Federal IR Reform: the Shape of Things to Come

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1 Introduction/Executive Summary

The Federal Government’s WorkChoices Bill is widely acknowledged to be the most far-reaching change to our industrial relations system in the past century. There are five primary dimensions to the IR changes:

• *Unifying labour law* by over-riding the state systems;

• *Limiting the reach and influence of labour law and the award system* by encouraging commercial contracts, ‘corporatising’ labour law and constructing exit routes for businesses to become award-free;

• *Tilting labour law* in favour of employers by regulating unions and de-regulating employers;

• *Transforming the AIRC* from a Dispute-Settling body to an Institution which enforces Labour Law on Unions;

• *Centralising IR Authority* from the AIRC to the Executive and Parliament in an historic realignment which ends the Australian tradition of an independent, judicial-like institution setting minimum labour standards.

Predicting the effect of changes to labour legislation is not easy. As always the ‘devil is in the detail’ – especially with such a complex, technical and far-reaching piece of legislation as WorkChoices.
However, this is not the first experiment with major labour market deregulation in jurisdictions with award systems. Victoria, Western Australia and New Zealand have also previously undertaken similar reforms – dismantling award safety nets in favour of agreement-making underpinned by a handful of statutory minimum conditions. There is also some data allowing for comparisons between the Federal Government’s preferred option, individual Australian Workplace Agreements (AWA’s), and outcomes under awards and collective agreements.

Past results in all these jurisdictions have been identical. Whether we are talking about New Zealand, Australian state jurisdictions or AWAs, the result has been agreements focused narrowly on wages and working hours flexibility, the widespread loss of penalty/overtime rates and the growth of low-pay jobs and wage inequality - especially in regional areas and especially for women, young people and low-skill employees. Internationally, the outcomes in nations with deregulated labour markets such as the United States and the United Kingdom have been the same: far-reaching labour market deregulation of this character has without exception been associated with a large low-wage sector and wage inequality.

Concretely, there are five mechanisms through which low-pay jobs will expand under WorkChoices:
1. Firstly, award-dependent employees with low bargaining power will be shifted by their employers to low-pay AWAs/non-union collective agreements. The replacement of the ‘no-disadvantage test’ based upon awards for workplace bargaining with the five minimum standards of the Australian Fair Pay and Conditions Standard (AFPCS) will lead to the loss of important sources of earnings such as overtime/penalty rates and casual loadings – especially in non-union service sector jobs. By allowing the 38-hour week to be ‘averaged’ over a 12-month period, employers can easily contract out of the 38-hour week without paying overtime and penalty rates;

2. Making it easier to convert employees into contractors outside the system of minimum labour standards, whilst removing remedies against exploitative arrangements such as unfair contracts provisions, will lead to quasi-unregulated/sub-award standard jobs in some occupations such as security guards and contract cleaning;

3. There will be an ‘inter-generational’ effect in some sectors whereby new employees work under lower rates and conditions than existing or previous employees. New employees can be presented with take-it-or-leave-it AWAs whilst other measures such as liberalised transmission of business, greenfield agreement and unfair dismissal provisions will make it easier to replace existing workers or set up new businesses with cheaper alternatives;
4. There are new opportunities to lower the wages and conditions of existing employees. Workplaces with terminated agreements will become permanently award-free, businesses will be able to use the new transmission of business and Greenfield agreement regulations to remove award protection for existing employees and *WorkChoices* systematically tilts bargaining power towards employers.

5. The changes to the wage-setting principles and selection of personnel associated with the establishment of the Fair Pay Commission will almost certainly led to the stagnation of minimum wages and their decline as a ratio of average earnings. There is also no mechanism guaranteeing a wage increase for employees of constitutional corporations in the state systems during the three-year transition period. Employees with low bargaining power could face a de-facto wage freeze;

The IR reforms are complemented by the welfare-to-work reforms which tighten, lower and remove eligibility for benefits, notably if workers refuse jobs – even take-it-or-leave-it AWAs which remove award entitlements such as overtime and penalty rates. Welfare reforms will forcibly generate a labour supply for low-pay jobs which undercut existing wage and employment standards.
The dynamics of product market competition in a deregulated labour market will sooner or later trigger a ‘race to the bottom’ in cost-sensitive, competitive markets. To survive in the market place, firms will be forced to match competitors who do lower their labour cost structures by using cut-price contractors and casuals, replacing existing workers with cheaper labour or lowering wage and conditions of existing workers.

