

2. TIMING

2.1 - INTRODUCTION

- 2.1 ACCI's primary position is that any uprating of minimum wages would be premature in 2007, prior to 12 months elapsing from the previous increase. The outcome of this review should be no uprating of minimum wages prior to at least 12 months elapsing from the preceding, 1 December 2006, increase.
- 2.2 Wage Decision No.1 of 2006 should remain in force until an opportunity for a review and possible uprating properly arises at some later stage not less than 12 months from the preceding, 1 December 2006, increase.
- 2.3 Changes should be made however to the Decision commencing 1 December 2006 to prevent any possible instances of double counting of minimum wage increases arising from the transition from pre-*WorkChoices* state award arrangements to *WorkChoices*.
- 2.4 This section addresses:
- a. The basis for the 12 month period between increases and this review not yielding an increase in mid-2007.
 - b. An appropriate period of notice where there is to be some uprating of minimum wages following this review.

2.2 - NO DISREPAIR / INK STILL WET ON 2006 RISE

2.2.1.1 - Background

- 2.5 One of the AFPC's responsibilities under s.23 of the *Workplace Relations Act 1996* is 'providing a safety net for the low paid' (s.23(c)).
- 2.6 This is effectively the *raison d'être* for minimum wages – there is properly no purpose for this intervention in any labour market other than ensuring some minimum level of remuneration for work.

- 2.7 Employers accept that, in principle, ‘providing’ a safety net arguably implies some currency or functional maintenance of that safety net.
- 2.8 This was examined in some detail in the pre-*WorkChoices* safety net review / national wage case process, during which parties closely considered the concept of minimum wage maintenance what this means, when wages need to be maintained, with what triggers etc.
- 2.9 One of the questions that evolved out of this was the concept of examining when the wages safety net was, or threatened to be ‘in disrepair’. There has been an ongoing discussion in Australian minimum wage fixing on when changes in prices and other circumstances diminish the functional efficiency and efficacy of minimum wages such that they are not performing their function under the *Workplace Relations Act 1996*.
- 2.10 In summary, under the previous system the ACTU would prosecute its case on the basis of changing economic indicators or the effluxion of time claiming the wages safety net was in disrepair, or threatened to become so, such that the minimum wage setter had to act. On some occasions employers would dispute this, or indicate that other factors should weigh in favour of outcomes different from those the unions sought.

2.2.1.2 - There needs to be some trigger

- 2.11 Fundamental to the triggering of minimum wage reconsideration and uprating has been the notion that something need be done to ensure the minimum wage continues to fulfil its functions.
- 2.12 Some objectively established material facts need to have changed to enliven this question. Something needs to have occurred to even open up the question of whether the minimum wage needs to be readjusted to continue to fulfil its function. This trigger is always some change in prices, some change in other indicators, or the effluxion of time (which is in turn a proxy for changes in indicators affecting the safety net

function of minimum wages), in turn balanced against other considerations.

2.2.1.3 - Time needs to elapse

2.13 It follows then that, for there to be any proper trigger to change minimum wages (or for unions to claim one) there needs to have been some sufficient period of time since the last minimum wage uprating for those objective facts to have been established.

2.14 A properly set minimum wage cannot possibly be in disrepair or threat of disrepair, or need to be maintained, without some realistic period having elapsed since it was last set. The premise of this is that if in the first instance, the decision maker has determined an appropriate minimum wage, then some period needs to elapse for it to cease to be appropriate and adequate.

2.15 In particular for this review, a minimum wage cannot be set on Friday 1 December 2006 and cease to be adequate on Saturday 2 December 2006 such that a further review must be initiated. This means either that the initial rate was not set properly, or that the second review is precipitous.

2.16 In no other area of law or regulation would a major review be completed and new regulation take effect, only to have the decision maker open up a regulatory setting to be revised the day after it takes effect.

2.17 An exception to this would be a process of continuous review, however this would generally be premised on not revising settings less than 12 months apart, and on reviews not necessarily yielding regulatory change (i.e. minimum wage increases).

2.2.1.4 - Time needs to elapse to properly apply the Act

2.18 Further, the AFPC cannot fulfil its statutory obligations if it undertakes a precipitous decision to uprate minimum wages.

- 2.19 The statutory objective of the AFPC is to ‘promote the economic prosperity of the people of Australia’.
- 2.20 In doing this, the AFPC is required to consider (s.23):
- a. The capacity for the unemployed and low paid to obtain and remain in employment.
 - b. Employment and competitiveness across the economy.
 - c. Providing a safety net for the low paid.
 - d. 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.
- 2.21 As a matter of fact and law, ACCI submits that these prescribed considerations preclude decisions being made prior to information being available to assess the factors statute demands be assessed.

2.3 - 12 MONTHS BETWEEN INCREASES

2.3.1 - Introduction

- 2.22 ACCI maintains as a primary position that there should be no uprating of minimum wages/ APCS in mid 2007, and that no uprating should be countenanced until at least 1 December 2007, at the earliest and only if merited. This would maintain the long established and accepted approach of not less than 12 months elapsing between wage increases.

2.3.1.1 - What you inherit

- 2.23 What is this 12-month rule? What precisely has the AFPC inherited from the AIRC? The 12 month rule is an accepted common sense application of the safety net concept in the *Workplace Relations Act 1996*, which requires at there be a period of at least 12 months between general up-ratings of minimum wages which are to perform a genuine safety net role in a system which encourages bargaining.

2.24 ACCI maintains that there is absolutely no basis on the facts before the AFPC to abandon this approach to setting minimum wages by awarding an increase to take effect prior to 1 December 2007.

2.3.2 - Safety Net concept justifies 12 months between increases

2.25 A principal question for the AFPC is whether increases less than 12 months apart would be consistent with the safety net role for minimum wages under the *Workplace Relations Act 1996*.

2.26 ACCI maintains that it would not. Even if it is the case that as a matter of law the AFPC could act prior to 12 months having elapsed, it should not do so in the exercise of its discretion. There are no exceptional circumstances that would warrant such an approach.

2.27 Australia has determined various parameters for a safety net approach to minimum wages (with varying success) during the past decade. One of the things we correctly recognised in Australia some years ago is that the appropriate period between increases in any genuine minimum wage is at least 12 months.

2.28 A genuine safety net minimum wage does not seek to slavishly chase prices or any other economic indicator. A safety net minimum wage inherently changes less regularly than an indexed or market rate minimum wage and errs on the side of moderation and caution in both the timing and level of uprating.

2.29 This reflects the role of a genuine minimum wage. Safety net minimum wages are not market rates, and a genuine safety net is differentiated from the market by applying only to a diminishing minority of employees. Bargaining is the mechanism to deliver wage maintenance and to match costs, not minimum wages.

