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Submission to the Fair Pay Commission

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1. The submission by the Commonwealth Government to the FPC urging an increase in the $12.75 minimum wage already mandated in the WorkChoices legislation, and the very public endorsement by the Prime Minister of this proposal, is a tragic turning away from policies and advocacy which have transformed Australian economic life in the last 15 years. Any increase in the size of the 'welfare trench' (see below), in which contracts between people who want jobs and people who need employees are made illegal (merely because the Prime Minister does not agree with the terms of the contract), will put some people, somewhere, out of work; will forestall, somewhere, the ambition of an entrepreneur to develop a new business and new employment opportunities; and will accelerate the replacement of labour by capital in the implementation of new ways of doing things. The people who are hurt by these developments are, of course, the unskilled, the unqualified, the long-term unemployed. They have no-one to speak for them: not the unions, not the church leaders, not the welfare lobby and now, not the Prime Minister. Unless the gap between market wages for the unskilled and the statutory minima is non-trivial, unemployment must increase as a consequence of widening the welfare trench.

2. The belief that in the absence of legal restraints, employers could and would drive down wages to near-zero levels and its corollary, that prosperity can be increased by judicial fiat, seems widely held, or at least is perceived to be widely held. A useful expression of this belief is found in a letter from a Ron Brown of Hornsby, NSW, published in *The Australian* in February 2002:

> Alan Wood misses the essential point on workplace relations. (Opinion 19/2). Almost any bargaining between employers and individual employees will be lopsided (employers in general know they could get someone else).
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> Unrestricted freedom to negotiate on hours, pay and conditions ultimately leads to exploitation. It is only a matter of time before the clock is turned back to the nineteenth century.
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> Should a man or woman really be forced back into working 12 hour shifts (or longer). Almost no one can remain efficient for that length of time.

> That the unions in their day sometimes went to extremes is acknowledged but so too must be noted the extremes of employers before unionism managed to curb their excesses.
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> It is government's role to stand between the often conflicting requirements of employers and the welfare of employees. The common good is not solely served by the employer's competitiveness and especially when Australia is competing with third-world countries where employees' welfare and rights are frequently of little consequence.
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> Governments abdicating this responsibility are not showing the leadership needed.

3. Mr Brown has described an understanding of the labour market which is essentially Marxian in its modern antecedents[1] but it is an understanding shared by influential church leaders such as Archbishop Peter Jensen and Cardinal George Pell, whose understandings may have been influenced more by Thomas Aquinas than by Karl Marx. The crucial error is in the claim that 'employers know they can get someone else'. The first rule of markets is that price is the instrument by means of which supply and demand are brought into balance and whilst every market is different in detail, the labour market, like all markets, uses price as a means of matching workers with jobs. The Marxian idea of the imbalance of power has been recently analysed at length by Geoff Hogbin in a paper published by the NZ Business Roundtable which is also available on the HR Nicholls Website and is commended for its depth and breadth.

4. In an essay published in the March 2002 issue of *Quadrant* entitled 'The Failure of the Family'. Cardinal George Pell, Roman Catholic Archbishop of Sydney, argued that governments could and should do more to help families prosper. Most Australians would support pro-family policy on the part of governments, but difficulties arise when particular policies are proposed and their impact on families is debated. What is particularly disturbing about Cardinal Pell's essay is to find that his first line of attack is to cite Higgins' Harvester judgment of 1907 as a model of wise and beneficent pro-family policy. I will quote some sentences of the Cardinal's essay to provide the essence of his argument.

> The Harvester case is usually referred to as one of the key elements in the development of the raft of benevolent laws and social legislation—the 'New Protection' as it was called—which Australian governments began to put in place in the wake of the economic crash of the 1890s. These laws were intended to minimise social conflict, especially conflict between labour and capital;… to ensure a decent standard of living for workers and their families; and more broadly through the system of tariffs and economic

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[1] A particularly annoying element in this imaginary view of the world is a Dickensian picture of the C19 which is completely at odds with reality. Between 1815 and 1914 the West in general, and the English-speaking world in particular, increased in population and in prosperity at an historically unprecedented rate.

> protection, to encourage local industry and to maintain Australia's independence.
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> Higgins' Harvester judgment linked wages to human need, more than to profits or productivity. . . It was also one of many measures in support of a great social experiment, … to build a peaceful, egalitarian and democratic society without revolution or violent upheaval. By and large that experiment was a tremendous success…
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> Harvester placed the welfare of the family at the centre of social and economic policy from the beginning of Federation. In a new nation concerned to minimise the divisions between rich and poor and to lay a solid base for social stability this made perfect sense.