Consequently, these IR reforms represent a decisive shift away from the traditional ‘living wage’ approach towards a low-wage sector policy. Real wages will on average continue to display healthy growth in the immediate future. Many employees will be untouched and wonder what the fuss is about – notably those in CBD professional jobs under common law contracts and those in occupations and areas with labour and skill shortages. But there will be increased inequality and low-wage jobs. It will probably take some time, and may not fully occur until the next major downturn or recession, but the size of the Australian low-wage sector will gradually expand towards levels found in other English-speaking nations such as New Zealand, the United Kingdom and the United States.

Our projections are that in the medium-term there will be major changes to our labour market institutions and regulatory arrangements:

- Awards will wither away in the medium-term. There are a series of mechanisms through which awards either expire or through which businesses can re-engineer
their operations or employment arrangements to become award-free. Award-dependent employees with low bargaining power, especially in non-union workplaces, will be switched over time by their employers to AWAs and non-union collective agreements. Awards will only continue to operate where businesses choose not to become award-free.

- The coverage of certified agreements will over time come to more closely shadow union membership as in other deregulated labour markets. On top of the 20 per cent or so of union members, just under 15 per cent of non-union members are covered by certified agreements. The ability of trade unions to recruit and organise this group will probably be of key strategic importance to how the union movement weathers these reforms.

- The number of employees will also certainly fall significantly as employers take advantage of new-found freedoms to engage them as contractors – sometimes legitimately so as independent contractors but also as ‘bogus’ contractors.

- The object of these reforms is to simplify employment regulation, especially for small business. However, the gains from headline reforms such as unifying labour law have been over-stated by advocates and for many firms will be overwhelmed by the added complexities, risks and costs associated with redrawn (but not
eliminated) federal-state boundaries, a more complex and regulated IR system and the shift of dismissal claims into cost jurisdictions.

The end-result is likely to be a deeply fractured, atomised labour market: a dwindling handful of award-only employees, a decline in collective bargaining, swelling numbers of employees on individual and non-union agreements and a surge in workers who are swept voluntarily or involuntarily outside the IR system altogether onto commercial contracts.

The effects of these IR reforms will not stop at the workplace and the labour market. There are social dimensions to IR reform which will change the relationship between the sphere of work, private households and the community. Fragmenting working time erodes the common time for families, friends and community activities so it also fractures social relationships. The quality of family life, parenting, relationships and health - already under strain because of the well-known ‘work-life collision’ (Pocock 2003) - will deteriorate further for those where the quality of jobs and earnings is affected.

The growth of inequality will worsen health outcomes and the quality of life across society by sharpening the ‘social gradient’ (Marmott 2004). It may seem far-fetched to assert IR reform could worsen life expectancy and rates of morbidity. But social epidemiologists have amassed compelling scientific evidence of a ‘social gradient’ in life expectancy and a range of conditions such as stroke, heart disease and mental illness
linked to levels of inequality, the quality of work and community. Industrial relations reform which lead to rising inequality, poor quality jobs and increase the angle of the ‘social gradient’ are likely to increase rates of ‘excess’ morbidity and mortality and impact on the mental and physical health of low and middle-income earners. As Professor Marmot (2004: 18-19) notes: ‘Many politicians, however, preach the virtues of inequality (set the wealth producers free). If bigger social and economic inequalities, i.e. a steeper social gradient, are related to bigger health differences, this might give the politicians pause.’