2.30 ACCI extensively articulated the safety net concept in submissions to the 2006 AFPC Review. This submission and our preceding material flesh out this concept, how it has evolved, and what it means for minimum wage setting under the *Workplace Relations Act 1996*.

2.3.3 - Economy Demands 12 months between increases

2.31 One of the principal objects of the Workplace Relations Act 1996 appears at subsection 3(c), as follows:

providing an economically sustainable safety net of minimum wages and conditions for those whose employment is regulated by this Act;

2.32 Consideration of the economy and the economic considerations of the AFPC, including the economic prosperity of the people of Australia, demands some appropriate period between increases, which Australian and International experience has proven to be no less than 12 months.

2.33 Any economy needs time to digest a minimum wage increase or adjust to the shock of minimum wages being increased. Minimum wages do have an impact on considerations such as employment, prices, capacity to bargain etc (as the AFPC found last year). In theory what allows minimum wages to be increased whilst minimising these effects is a due period between increases, and proper opportunity for the economy and labour market to digest the negative impacts of minimum wage uprating. Safety net increases have to date been appropriately spaced to minimise their impact and allow particular markets or settings to adjust to the new settings. This is the reason international practice is to require or provide at least 12 months between increases (see below), and why all parties and the AIRC have accepted this concept since the late 1980s.

2.34 In Australia, and indeed in a number of other systems, the level of increase provided has been a function of the period between increases. The AIRC in particular felt it could award increases at or in excess of inflation, because there was at least 12 months for the system to absorb the negative impact of doing so. ACCI may have disagreed strongly with this reasoning, but at least there was some recognition by the AIRC that large increases need some spacing out to even begin to be able to be absorbed into any economy and labour market.

- 2.35 Associated with this is the inherent lack of data mere months after the preceding increase. As expanded on below, it is impossible to in any way know the economic impact of the preceding increase prior to data running its course. At least 12 months is needed to compare outcomes of the preceding increase against preceding periods and understand the impact of wage outcomes under consideration.
- 2.36 This is quite fundamental to considering s.3(c). How could the AFPC know whether either its 2006 or 2007 increases is economically sustainable, without understanding the impact and implementation of the 2006 increase? ACCI maintains that the Act demands that there be a proper assessment of the impact of the initial 2006 minimum wage intervention (including based on data) prior to anything further being considered.

2.3.4 - The Act demands 12 months between increases

- 2.37 The AIRC has interpreted the safety net wage concept as requiring at least 12 months between increases (see below). This interpretation was a function of the pre-*WorkChoices Workplace Relations Act 1996*. However, when the current (post-*WorkChoices*) Act is properly considered there is no reason to change this approach and every reason to maintain it.

2.3.4.1 - Section 23

- 2.38 Section 23 outlines the wage setting parameters of the AFPC.
- 2.39 (s.23(a)) *“the capacity for the unemployed and low paid to obtain and remain in employment”* (s.23(b)) *“Employment and competitiveness across the economy”*:
- a. It has been recognised for some years under the safety net era legislation (from 1993) that there are serious negative consequences for employment and competitiveness of increasing minimum wages with undue frequency.

- b. During the safety net era, Australia has evolved a successful practice of allowing 12 months between increases to minimise the effects of increasing minimum wages on prices, operations, capacity to employ etc. Some would argue that the high level of minimum wage increases in Australia during the past decade have been facilitated by the period allowed between increases.

2.40 (s.23(c)) *“Providing a safety net for the low paid”*

- a. The previous concepts of employee needs under the pre-*WorkChoices Workplace Relations Act 1996* were replaced by this new formulation. Importantly it talks about a safety net for the low paid, not instant real wage maintenance or slavish indexation.
- b. A true safety net is adjusted with appropriate periodicity and errs in favour of fewer, more genuinely targeted and essential increases.
- c. A true safety net for the low paid would also be one based on a proper understanding of the changing income and expenditure needs of the low paid, and crucially how the preceding minimum wage intervention has impacted on these needs. How could any wage setter seek to validly change the minimum wage safety net for current employee needs, without an understanding of how their preceding efforts have impacted on these needs?
 - i) It may be that the preceding increase had little or no effect on the low paid, requiring a reconsideration of approaches.
 - ii) It may be that the preceding increase has had a positive impact, which needs to feed back into efforts in the second year.
 - iii) It may be that the preceding increase had adverse impacts and that these need to be considered in setting strategies for the next uprating of minimum wages.

- d. The key to all this is properly understanding the positive and negative impacts of the initial 2006 review, conclusions and increase. This demands a proper data set, a proper period elapsing and a timetable which allows employers and unions to be able to tell the AFPC what the impact of the previous increase has been.

2.41 (s.23(d)) *“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”*.

- a. There is also the related issue of properly knowing the impact of your wage setting actions on these designated groups. To ensure their competitiveness in some additional or particularised way (one construction of why this subsection was included in the Act), the AFPC needs to particularly carefully understand the impact of what it is doing, and the impact on the labour market competitiveness of the prescribed groups.
- b. This demands a proper period to assesses the impact of previous increases, even where they are merely proportionate to a general increase.
- c. The construction of s.23(d) privileges a consideration of labour market competitiveness (i.e. requires special or particular consideration of this issue). It does not privilege employee needs, the safety net concept or real wage maintenance. Thus, the AFPC is required to pay particular regard to labor market competitiveness, but not to similarly advance the purchasing power maintenance of these employees such that embarking on rushed wage increases could be countenanced.

2.42 Ultimately, there is no basis to conclude that the factors which led the preceding system to demand 12 months between increases have been in any way diminished by *WorkChoices*. There is every basis to conclude they have been strengthened and that the safety net role of awards has become more important. The AFPC should err on the side

of no increase taking effect until at least 12 months have elapsed from the 2006 increase, and err on the side of acting on a proper data set and input which cannot be provided on the current review timetable.

2.3.5 - AIRC statements on the 12 month rule

- 2.43 ACCI maintains that there should be no uprating of minimum wages / APCS in mid 2007, and that no uprating should occur prior to 1 December 2007 at the earliest (and only if and to the extent merited). This would maintain the long established and universally accepted approach of not less than 12 months elapsing between wage increases.
- 2.44 This “12-month rule” was implemented in the wake of the failure of centralised wage indexation and the negative economic and labour market consequences of unduly frequent wage increases under the pre-bargaining centralised system.
- 2.45 Under even the Accord, it was recognised that unduly frequent rises yielded an economic failure, and that the changing role of wages (to safety net rather than market instruments) demanded properly spaced increases. It was recognised that a bargaining based system supported by a genuine safety net does not increase minimum wages less than 12 months apart.
- 2.46 This approach was clearly recognised in the AIRC’s wages reviews during the safety net era. Indeed, the AIRC effectively defined one of the key minimum wage settings for safety net minimum wages by ensuring at least 12 months between increases.
- 2.47 The AIRC has at various junctures during the life of the *Workplace Relations Act 1996* reiterated in the clearest possible terms that there should be at least a 12 month period between increases, and the basis for this period between rises.