5. Cardinal Pell's lamentable ignorance concerning critical issues in Australia's economic history contrasts dramatically with his record as a defender of the Roman Catholic Church, and of its teaching of the Christian Gospel. Many orthodox Christians of other denominations wish we had more church leaders with his confidence in the basic truths of Christian doctrine, and his courage to defend them in the public arena. This makes his incursions into economic history, with his propensity to get the story completely wrong, all the more serious.

6. In dealing with the actual impact of the Harvester judgment on the lives and fortunes of Australian families and their breadwinners (as opposed to the mythology surrounding it) we are fortunate to have the results of the work done by Colin Forster, a distinguished and careful economic historian, whose paper 'An Economic Consequence of Mr Justice Higgins' was published in the *Australian Economic History Review* in September 1985. A number of preliminary points have to be made. The first is that Higgins' Harvester decision of 1907 (which decreed a minimum wage of 42 shillings per week for unskilled labourers) was soon overturned by the High Court, which found that the *Excise Tariff Act* of 1906, which Higgins had presumed gave him the legal authority to make his award, was constitutionally invalid. (Given that Higgins was a justice of the High Court as well as President of the Arbitration Commission, this judgment must have caused some rancour within the bench). But the High Court's intervention was indeed fortunate for the unskilled worker upon whom Higgins had bestowed a huge mandatory increase. He subsequently wrote in 1922 in his apologia *A New Province for Law and Order*:

> I think I am close to the mark when I say, even for men in regular work, the average wage was not more than 5s.6d. per day, 33s. per week. This would mean that the standard was raised by over 27 per cent in 1907…

7. If that increase had remained a legal requirement in 1907, then a sharp increase in unemployment, particularly amongst the unskilled, would have followed soon after; just as we saw a sudden and disastrous increase in unemployment which followed the 1981-82 increases of similar magnitudes in the metal trades awards. But Higgins' doctrines took hold in the minds of

the arbiters of the State Wages Boards, particularly of NSW and Victoria, in the years which followed, and slowly these Boards, with unlimited constitutional power, and constrained only by fear of inter-State competition, began to regulate in the Higgins spirit.

8. After the Great War, however, a mild deflation set in, and the squeeze between deflation and the awards laid down by the State Wages Boards began to bite. I quote the conclusion of Forster's paper:

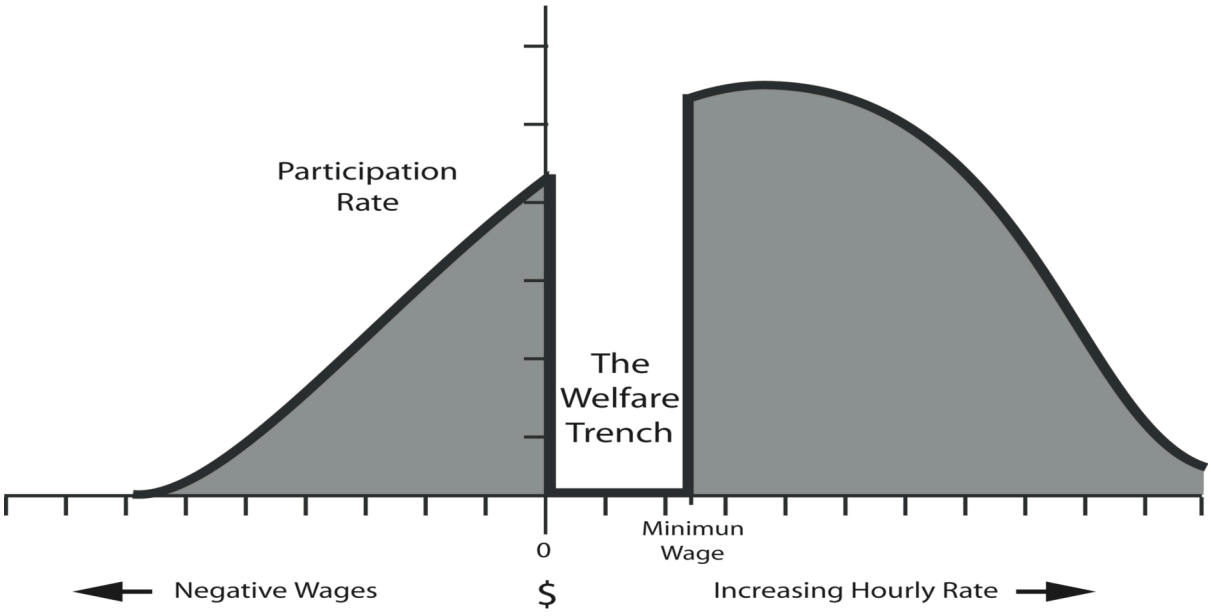
> It is argued that a minimum wage of significant size did not become generally effective in NSW and Victoria until 1921, and that the level of the wage was strongly influenced by—indeed roughly equal to—Higgins' 1907 decision. It might be suggested that the level of the basic wage was not too inappropriate because unemployment as a proportion of employees was not high. But unemployment was strongly concentrated in unskilled men and, within that group, on those lower down the ladder of capabilities. Higgins thought he was protecting the weak: in fact he was aiding the strong.