1.1 How Should IR Reform be Judged?

Before commencing more detailed analysis, it is worth considering what should be the benchmarks against which these reforms are judged. The key labour market and workplace challenges currently facing Australia can be summarised as follows:

- Lowering unemployment and addressing labour and skills shortages which are likely to intensify as the population ages
- the productivity slow-down;
- improving the efficiency and equity of transitions between education, work, households and retirement - especially easing the stresses on work-family balance;
- the growth in inequality, low-pay jobs and poverty.
These reforms are either irrelevant to solving or will deepen these problems. Independent assessments, using generous assumptions, found relaxing unfair dismissal laws would create few extra jobs (Oslington & Freyens 2005). There is a vigorous but unsettled debate on the relationship between minimum wages and employment but opponents of minimum wage standards have been unable to empirically prove the safety net increases of recent years have cost jobs. In relation to boosting labour supply, the major source of untapped labour is women with children amongst whom employment rates are very low by OECD standards (OECD 2002). Instead of stigmatising and targeting those on disability and single parent pensions, ‘scouring the bottom of the employment barrel’ as Ross Gittins (2005) put it, the focus should be on tax disincentives, childcare resources and family friendly provisions such as paid maternity leave. De-regulating the labour market will only worsen the monetary disincentives, irregular hours and work-family stresses which discourage mothers from working. Nor will facilitating the growth of low-wage jobs, encouraging firms to compete on lower labour costs, create incentives for innovation and productivity growth. None of the major IR academics have endorsed the claims of the Commonwealth Government that WorkChoices will boost productivity (Gregory 2005; Lansbury 2005; Peetz 2005; Wooden 2005). These reforms will however greatly expand the low-wage sector and inequality.

Some political figures and commentators urging these reforms have spoken of the ‘once-in-a-generation’ opportunity to implement far-reaching IR reforms: unfortunately, they
may also represent generational change because once labour market institutions are unravelled and de-constructed they are not easily put back together.
2 Federal IR Reforms

There appear to be five primary dimensions to the Federal IR reforms. Firstly, measures to *limit and contract the reach and influence of labour law and the award system* by encouraging commercial contracts, ‘corporatising’ labour law (McCallum 2005) and removing the ‘no-disadvantage test’/award ‘safety net’ for workplace agreements. Secondly, to *unify labour law* by over-riding the state systems. Thirdly, *further tilt labour law in favour of employers* by regulating unions and de-regulating employers. Fourthly, *transform the AIRC into an administrative institution which enforces labour law on unions* whilst outsourcing its dispute-settling functions to the Common Law courts, private mediators and a new low-pay commission (Briggs & Buchanan 2005). Fifthly, Centralising IR Authority from the AIRC to the Executive and Parliament and extending political control over IR institutions and the bargaining parties.

2.1 Shrinking Labour Law and Awards

Unfair dismissals and the bid to create a single, national IR system have gathered most publicity but the most far-reaching and radical reforms focus on contracting the reach of labour law and awards. There are three primary dimensions:
measures to facilitate and encourage the movement of employees from employment to commercial contracts beyond the sphere of labour law

measures to enable businesses to construct award-free workplaces or switch their employees from awards and collective agreements to lightly-regulated AWA’s

the removal of more ‘allowable matters’, the rationalisation of awards from 4000 to ‘several dozen’ and the establishment of an inquiry into award classification structures.

The final shape of awards will not be clear until after the inquiry so the focus here is on the measures to shift employees from awards into agreements and from employment contracts into commercial contracts.

The threshold change is the replacement of the ‘no-disadvantage test’ based on the relevant award for assessing an agreement with satisfying six statutory minimum standards – the Australian Fair Pay and Conditions Standard (AFPCS). Currently, the OEA (the authority responsible for AWAs) and the AIRC (the authority responsible for certified Agreements) have a statutory duty to ensure workplace agreements do not leave employees overall worse off compared to the relevant award – the ‘no-disadvantage test’. WorkChoices replaces the no-disadvantage test with a requirement that an agreement must
satisfy just six statutory minimum standards to be legally valid: the minimum award wage, four leave entitlements (personal/carers, unpaid parental, compassionate & annual leave) and ordinary working hours. Even these meagre entitlements are not guaranteed. An enterprise agreement which allows for the 38-hour week can be ‘averaged’ over a period of 12 months will be valid so long as employees are not ‘required’ to work added hours which are not ‘reasonable’. In other words, an employer could require their employees to work 60 hours a week for 6 months, 16 hours the next 6 months without paying over-time or penalty rates. Two weeks of annual leave could also be cashed out – paving the way for the erosion of the 38-hour week, overtime rates and the Australian community standard of four weeks holidays. Certified agreements will be lodged with the OEA instead of the AIRC and agreements will also come into effect immediately upon lodgement.