2.48 This issue was first expressly addressed in the 1999 decision¹ (having in fact been in place since 1991), which established a formal 12-month rule, requiring at least this period between safety net minimum wage increases under the *Workplace Relations Act 1996*:

[88] The date at which increases flowing from this decision should be available was a matter of debate during the case. The Joint Governments and some employers asked us to ensure that there is a twelve month gap between the increases provided for in our April 1998 decision and any increases provided for in this case. It was said that if safety net adjustments occur too close together intolerable pressures will be placed on many employers and ultimately jobs will be lost. The ACTU opposed the proposal. We consider a case has been made out by the Joint Governments and the employers concerned. The Statement of Principles will be amended to require that at least twelve months have elapsed since the rates in the award were increased in accordance with the April 1998 decision before the award is varied as provided for in this decision.

2.49 The AIRC recognised that “*intolerable pressures will be placed on many employers*” and jobs would be lost if minimum wages were increased without 12 months elapsing. This conclusion was not a function of the 1999 case or the 1999 economy; it has been reiterated and retained over time across the economic cycle.

2.50 This approach was continued in the May 2000 Safety Net Review Decision²:

‘We also intend to maintain the requirement introduced in the April 1999 decision that at least twelve months must have elapsed since the rates in the award were increased in accordance with the last safety net adjustment before the award is varied as provided for in this decision. The purpose of the requirement is to avoid the cost pressures which might arise if more than one safety net adjustment is implemented within a twelve month period’.

2.51 The AIRC again specifically highlighted that one purpose of allowing a period of at least 12 months between increases is the avoidance of cost pressures. The AIRC effectively recognised in 1999, 2000 and on an ongoing basis that an unduly truncated schedule of increases would be inherently inflationary, and that increases less than 12 months apart would be highly damaging.

¹ [Safety Net Review—Wages April 1999 \[Print R1999\] - 29/4/99](#)

² [Safety Net Review—Wages May 2000 \[Print S5000\] - 1/5/00](#)

2.52 This was made even clearer in a subsequent Full Bench flow on decision³ that specifically examined the timing between safety net increases.

[15] It is apparent from the *April 1999 Safety Net Review decision* that the requirement in principle 8(b) for a 12 month period between safety net adjustments was imposed to minimise the adverse economic consequences that may have arisen in the absence of such a requirement. The relevant part of the April 1999 decision states:

*"It was said that if safety net adjustments occur too close together intolerable pressures will be placed on many employers and ultimately jobs will be lost ... we have decided to adopt proposals to bring about a twelve month gap between the implementation of the 1998 safety net adjustment and the adjustment provided for in this decision. This will ensure that safety net increases are not implemented too close together in a way which may cause economic difficulties."*⁸

[16] In its most recent review of the safety net, the *Safety Net Review Wages - May 2000 decision* the Commission said:

*"... We also intend to maintain the requirement introduced in the April 1999 decision that at least twelve months must have elapsed since the rates in the award were increased in accordance with the last safety net adjustment before the award is varied as provided for in this decision. The purpose of this requirement is to avoid the cost pressures which might arise if more than one safety net adjustment is implemented within a twelve month period."*⁹

[17] The purpose of the limitation is to reduce cost pressures on employers and thereby to limit the potential for job losses. It is clear that granting the applications before us will not cause any *"economic difficulties"* for the employers or the employees concerned because of the existence of enterprise agreements providing for wage levels in excess of the rates of pay sought in the applications. In these circumstances we have decided to grant each of the applications.

2.3.5.1 - What to take from this

2.53 The AFPC is not formally bound to the approaches of the AIRC and indeed in many areas ACCI has commended differing conclusions and sought to have the AFPC embark on different approaches.

2.54 This is not such an area. The conclusions of the AIRC are based on elements of the Act which have either not been changed, or have been strengthened post-*WorkChoices*. The AIRC demonstrated appropriate caution and economic consideration in shifting minimum wages

³ Print [T4831](#), 20 December 2000.

towards their safety net role, at least in terms of the timing of increases. There is absolutely nothing in the amended legislation or mandate of the AFPC which could lead you to a different conclusion, or to conclude that Parliament intended that minimum wages be up-rated more frequently than 12 monthly.

- 2.55 None of the *WorkChoices* amendments invalidates or diminishes the considerations that led the AIRC to award increases not less than 12 months apart. Nothing in *WorkChoices* or the role of the AFPC diminishes the importance of the cost pressures identified by the AIRC or the potential impact on jobs.
- 2.56 Indeed, the considerations in s.23 of the amended *Workplace Relations Act 1996* are completely consistent with those that led the AIRC to introduce the 12-month rule (in regard to this issue). If anything, the safety net concept and the focus on the economy is strengthened and tightened in comparison to the provisions the AIRC was acting under.
- 2.57 The AFPC has been provided with no basis to depart from the accepted conclusions on only increasing minimum wages each 12 months, and on the consequences of departing from this approach. Precisely the factors that led the AIRC to refuse to increase minimum wages less than 12 monthly (costs, inflation, jobs and adverse consequences for competitiveness) should lead the AFPC to also refuse this course under s.23 of the amended Act in 2007.
- 2.58 There is a very real risk of adverse economic difficulties if minimum wages increase more frequently than 12 monthly. Employers subject to minimum wage increases are logically those without certified agreements. The EEH data tells us they are small businesses, often concentrated in lower margin, volatile industries such as retail and hospitality. So there will be no shielding from the negative economic consequences of major increases in labour costs less than 12 months apart. Whilst this may be overcome in particular enterprise circumstances (for example where more than the minima is payable under an agreement) this is disproportionately not the case for those most subject to minimum wages.