9. The impact of unemployment was far more severe in the 1920s than it is today. There was no 'dole', and the only option for most of these men was to roll up a swag and look for casual work, or hand-outs, in the bush. Many of them, no doubt, were family men, and how those families coped with an absent bread-winner, and the absence of bread, is something Cardinal Pell might reflect upon. Certainly many of them were ex-servicemen, and the bitterness which unemployment generated amongst them became part of the political folklore which carried into the post-war period of the late 1940s. The argument that the Harvester judgment was a family-sustaining doctrine is a cruel fantasy, and any government or tribunal with legislative powers that sought to emulate Higgins today would merely repeat the tragedy which he and his disciples caused in the early 1920s.

If the Fair Pay Commission were to emulate Higgins and decide that all wage minima within its aegis were to be increased by 27 per cent, then the political row which would follow would lead to its rapid demise.

10. Many would agree with Cardinal Pell's general thesis that much government policy, particularly tax policy, makes life much more difficult for families than would otherwise be the case. But the leitmotif of his *Quadrant* article, which is that a return to the policies of the Deakin settlement, notably protectionism, and arbitration of industrial disputes (which means prices in the labour market set by political fiat), would improve the position of Australian families, is a fantasy, and since it comes from such a prestigious source, it is a dangerous fantasy.

11. Under current legislation and regulation, the distribution of wages from employment contracts is shown schematically in the following diagram.



Strictly speaking, the negative part of the distribution, in which participants in the labour market pay to be employed, and which represents the voluntary sector of the economy, is not the consequence of an employment contract. Although volunteers commit time and resources to their activities (sometimes very substantial resources) their work is not usually regarded as belonging to the world of employment contracts. But any person who has been involved in, for example, the administration of a church, and has experienced the ambition of regulators to shut down the institutions of civil society through OH&S (to cite one exploding sphere of regulation) is aware that the skills and commitment required to keep such institutions alive are of a high level, and even though the work of volunteers is not of a contractual kind, the commitment of those volunteers to the tasks they have undertaken is equivalent to it.

This diagram (first published by Bob Day, a board member of the Society) does demonstrate the static economic loss to the nation which follows from the prohibition which regulators have imposed on employment contracts between zero and whatever minima has taken the fancy of the regulators. What the diagram does not show are the dynamic losses which are consequent to the imprisonment of people in the welfare trench.

12. The history of wage regulation in Australia is very closely interwoven with protectionism. The Harvester judgment arose because the manufacturer H V McKay, in pursuit of a tariff on imported harvesters, sought a certificate under the 1906 Tariff Act which declared that the wages

paid in his company were 'fair and reasonable'. This certificate was to be issued by the Arbitration Commission. So we read, in *The New Province for Law and Order*, of the Sunshine housewives' weekly shopping list of 1906, (these women were the wives of trade union officials) which, when added to Higgins' ideas of what was required for the working man's extramural expenditure, totalled up to 42 shillings, a 27 per cent increase on the 33 shillings which was the market rate of the day.

13. The sustained and almost unprecedented economic growth of the last 15 years is due to two things. The first is the success of the Reserve Bank in providing an inflation-free economy. The second is the phasing out of protection. Both these things have changed the business culture of Australia as well as providing a sound environment for making business decisions throughout the entire economy. The last remaining impediment to putting the Australian economy onto a trajectory where the energies and entrepreneurial potential of the whole population can be fully realised is our system of wage regulation. The Howard Government established the Fair Pay Commission to continue the work begun by HB Higgins in 1907. The WorkChoices legislation mandates a $12.75 minimum hourly rate and the FPC is powerless to overrule that. The HR Nicholls Society urges the FPC to take up the challenge now laid down before it by the Howard Government and explain to the Australian people that Higgins' decision a century ago eventually caused serious unemployment amongst those least able to withstand such misfortune, and that raising statutory wage minima today (in the absence of a general inflation) must cause unemployment both immediately and in the future. Given that the demand for labour in Australia is now very high, there could be no better time to challenge the mythology of the Harvester judgment.

Ray Evans
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