*Work Choices* inserts a series of mechanisms for awards to expire or to enable businesses to exit the award system. Firstly, the state awards of employees in incorporated businesses will be deemed to be federal agreements but once the transitional period ends and they enter the federal system they will be award-free. Secondly, an employer can ‘terminate’ any federal agreement as it is expiring which will permanently excise employees from the award system. Bargaining for the new agreement will only be underpinned by the AFPCS. Thirdly, under the new transmission of business regulations, if a business transfers operations to a new entity only the existing employees will be bound by the existing agreement and only then for a year. The worst-case scenario for the business is
that it would have to wait a year for the workplace to be award-free. Fourthly, the greenfield agreement provisions can also be used to construct award-free workplaces. Bizarrely, the Greenfield agreement regulations effectively allow employers to make an ‘agreement’ with themselves and unilaterally determine the terms and conditions for the first 12 months of a new business. It also appears that Greenfield agreements could apply to existing businesses. Greenfield sites are defined as a ‘new project’ or ‘new undertaking’ so it may be possible for a firm to take over an established business, make a Greenfield agreement and offer employment only on those terms to some or all of the existing workforce (Stewart 2005a). Whether an employee remains on the award will therefore not be a matter of their choosing but whether or not their employer chooses to avail themselves of the myriad of options for becoming award-free.¹

The Coalition will also introduce a new Act, the Independent Contractors Act (ICA), to facilitate and encourage the movement of employees from employment contracts into commercial contracts. The object of the Act is to:

enshrine and protect the status of independent contractors and encourage independent contracting as a wholly legitimate form of work. These policies reflect the Government’s position that independent contractors should not be regulated by workplace relations law, but by commercial law … (and) that parties

¹ See Stewart (2005a) for further legal analysis of the way in which Work Choices facilitates award-free workplaces.
should be free to decide their working arrangements according to their own needs and genuine preferences (DEWR 2005: 5 & 20).

The ICA appears to have its genesis substantially as a response to developments in agreements, state legislation and the courts to control the growth of ‘dependent contractors’. The ICA will over-ride the state laws on deeming and unfair contracts. Notwithstanding rhetoric about respecting the choices of the parties, it will legislate to outlaw the negotiation of any clauses on contractors by the parties to awards or agreements. The ICA may also over-ride other state laws which apply to contractors such as workers compensation, anti-discrimination and occupational health and safety (DEWR 2005: 15). The 2004 election policy also explicitly criticised courts which ‘have developed tests to uncover “sham” independent contractors arrangements’, claiming they have often ‘gone too far and that, too frequently, the honest intentions of parties are disregarded and overturned’ (Liberal-National Party 2004: 3). The ICA is designed to legitimise and facilitate the movement of work arrangements from labour law to commercial law.

2.2 Unifying Labour Law

The second objective is to create a single, unified system of labour law by over-riding the state IR systems through the use of the Corporations power. Some of the administrative complexities and inefficiencies associated with multiple, overlapping systems of labour regulation have led to recurrent calls to create a unified system of labour law. A
unification of labour law could be achieved if the states were to ‘hand-over’ responsibility for employment regulation to the Commonwealth Government (as the Victorian Government did) but this is clearly not going to occur in the immediate future. The Commonwealth Government will therefore proceed by legislating through the Corporations Power to over-ride aspects of the state systems. Under this constitutional head, the Commonwealth Parliament may legislate with respect to “Foreign, trading and financial corporations formed within the limits of the Commonwealth” which covers most incorporated bodies in our nation.