2.3.6 - Following the logic of the AFPC's 2006 decision

- 2.59 The AFPC also faces the challenge of acting consistently in 2007 and 2006. In resolving the issue of whether it should increase minimum wages less than 12 months from the preceding increase or whether it should follow established practice under the *Workplace Relations Act 1996*, the AFPC need also do no more than follow its own logic in its initial decision.
- 2.60 Various interests claimed that the 2006 increase was somehow some months 'late' and should be inflated or adjusted on that basis. In the initial 2006 review, the AFPC was specifically requested by a number of parties to increase minimum wages not only for changes in costs, the effluxion of time etc, but also on the basis that some inalienable annual timetable had been breached and this breach needed to be rectified by an additional or inflated adjustment.
- 2.61 There was some criticism of the AFPC process on the basis that an annual increase had not been generated in June 2006 (12 months from the final AIRC safety net review decision). Essentially, a number of parties subsequently argued that the AFPC needed to award "1½ increases in one" in 2006 to rectify delays to an inalienable 12 month timetable in 2006.
- 2.62 ACCI argued last year that this was a false premise. The correct understanding of the approach evolved prior to the AFPC was that minimum wages should not increase less than annually, not that they must increase annually. ACCI asked the AFPC to ignore the effluxion of time from the preceding increase in making its 2006 decision.
- 2.63 This did not occur. The first, and apparently lead, factor which the AFPC identifies itself as having taken into account in making its 2006 decision was:
- "the close to 18 month period since the last pay increase for Pay Scale reliant employees".⁴

⁴ AFPC (2006) *Wage-Setting Decision and Reasons for Decision – October 2006*, p.7

- 2.64 The AFPC need do no more now than be consistent. It has apparently accepted that it should uprate minimum wages based on the annual approaches evolved by its predecessor, the AIRC. Indeed, where there was deemed to be some delay in the inherited process, this apparently⁵ became the lead factor that determined the level of increase awarded.
- 2.65 ACCI asks that the AFPC do no more than continue this approach. If the AFPC is to accept the periodicity between the previous AIRC increases as important (as it did in 2006), then it should accept negative as well as positive imperatives on the timing of minimum wage increases. If it is to be assumed that wages must increase each 12 months, it must also be accepted that there must 12 months between wage increases,

2.3.7 - Payroll Administration

- 2.66 There is also some fundamental point at which the interests of uprating minimum wages are outweighed by the transaction and payroll costs of doing so.
- 2.67 In theory, minimum wages could increase by lesser amounts more regularly, keeping “better pace” with prices. In some people’s utopia, minimum wages would increase quarterly or even monthly, keeping exact pace with changes in prices and other indicators. In theory there would be no end to this. Minimum wages could become akin to the petrol price, with employers calling a phone number each morning to find out what they had to pay that day.
- 2.68 This is of course ridiculous and therein lies the point. There is some point at which unduly regular wage increases detract from the functions of minimum wages, and threaten to compromise the role of minimum wages.
- 2.69 Employers bear administrative costs for increasing wages. When wage increases are put through a payroll, this absorbs time and money.

⁵ From the formulation of the 2006 decision, p.7

These transactional costs are significant and this has been recognised in the annual practice to date (and indeed in milestone payments in workplace agreements which are for the most part annual, and not more than annual).

- 2.70 If employers have to increase minimum wages more regularly than annually (the proposition under examination here) they assume additional dead costs, with no additional productivity or efficiency offsets. This has been recognised by minimum wage setters for many years.
- 2.71 There are also concerns for employees. If minimum wages increase continuously employees have no perception of minimum wages having increased, they retain no sense of the value of the minimum wage or its dynamism.
- 2.72 There would also be concerns about the impact on employment if the cost of employing rises too regularly. Too constantly rising a price of labour may have the effect of dampening employment demand.
- 2.73 This is effectively another signpost as to why minimum wage setters generally do not increase minimum wages, particularly in modern market economies, more often than annually. There is a reason international best practice does not see minimum wages blow in the breeze of the day-to-day economic tempest – and the AFPC should properly recognise this in its actions during 2007.

2.3.8 - Flux = Lack of Confidence = Less Employment

- 2.74 To award minimum wage increases less than 12 months apart is also to descend into a maelstrom of wages flux, and to risk getting embroiled in day-to-day economic vagaries. This in turn leads to the problems of the indexation period, and in particular to incapacity of the system to achieve any vision for minimum wages other than determinism based on increases in data (i.e. because inflation = a , minimum wages must increase by a).

- 2.75 There is also an issue of expectations and managing expectations. If we embark on a process of less than 12 monthly wage setting in the current economic climate, what of next year, or 3 or 6 months time. If the AFPC embarks upon six monthly wage increases when inflation is within the RBA target zone, what about when it blips higher? What answer would the AFPC be able to give other than minimum wages continuing to chase prices?
- 2.76 If six monthly wage increases are embarked upon in the current economic climate, how would the AFPC be able to return to an alternative approach if some indicators changed – particularly prices?
- 2.77 Linked to this, the more regular minimum wage increases the more any minimum wage setter is effectively being bound by shorter run economic indicators. Short term developments (particularly in commodity or food prices) have lesser chance to settle, and the wage setter is forced to match enduring and ongoing minimum wages to shorter term problems, vagaries and developments prior to a proper opportunity for data to revolve itself. As already indicated, 12 monthly uprating protects against minimum wage setting descending into the daily economic tempest.

2.3.9 - Premature indexation = desperation

- 2.78 Whatever the basis for its determination, the October 2006 increase was at least equivalent to wage-price indexation for the period from the preceding 2005 AIRC safety net increase.
- 2.79 Under consideration in this review is another increase perhaps 6 months from the preceding one, with another approach based on inflation one of the options open to the AFPC.
- 2.80 This would amount to a return to wage indexation, if not formally then in effect. Australian wage fixation and the creation of the AFPC would have yielded minimum wage change to all intents and purposes based arithmetically on price change – something Australia is well and truly familiar with from some our darkest economic times of the 1970s and 1980s.

- 2.81 There is no valid basis for a return to formal or informal indexation, nor could there be under the amended *Workplace Relations Act 1996* or the contemporary workplace relations system. The time for indexation (if there ever was one) has more than passed and ACCI believes that the *Workplace Relations Act 1996* precludes it.
- 2.82 ACCI draws two adverse historic conclusions from Australia's various flirtations with wage indexation:
- a. Indexation was essentially used in desperation, when wages, prices or both had "broken out" of acceptable bounds and there was significant industrial pressure on the system. Embarking on indexation was a sign that the system had otherwise run out of ideas, and that the most basic and least effective form of centralised 'control' was the only option available to stop strikes and wage deals fuelling further inflation.
 - b. Indexation didn't work. It actually fed a viscous circle of wages and prices, and feeding off itself, fuelled high inflation, high unemployment and high wages. Indexation was ultimately abandoned after having led to desperate and damaging outcomes.
- 2.83 Indexation is a failed idea which is indivisible from centralised regulatory approaches Australia has long left behind and from the periodic intellectual bankruptcy of our wage fixing system.
- 2.84 The AFPC should be mindful that any premature increase in mid-2007 does not set us on the path of this failed concept – whether intended or not. Our system is in no way in serious crisis (the historic spur for indexation in Australia). Even if we were in some serious wages crisis, experience would tell us minimum wage indexation (whether express or in effect) would be precisely the worst course to pursue.
- 2.85 This is not inconsistent however with ACCI pointing out in Section 1 that one of the starting points for determining a moderate increase may be the underlying inflation rate. ACCI was not advocating indexation, rather pointing out that the inflation rate must form the absolute upper limit of what could legitimately be viewed as a reasonable increase.

