workers into thinking that the claim was fairly arguable and that it might be achieved. Many low paid workers, whether working full time, part time or casual, would feel aggrieved to know that the way in which the claim was framed would ensure that they had no chance whatsoever of achieving that objective.

ACCER addressed these kinds of issues in its Reply submission of April 2018. It expressed regret that the ACTU did not contest the wages relativities policy, adding the following: “For so long as the [wages relativities] policy is applied, low paid workers will not make significant progress towards a living wage that provides them and their families with a decent standard of living. Australian workers are fortunate to have an award system designed to provide them with wage increases to reward them

for the acquisition of skills and responsibilities, but the wages relativities policy compromises the capacity of the NMW to be a living wage.”

We should keep in mind, as should the ACTU, that the wages relativities policy frustrates the application of fundamental human rights. Seventy years ago this December the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations. It recognised 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)). The instrument that gives effect to the wages provisions of the Declaration and a number of the other rights declared in 1948 is the United Nations' International Covenant on Economic, Social and Cultural Rights, which was adopted in 1966 and subsequently adopted by Australia. The Covenant recognises a universal right "...to the enjoyment of just and favourable conditions of work which ensure, in particular: ... Remuneration which provides all workers, as a minimum, with ... Fair wages and... A decent living for themselves and their families." (Article 7(a)). These rights are fundamental to the role and work of unions. They should always focus on them in their advocacy and campaigns and should not compromise them by accepting the FWC's wages relativities policy. The social role of protecting the interests of low paid workers and low paid working families falls to the trade union movement. In the absence of a change in the ACTU's advocacy in minimum wage cases, who will speak on their behalf?

The question posed by this paper is How many children have to live in poverty before the Fair Work Commission takes decisive action to support working families?

The answer is that the number does not matter given the basis upon which the FWC makes its decisions. The ACTU's failure over past years to attack the wages relativities policy and, in 2018, its claim for a uniform percentage increase, have probably strengthened the FWC's resolve to put the maintenance of existing award relativities for higher income earners over the interests of the low paid.

A related question is "When will the FWC take childhood poverty seriously?" The answer is: most probably not before the ACTU takes child poverty in working families seriously and challenges the FWC's policy to prioritise award relativities over the livelihoods of low paid workers and their families.