Leaving aside the legal questions as to its validity for the moment (see 4.4), the effect of these changes may not be so much as to create a single system of labour law so much as to recast the foundations of labour law in favour of employers. In the short-run, the immediate effect will be to eradicate some aspects of state labour law which deliver better standards, entitlements and rights for workers and trade-unions – what John Howard (2005) calls the ‘dead weight of Labor’s highly regulated State industrial relations systems.’ In the longer-run, it will accelerate the corporatisation of labour law. As McCallum (2005) explains, the corporations power is framed primarily in terms of the rights and obligations of corporations and only secondarily those who deal with corporations such as their employees: ‘In time, our labour laws would become a sub-set of corporations’ law and employees would be regarded as little more than actors in the economic enhancement of corporations.’
2.3 Tilting Labour Law

Within the remaining system of labour law, the objective of these IR reforms is to shift bargaining power towards employers by regulating unions whilst de-regulating employers. *Work Choices* aims to shift employees onto AWAs. Employees individually have less bargaining power whilst *Work Choices* removes many of the legal standards which inhibited employers from exploiting their bargaining power at the bottom-end of the labour market such as shrinking the safety net through to removing procedural safeguards to ensure employees genuinely consent to AWAs (employers will essentially self-assess AWAs under *Work Choices*). Bargaining under *Work Choices* will only be underpinned by the six minimum standards of the AFPCS once an award or agreement expires (unless their employer agrees otherwise). The floor underneath bargaining will collapse down to the AFPCS placing employers in an enormously powerful bargaining position as almost all existing standards will be unprotected at the outset of negotiations.

*Work Choices* almost entirely hollows out the right to strike. The key legal amendments relating to industrial action include:

- completely prohibiting industrial action during the life of an agreement;

- requiring unions to undertake a bureaucratic secret ballot process before undertaking industrial action. A group of workers will first have to apply to the
AIRC for permission to hold a ballot which will only be granted if certain conditions are met such as the applicant has genuinely tried to negotiate. If the AIRC approves the ballot, industrial action can proceed if 50 per cent of employees on the roll vote and 50 per cent of those vote yes. The Commonwealth will pay 80 per cent of ‘validly incurred’ costs (as determined by the registrar).

- Even if a group of workers is taking protected action, the legal remedies to suspend or terminate bargaining periods are so sweeping and open-ended it is difficult to think of a strike which will not be vulnerable to legal challenge. *Work Choices* gives the Minister the right to issue a declaration suspending or terminating a bargaining period if the industrial action is being ‘taken, or is threatened, impending or probable’ which would cause ‘significant damage to part or all of the Australia – or even just because it would ‘adversely effect’ an employer! Any ‘significantly affected’ third-party, any individual or business, can also apply to have the bargaining period suspended.

AWA lockouts are no longer legally recognised but collective bargaining lockouts are retained and excluded from the secret ballot process. It will take weeks, if not months, for unions to take protected action in ballots subject to legal requirements supervised by the AIRC and AEC whereas employers remain free to lockout their employees with three-days notice, no-questions asked. It is difficult to understand why lockouts are not also subject to a ballot of shareholders who surely have the same right to vote if a lockout is in
their interests as workers do in relation to a strike. There will be less flexibility in how employees can deploy industrial action because unlike employers they will have to comply with the wording of the ballot. The ballot process also increases the administrative and compliance costs of industrial action for unions. Whilst the legal remedies for suspending or terminating industrial action also apply in theory to lockouts, they are designed to be applied to strikes. Whereas other OECD nations limit employer access to lockouts relative to strikes to try and maintain bargaining equilibrium and fair agreement-making, WorkChoices will uniquely make Australia the first OECD nation to reconfigure labour law in favour of employer lockouts.