2.3.10 - International Practice

2.86 ACCI has previously examined international practice in regard to notice of pending wage increases and periods between increases. If the AFPC were to embark upon 6 monthly wage increases, it would be acting contrary to the uprating of minimum wages in comparable countries. Uprating minimum wages less than 12 months apart would be contrary to general international practice in comparable OECD countries.

2.3.10.1 - UK

2.87 The UK Low Pay Commission has conducted annual reviews and up-ratings since its creation. For at least the past 8 years minimum wages have increased from 1 October each year.

2.88 In 2007, the LPC reported in early March with the government accepting them shortly thereafter, for an October 2007 implementation date. This provides an effective 6 months notice of the pending, 2007 increase and 12 months between increases. This is the type of process and timetable Australia should be aspiring to.

2.3.10.2 - NZ

2.89 Minimum wage increases in New Zealand have taken effect in recent years from late March, announced prior to Christmas in the preceding year. There has been at least 12 months between increases, not always strictly to the day, with the 2007 increase to take effect from 1 April⁶.

2.3.10.3 - France

2.90 France is one of the continental European countries to have a minimum wage, with others relying on collective agreement rates (although again these vary not more than annually in most cases). The French Minimum Wage (the SMIC⁷) has been varied not more than annually

⁶ <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=28115>

⁷ *Salaire Minimum de croissance*

since at least 1980⁸ ⁹, with the minimum wage reassessed each year on 1 July.

2.3.10.4 - Canada

2.91 At least 12 months is allowed between increases in Canada's system of provincial minimum wages. For example:

- a. The Manitoba minimum wage increases from 1 April each year¹⁰.
- b. The Ontario minimum wage increases from 1 February each year¹¹.

2.92 In various other provinces, wages have not increased for some years, including back to early 2005.

2.3.10.5 - Ireland

2.93 While the national minimum wage can only be increased following a recommendation in a national agreement, if there is no national agreement on a recommended increase, the Labour Court can only examine the minimum wage not earlier than 12 months after the Minister has declared a national minimum wage.

2.94 With the exception of the 2007 recommendations, since April 2000, when the National Minimum Wage was introduced, there has been at least 12 months between upratings of the minimum wage.¹²

2.3.10.6 - Spain/Portugal

2.95 The Spanish Government uprates annually following its review of minimum wages, while a Portuguese tripartite committee conducts an annual review with the Government implementing increases annually from January the following year.¹³

⁸ The earliest data available.

⁹ <http://www.insee.fr/en/indicateur/smic.htm>

¹⁰ http://www.gov.mb.ca/labour/standards/factsheet.doc_minimum-wage.pdf

¹¹ http://www.labour.gov.on.ca/english/es/pdf/fs_wage.pdf

¹² <http://www.entemp.ie/publications/employment/2006/esrireport.pdf>

¹³ UK Low Pay Commission Report 2007, p.324, Table A4.3

2.3.10.7 - Conclusions

- 2.96 Clearly international practice favours at least 12 months between increases. There is an international recognition that genuine 'minimum' wages are not involved in an indecent or ineffective pursuit of each and every fluctuation of prices and other indicators.
- 2.97 Other systems recognise the types of considerations identified in this section as justifying the proper spacing out of minimum wage increases. It is recognised internationally that there must be at least 12 months between increases to allow wage setters scope to award the level of increases they wish to. It appears to be recognised internationally that the type of substantial minimum increases minimum wage setters and politicians sometimes like to deliver are only in any way possible if properly spaced out.
- 2.98 International best practice should remain the aspiration of the AFPC. The AFPC retains the opportunity to pursue world's best practice and an Australian model for minimum wage setting. This should lead it to decline to uprate wages prior to 12 months elapsing from the initial, December 2006 increase.

2.4 - NOTICE OF INCREASES

2.4.1 - AFPC took some steps in the right direction in 2006

- 2.99 The AFPC assumed responsibility for minimum wages in Australia from a previous system that had some manifest inadequacies. One of the major ones was in regard to providing users of minimum wages (employers and employees) with proper notice of increases.
- 2.100 The AFPC seized its opportunity and responsibility under the revised *Workplace Relations Act 1996* to provide appropriate notice of minimum wage increases in Australia for the first time, and thereby began to address of the more objectionable and deficient parts of the previous system.

- 2.101 It was welcome that there was a period of notice between the announcement of the Spring 2006 increase on 26 October and commencement on 1 December. This was a small but important step in the right direction.
- 2.102 However, this still fell well short of the necessary period of notice for pending minimum wage increases. Five weeks was better than the AIRC process had proven itself capable of providing, but was still short of the notice actually required. Implementation of the Spring 2006 increase has underscored that this issue is even more important post-*WorkChoices* than it has previously been.
- 2.103 Any changes to minimum wages should not come into effect until a *proper* period of notice after the announcement has elapsed. ACCI maintains that this should be a period of some months, ideally (6) six, but certainly no less than (3) months from an announcement or formal decision that minimum wages are to be increased.
- 2.104 That is, employers should have an effective period of months to be effectively informed, and change payroll etc prior to any minimum wage increases having effect. As we now know from 2006, downstream processing of the increase by users of the system and the AIRC also favours a better approach to notice of minimum wage increases.
- 2.105 The AFPC needs to maintain its 2006 approach in 2007, build upon it, and understand the interaction of its increases with those in other systems. This should lead to a longer period of notice and a move towards international best practice on the implementation of minimum wage increases.

2.4.2 - What you have already accepted

- 2.106 The AIRC accepted the mistaken notion that it was somehow urgently repairing a broken safety net. Once a union made out its case that the safety net had “fallen behind”, it appears to have become an overriding concern for the AIRC that this be redressed – immediately. This was considered of greater weight than any employer concerns regarding practicality, administration or a balance of interests. This

approach persisted despite AIRC increases running well in excess of inflation for some years.

2.107 These assumptions were partly overturned by the AFPC in its first decision. Having heard from various parties (including Section 3 of ACCI's 2006 submission¹⁴ which examined this issue in detail) the AFPC overturned the previous assumption that once an increase was found to be merited, it had to commence immediately. Instead, the AFPC recognised that there should be some reasonable period of notice between the announcement of an increase and the implementation date.

2.108 The fundamental change of principle accepted by the AFPC last year is underscored by the circumstances of the 2006 decision. The last AFPC increase came 18 months after the preceding AIRC safety net decision. If ever there was a time that the AIRC's so called urgency thesis should have held – it would be then. It did not hold, and the AFPC made the long overdue move to recognise the plurality and balance of interests in implementing wage increases and the need for some proper period of notice. Consideration is now triggered of what a proper period of notice will be as the new AFPC process matures.

2.4.3 - What happened last year

2.109 Employers welcomed last year's attempt to provide proper notice of a pending wage increase. The AFPC proved itself capable of introducing some level of realism into the implementation of its wage increases.