Work Choices reverses the assumptions and principles of labour law traditionally applied here and elsewhere. Low-skilled employees are implicitly assumed to have equal bargaining power to their employers. Minimum labour standards are unnecessary and individual agreements are preferable. Where employees have higher skills and are bargaining collectively, WorkChoices implicitly assumes employees have more bargaining power and elaborate state regulations are required to protect employers. Consequently, Work Choices tightens the circumstances under which unions can legally take industrial action, imposes a legalistic ballot process and create almost open-ended rights for third parties to apply for the suspension or termination of industrial action.
2.4 Enforcing Labour Law on Unions: Reconfiguring the AIRC

The primary role of the AIRC under WorkChoices appears to be as an enforcer of these regulations. When the Liberal-National Party first came to power in 1996, some voiced fears (or hopes) that the days of the AIRC might be numbered. In practice, the Liberal-National Party has diluted the independent capacity of the AIRC to settle disputes and set fair labour market standards whilst enhancing its capacity to ‘police the boundaries’ of the bargaining system by enforcing remedies against industrial action and removing its discretion how to exercise these powers.

we have endless provisions that direct the Commission as to what it must and must not do, what factors to treat as relevant or irrelevant, whose views to seek and whose to disregard, when things must be done — and so on, ad infinitum (Stewart 2005a).

Under WorkChoices, the AIRC will further lose its role in vetting certified agreements, hearing unfair dismissals for employers with less than 100 employees and its most important remaining role, setting minimum award wage rates, will pass to a new body – the Australian Fair Pay Commission (AFPC). Its role in relation to industrial action will be extended, notably in relation to administering secret ballots.

In the longer-term, the Commonwealth Government’s preference appears to be for a market of private mediators to substitute for if not replace the AIRC. Private mediators in
Victorian small businesses are being trialled and the model dispute resolution clause under *WorkChoices* allows the parties to refer disputes to private mediators.

### 2.5 Centralising IR Authority

*WorkChoices* represents a historic centralisation of IR authority from the AIRC to political and bureaucratic institutions. Industrial relations authority is being centralised by using the Corporations power to over-ride the state systems but also through a myriad of changes which centralise authority to Parliament, the Executive, the Minister and the Department of Workplace and Employment Relations. Under the arbitral power, the Commonwealth Parliament does not have a ‘direct’ industrial power to set wage and employment standards. As a consequence of the arbital power, Commonwealth Parliament delegated authority to the Federal industrial relations commission which was established as a judicial-like institution with safeguards to protect their independence. *WorkChoices* signals an end to the Australian tradition of independent, judicial-like institutions determining wage and employment standards.

One of the major structural changes is the replacement of awards and the no-disadvantage test with the Fair Pay and Conditions Standard as the safety net underpinning bargaining. Minimum labour standards will now be determined by the Executive, usually via negotiations with the Senate, instead of by the AIRC. The risk is that wage and employment standards for the low-paid will be the product of political
lobbying, horse-trading and party-political disputes instead of a more formal, rational process.

Some other examples of how WorkChoices extends the authority of the Minister and political institutions over industrial relations include:

- The OEA, which has assumed many of the functions of the AIRC, can be directed through legislative instrument how to discharge its duties;
- The Chair and Commissions of the AFPC are on fixed-term appointments subject to renewal by the Minister which erodes their independence and likelihood of impartiality from the Government of the day;
- The DEWR, under the direction of the Minister, has an open-ended capacity to determine what can and cannot be included in any enterprise agreement by nominating a matter as ‘prohibited content’.
- The Minister has sweeping powers to issue a declaration terminating any bargaining period and therefore removing access to protected industrial action.

New IR institutions (OEA, AFPC) lack the independence from the political process of the AIRC, Parliament will now determine minimum labour standards which underpin bargaining whilst the Executive has extraordinary powers to intervene in disputes and to determine the content of agreements. The centralisation of IR authority under
WorkChoices is unprecedented: the Executive and Parliament will have more control over IR than at any other point in modern Australian history.
3 Deregulating Award Systems: the Experience of New Zealand, Victoria and Western Australia

There is now a significant body of experience with labour market deregulation in award systems. Victoria, Western Australia and New Zealand all replaced award systems with bargaining systems underpinned by statutory minimum standards. Comparisons between the Coalition’s preferred instrument for regulating employment, AWAs, and other instruments such as awards and collective agreements also offer a guide.