2.110 Unfortunately, the 5 weeks notice could not be used in late 2006 to inform employers of pending wage increases in advance as intended. Whilst there was the AFPC decision from 26 October, parties to awards could have no confidence in knowing the exact wage rates under APCS. The 5 weeks notice was quickly eaten up by employers negotiating the terms and scope of the APCS summaries issued by DEWR.

¹⁴ ACCI (2006) ACCI Primary Submission, pp.35-54

2.111 The majority of these summaries were not finalised until after the 1 December commencement date for the 2006 increase. This dictated that employer associations could not in fact advise their members prospectively in late 2006 as envisaged, and wages advice once again could only be provided retrospectively.

2.4.4 - Settling APCS

2.112 Having noted that the notice period last year was consumed by attempts to understand revised minimum wage obligations in the absence of published pay scales, what should happen this time?

2.113 This is set out in more detail in the next section, but essentially a proper notice period must be allowed in which parties can comment on draft APCS issued by the AFPC, for issuing as finalised APCS by the AFPC.

2.114 Last year's decision varied APCS 'virtually'. Items C and B of the decision added particular amounts to the APCS carried into *WorkChoices* from the preceding award wages system. There was an obligation to add 72¢ or 58¢ to a newly derived hourly wage which was not reduced to a formal written amount either prior to or after the 1 December 2006 uprating. The narrative of the 2006 decision instructed the increasing of award rates, but the AFPC did not issue orders setting out the revised APCS rates.

2.115 Employers request the issuing of APCS giving effect to any 2007 increases, for the reasons set out in the next section.

2.116 This will take a period to finalise in the wake of the overall AFPC decision and this period should be reflected in the amount of notice between announcement and commencement of the next minimum wage increase.

2.117 The need for the AFPC, employers and unions to finalise orders setting APCS supports the ACCI proposal for some proper period of perhaps 6 or 3 months being allowed between announcement of an increase and it taking effect. The need for the Australian minimum wage fixing

system to provide proper notice of increases remains pressing. It will be met in 2007 by:

- a. The AFPC issuing APCS giving effect to its decision for pay rates derived from the former award system.
- b. The AFPC setting its notice period accordingly, allowing a realistic period for employers and unions to finalise APCS rates with the AFPC.

2.4.5 - How to proceed in 2007

2.118 Based on the wider position in this submission, the AFPC should proceed as follows:

- a. No increase should take effect prior to at least 1 December 2007 as set out throughout this submission.
- b. There should be a period of 6 and certainly not less than 3 months notice of any increase which is awarded for the reasons previously argued by ACCI and others, and as recognised in the previous AFPC decision.
- c. If an increase is to be considered independent of the 12-month rule (i.e. prior to 1 December) there should be a period of not less than 3 months notice for the reasons set out below.
- d. (At the very minimum) the 5-week notice period for in 2006 is the very minimum that should be provided for. There should be absolutely no detracting or truncation of the period of notice in the initial decision, which should now be regarded as the absolute minimum period of notice.
- e. A process for the publication of pay scales by the AFPC should commence.

2.4.6 - Nexus With Other Minimum Wage Setting

2.119 The AFPC should also properly take into account the ramifications of its approaches for downstream users in flow on proceedings, and to

the extent possible seek to accommodate the interests of parties (also seeking to settle other minimum wages) (especially as they are the same as the top tier of interests addressing the AFPC on the review of pay scales).

- 2.120 There is a parallel system of minimum wages under transitional awards which the AIRC retains responsibility for, along with responsibility for allowances under both transitional awards and pre-reform awards covering corporations. In a signpost for the future interaction between these reviews and the work of the AIRC, in the wake of the October 2006 AFPC decision the AIRC convened and determined the *2006 Wages and Allowances review* case¹⁵.
- 2.121 In the wake of this case, the AIRC attempted to vary all awards for a 1 December operative date. This process was far from successful, and the variation of awards has extended well into 2007. In effect, there was a decision to retrospectively increase transitional award wages, and a failure to reduce the new wages to writing in some cases weeks or months after the date of effect for the decision.
- 2.122 The primary nexus between this AIRC case and the timing of any 2007 AFPC decision lies in allowing a proper opportunity hear and convene the 2007 AIRC proceedings, whilst also allowing an opportunity for common operative dates without detriment to parties.
- 2.123 We know in the wake of the 2006 AIRC case, that there is an ongoing predilection or presumption towards a common operative date between the AFPC increase and that awarded downstream by the AIRC. Given that this is to be the case, the AFPC should consider this in addition to the other grounds supporting a proper notice period, and allow the type of notification period ACCI has called for.
- 2.124 A proper period of notice between the notification of an AFPC decision to increase minimum wages and its effect such as that we commend to you, will also allow the AIRC process to be heard and determined and

¹⁵ <http://www.airc.gov.au/wages2006/PR002006.htm>

transitional awards varied within the notice period. Thus, minimum wage increases could comprehensively be implemented from a single operative date, with the support of detailed new wage information from both the AFPC (APCS) and the AIRC (new transitional award rates and allowances for all forms of awards).

- 2.125 It may be asked whether this accords with the amended *Workplace Relations Act 1996*, and precisely what regard the AFPC should have for what is essentially a downstream process under the Act, and one which relevant only to a temporary schedule of the legislation (Schedule 6)?
- 2.126 Section 24(d) allows the AFPC to determine when its decisions come into effect, presumably in furtherance of the economic prosperity of the people of Australia. Presumably, the AFPC would also be mindful of the general objects of the Act which emphasise system simplicity (s.3(b)), furthering compliance (s.3(f)), and consistency between award minimum standards and AFPC decisions (s.3(g)).
- 2.127 Allowing the AIRC processes proper opportunity to implement the AFPC's decisions, whilst at the same time providing the proper notice of increases which the AFPC has already found important (and already overturned preceding approaches), would represent the best possible implementation of the AFPC's responsibilities under the *Workplace Relations Act 1996*.

2.4.6.1 - Cease Double Counting Increases

- 2.128 Subsection 3.4 in the next section addresses the importance of not double applying increases to various structures inherited from state awards, to which further minimum wage adjustments were specifically not to apply.

2.4.7 - International Best Practice

- 2.129 ACCI welcomes the approach of recognising the need for proper notice between the announcement and the commencement of minimum wage increases. The AFPC is to be congratulated for being able to make a

common sense adjustment to the implementation of its decision the AIRC simply could not make and could not comprehend.

2.130 However, the 5-week notice period allowed in 2006 was only the first step towards a proper period of notice of pending increases. As the AFPC considers the issues raised by ACCI and others, including the interaction between the increase and the pay scales and AIRC matters, it is relevant to consider international practice in this area.

2.131 International practice in implementing minimum wage increases favours providing employers, employees and the community with an even more appropriate notice or adjustment period once increases are pending.

2.4.7.1 - New Zealand

2.132 The New Zealand government effectively provides at least three months notice of pending increases to the NZ minimum wage. The 2006 increase was announced on 21 December 2005, and was implemented 27 March 2006 – a period of three months.¹⁶

2.133 The 2007 increase was announced by the New Zealand government on 18 December 2006, to take effect from 1 April 2007, a period of approximately 3½-months notice¹⁷.

2.134 Relevantly for this matter, the New Zealand government also expressly highlighted the period of notice as facilitating the level of increase it was applying:

"With four months till the changes come into effect, businesses will have time to prepare. The date of 1 April was chosen to reduce compliance costs for businesses as it will coincide with the implementation date of four weeks' annual holidays."

2.135 Not only does the New Zealand government recognise that comparatively higher wage increases require suitable notice, but it has also recognised something else ACCI sought to point out in our last

¹⁶ Media Release - Hon Ruth Dyson, 21/12/2005, "[Minimum wage to increase](#)"

submission. Increases in minimum wages can validly be aligned with other regulatory changes – something that would be achieved over time by moving to a 1 July implementation date (but not through bringing increases forward to get there or breaching anything as fundamental as the 12-month rule). This is a longer term issue for the AFPC to be mindful of.

2.136 The New Zealand government has also articulated a longer-term hourly wages target for the minimum wage, through to the end of 2008. Whilst ACCI would not support the level of uprating in New Zealand, the idea of employers having this level of notice of where the minimum wage is broadly going, would provide scope to budget and plan which has never been available in Australia.

2.4.7.2 - Canada

2.137 Various Canadian provinces provide many months or even years notice of pending increases, by announcing series of increases over periods of up to five years. For example, employers and employees in Newfoundland knew of minimum wages and dates of increases for 18 months through 2005 to 2007. On 6 January 2005, Joan Burke, Minister of Human Resources, Labour and Employment for the province, announced:

The minimum wage in Newfoundland and Labrador is currently \$6 per hour. That wage will increase by 25 cents to \$6.25 effective June 1, 2005, to \$6.50 effective January 1, 2006, to \$6.75 effective June 1, 2006 and to \$7 effective January 1, 2007.¹⁷

2.138 So, in addition to providing 6 months notice of the next increase, this provincial government provided notice of the next two increases after that. Employers in this province are a lot better off in terms of predictability and budgeting than their Australian counterparts have been.

¹⁷ Media Release - Hon Ruth Dyson, 18/12/2006, "Largest minimum wage increase since 1999" - <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=28115>

¹⁸ Media Release, NLIS 1, January 6, 2005 (Human Resources, Labour and Employment) "[Minimum wage earners in Newfoundland and Labrador to see increase in pay](#)"

2.4.7.3 - US

2.139 Legislated increases in minimum wages are signed into law, providing some prospective notice of the date of effect and allowing employers and employees to prepare and inform themselves prior to new obligations coming into effect. Another contrast to Australia is that the level of proposed increase is clearly in the public arena many months prior to finalisation.

2.4.7.4 - United Kingdom

2.140 Notice of increases and predictability for industry have been two of the hallmarks of the UK Low Pay Commission since its creation in the late 1990s. As the most recent and rigorous wage setting body prior to the creation of the AFPC, it effectively sets a benchmark for world's best practice in implementing wage increases.

2.141 Scheduled increases for October 2005 and October 2006 were announced from February 2005. The 2007 increase was announced in March and is to take effect from October.

2.142 This is 6/18 months notice of pending increases. It is 6 months notice in 2007. This provides a contrast to the 2006 outcome in Australia that provided 5 weeks notice of an increase which took effect at a similar time. UK employers knew about their late 2006 increase in October 2005, something which was not possible in Australia in 2006¹⁹ but which should be aspired to be AFPC over time. This is not to say the 5 weeks notice last time was not a positive development, but to emphasise that a much longer period of notice is actually required/represents international best practice.

2.143 In March 2007 the Commission published its latest report to the UK Government on the National Minimum Wage. The Government accepted the main recommendations made by the Commission. Thus, the scheduled wage increase of October 2007, has been confirmed at least 6 months prior to its commencement.

2.4.8 - The Act supports proper notice

2.144 ACCI's proposed approach represents a superior implementation of the requirements of the revised *Workplace Relations Act 1996* compared to the previous AIRC approach of providing effectively no notice of pending wage increases. Consideration of the Act should fortify the AFPC in continuing the paradigm shift it embarked upon last year and moving further towards a proper system of 6 months notice of pending increases.

2.4.8.1 - Section s.3(c) - An economically sustainable safety net

2.145 Section 3(c) of the *Workplace Relations Act 1996* provides that it is a function of the Act to provide the means "to provide an economically sustainable safety net of minimum wages and conditions...".

2.146 Economic sustainability is a function of practicality and enforceability. Sustainability is maximised and advanced by a balanced approach to the implementation of minimum wage increases. It is maximised by providing minimum wages with maximum notice to users of pending increases. Wages are more economically sustainable if those paying them have a decent chance to adjust their approaches, to adjust their budgets around the new wages etc.

2.147 Economic sustainability is also advanced by minimum wages that do least damage to budgeting. Maximising notice of pending wage increases maximises the opportunity to adjust commercial budgeting around changing labour costs.

2.4.8.2 - Section 3(f) Ensuring Compliance

2.148 Section 3(f) of the *Workplace Relations Act 1996* provides that an object of the Act is:

- f) ensuring compliance with minimum standards, industrial instruments and bargaining processes by providing effective means for the investigation and enforcement of:

¹⁹ The AFPC having only just being set up.

- (i) employee entitlements; and
- (ii) the rights and obligations of employers and employees, and their organisations

2.149 Compliance is supported by a system which gives people a chance to comply, and which does not implement new obligations with insufficient notice/no capacity to plan.

2.150 Furthermore, leaving it up to employees and employers to “calculate” the 2006 increases to their applicable virtual APCS does not assist in ensuring compliance, and as a result cannot ensure employees and employers know their rights and obligations under the Act.

2.151 This importance of this cannot be overstated. The issue of compliance is a serious matter for employers. In addition to the financial penalties involved, the issue of harm to a businesses reputation is also considerable. That it why 3(f) is included in the objects of the Act. The fact that DEWR had to issue a fact sheet on issues such as rounding more than 3 months after the December 1 increases, only highlights the lack of clarity in the obligations employers must observe.

2.4.8.3 - Section 3(g) Incentives to Bargain

2.152 Scope for bargaining is maximised by more predictable wage minimum increases. Calculations on the practicality of bargaining can only be undertaken where medium and longer term scenarios are more predictable. This has been one of employers’ key complaints to date.

2.153 In terms of notice, the October 2006 AFPC decision was a step in the right direction, and provided more notice of the pending increase than the AIRC had ever proven itself capable of delivering. However uncertainty about the detailed obligations (i.e. not having proper pay scale information) ate up the 5 weeks notice between 26 October 2006 and 1 December 2006.

2.4.8.4 - Section 23

2.154 The AFPC’s guiding parameters are also relevant to this important consideration for employers:

2.155 Section 23(a) – Unemployed and Employment

- a. Complex minimum wages make employing new people more difficult. You maximise capacity to enter employment by making wages obligations as transparent and predictable as possible.

2.156 Section 23(b) – Competitiveness

- a. Employer competitiveness relies on efficient operations, and this extends to all parts of the operation. Inefficient and overburdened payroll operations detract from efficiency generally.
- b. Scope to properly budget for pending wage increases, maximises scope for competitive operations and pricing. Scope to forecast costs and to properly integrate labour costs into budgets allows for more competitive pricing and greater efficiency.

2.157 Section 23(c) – A Safety Net For the Low Paid

- a. The concept of a safety net implies an effective safety net, and one which is enforceable and able to be implemented efficiently and clearly. This is best met by a safety net that operates with maximum possible confidence and understanding – that is, prospectively and with due notice.
- b. Wages are not a safety net when there is uncertainty about what should be being paid, or where there is widespread back-pay and over-taxation due to undue haste in introducing new obligations.

2.158 Section 23(d) – Juniors, Trainees, Persons with a disability, etc

- a. These minimum rates can be more complex to administer than minima generally. This is unavoidable, and ACCI's proposed approaches will continue this. However, these employment arrangements underscore the importance of providing some proper notice of pending wage increases.

2.4.8.5 - Conclusion

2.159 The AFPC should again conclude that the amended *Workplace Relations Act 1996*, and general merit and equity, compel an improved approach to providing due notice of pending minimum wage increases.

2.160 A positive duty should be distilled from the *Workplace Relations Act 1996* to provide genuinely prospective and balanced notice to employers that their minimum wage obligations are to increase. This duty should be met by the approach recommended by ACCI above.

2.4.9 - First pay period commencing on or after

2.161 The traditional implementation of wage increases in Australia has been not on the basis of a single prescribed date, but on the basis of the “First Pay Period Commencing on or After” a prescribed date. For example, one of the final wages variations to the *Metal, Engineering And Associated Industries Award 1998 - Part I*²⁰, included the following:

B. This order shall come into force from the beginning of the first pay period commencing on or after 1 June 2004, and shall remain in force for a period of 6 (six) months.

2.162 ACCI argued strongly in our 2006 submission²¹ that this was an area in which AIRC, unions and employers had it right. The long standing formulation for the implementation of increases ensured that employers were not required to vary wages part way through a shift, or through a pay period – which can significantly complicate payroll administration. Implementation dates based on the first pay period on or after a particular date is a logical, balanced and acceptable way of implementing minimum wage increases.

2.163 Employers were therefore particularly disappointed with the execution of the 1 December 2006 increase from midnight on 30 November 2006. It appeared to have paid insufficient regard to some of the practical

²⁰ AIRC Print [PR947308]

²¹ ACCI (2006) ACCI Primary Submission, [3.49 – 3.51], p.45

experiences which had been evolved in regard to effectively and efficiently increasing minimum wages.

2.164 Of course, the AFPC approach then had precisely the negative impacts we warned of:

- a. Employers had to implement wage increases part way through shifts and pay periods. Consider for example a hospitality worker working a night shift bridging midnight on 30 November 2006.
- b. Complicated back pay and pay adjustment was required. This was costly, complicated and ultimately unnecessary.
- c. There was a differing timetable for adjusted wages and adjusted allowances (which could have been avoided if the AFPC had adopted the approach ACCI commended to you).

2.165 In contrast to the AFPC approach, the AIRC got this right it in its subsequent flow on case, the *2006 Wages and Allowances Review* decision. This was applied from the first pay period commencing on or after 1 December 2006²².

2.166 The AFPC should in addition to providing due notice ensure that the operative date for any increase in minimum wages is in future implemented on a “First Pay Period Commencing on or After” basis rather than from a single set date which inherently cuts across pay periods.

2.167 There is a reason that this was the approach under awards, and a reason it was accepted as the mechanism to increase minimum wages by employers, unions, tribunals and all users of the system. As ACCI argued in the initial review, AFPC increases should be implemented on a first pay period on or after basis.

²² AIRC Print PR002006, *Wages and Allowances Review 2006*, 8 December 2006

2.4.10 - Not A Weekend or Holiday

- 2.168 Linked to the preceding, it is generally recognised that requiring variation of wages across holidays or on weekends is not desirable. This creates complications for employers and those preparing payroll.
- 2.169 There is also the issue of not increasing minimum wage obligations at a time that advice may not be properly picked up by either employers or employees, again creating potential back pay situations. On this basis, it has not generally been the case that minimum wages have been increased in the period between approximately 20 December and 27 January.
- 2.170 Whilst ACCI has emphasised the importance of no increase taking effect prior to 1 December according to the 12-month rule and established practice, this is not to be taken as indicating this is employers preferred part of the year. A number of ACCI members in industries most directly affected by the 2006 decision (e.g. retail and hospitality) report that December is the start of their busiest part of the year, and not at all an appropriate time for a wage increase to need to be implemented. This should remain a longer term consideration.

2.4.11 - Ideal Timetable

- 2.171 It is worth ACCI again articulating the ideal or preferred timetable for minimum wage increases for employers. That is, what should we ultimately be working towards after the initial period of the AFPC's operation.
- 2.172 Ideally there would be an announcement in January, of an increase to take effect in July – that is an ideal of 6 months notice, and of mid-year increases.
- 2.173 The month of July seems a very logical time for minimum wages to increase, aligning to other changes in costs with the financial year and of course according neatly with a major break in the accounting process.

- 2.174 If 6 months notice is not yet possible, any period of notice should allow for the revised obligations to be budgeted. Therefore a process in which a July increase was announced towards the end of the first quarter of the calendar year would be of considerably greater utility to employers than the pre-*WorkChoices* approach/the AFPC's 2006 approach.
- 2.175 Two further matters can be added to this:
- a. It is entirely legitimate to revise a timetable by a delay in increases, and there is no necessary reason to move towards a proper timetable through an unduly early increase (i.e. bringing one forward to get into the part of the year you want to be in). Indeed as we argue, there is every reason not to do this.
 - i) Over a period of years the AIRC changed its safety net review timetable (for example to be able to receive budget data) through gradual "delays" in the operative date for safety net increases from April in 1997, to June in 2005.
 - b. Nothing the AFPC does precludes moving into the right part of the year, with the right period of notice in the future. The AFPC process offers real scope to improve on some of the deficiencies of the previous system, including in regard to operative date.