The outcomes have been remarkably consistent:

- The overwhelming majority of agreements were narrowly focused on changes to earnings and working hours;

- Large groups of employees lost penalty rates, overtime rates, shift penalties and other allowances. Only $\frac{1}{4}$ employees under the Victorian system were being paid weekend penalties (less than 10 per cent in hospitality), between 40-50 per cent of individual agreements in Western Australia removed penalty and over-time rates whilst detailed longitudinal studies of retail earnings in New Zealand found hourly rates fell by between 18 per cent (ordinary time employees) up to 44 per
cent (part-time employees working evenings and weekends) reflecting falls in ordinary rates and the removal of penalty and overtime rates.

- Labour market deregulation was associated with the growth of low-wage jobs, especially in regional areas and particular sectors (hospitality, recreation & personal services, mining/construction), and inequality.

These findings are elaborated beneath.

3.1 The Victorian Experience

The Kennett Government abolished awards in 1993 and replaced them with a handful of statutory minimum standards under Schedule 1 (minimum hourly wages, annual, sick leave). So the Victorian system was very similar to what will now be introduced by the Commonwealth government. However, the Kennett Government referred its industrial powers to the Commonwealth Government in 1996. Schedule 1 was incorporated into the Workplace Relations Act and renamed Schedule 1A. So Victoria then had a dual system: employees who were already covered by or transferred to the Federal system with award minimum standards and the Schedule 1A workforce.

The Victorian experience under the Kennett Government allows for a quasi-natural experiment on the effects of labour market deregulation. We have two groups of
employees in the same state covered either by Federal awards or statutory minimum standards under Schedule 1A. A survey was undertaken by ACIRRT in 2000 for the Victorian Industrial Relations Taskforce to compare earnings and employment conditions for the two groups of employees. The survey found around one-third of employees were covered by Schedule 1A and around two-thirds were covered by Federal awards. The findings were reported in Watson (2001).

The key findings were as follows. Average hourly minimum rates were higher for schedule 1A employees who were paid $14.40 on average against $13.47 for federal award employees. However, there was much greater dispersion in the minimum hourly rate and a greater numbers of schedule 1A employees on or near minimum rates.

Table 3.1 (overleaf) illustrates the portion of employees who were paid less than $10.50 per hour:
Table 3.1: Portion of Employees paid Less than $10.50 per hour, Region and Industry

<table>
<thead>
<tr>
<th></th>
<th>Federal Award</th>
<th>Schedule 1A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metropolitan Region</td>
<td>13%</td>
<td>15%</td>
</tr>
<tr>
<td>Non-Metropolitan Region</td>
<td>8%</td>
<td>22%</td>
</tr>
<tr>
<td>Agriculture</td>
<td>17%</td>
<td>26%</td>
</tr>
<tr>
<td>Mining/Construction</td>
<td>8%</td>
<td>24%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>16%</td>
<td>7%</td>
</tr>
<tr>
<td>Hospitality, Recreation &amp; Personal Services</td>
<td>10%</td>
<td>28%</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>1%</td>
<td>17%</td>
</tr>
<tr>
<td>Education, health &amp; community services</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Other</td>
<td>2%</td>
<td>13%</td>
</tr>
<tr>
<td>Total</td>
<td>10%</td>
<td>18%</td>
</tr>
</tbody>
</table>


Table 3.1 illustrates almost twice as many Schedule 1A employees were working for less than $10.50 an hour, there was a pronounced geographical dimension to the emergence of low-pay jobs following the removal of the award safety net which were concentrated in non-metropolitan workplaces and it was especially pronounced in some industries such as mining/construction and hospitality, recreation and personal services.
Additionally, a massive 42% of Schedule 1A employees were on the minimum rate compared to 26% of Federal award workplaces.

So the findings were quite decisive. Using regression models to test for the influence of other mediating factors, Watson (2001: 303) concluded:

A workplace which had Schedule 1A employees had nearly twice the odds of being in the low wage category compared with a workplace with federal coverage, with all other variables held constant.

Schedule 1A employees were further disadvantaged by the loss of penalties and allowances. Whereas overtime penalties, weekend penalties, shift allowances and annual leave loading were standard conditions for Federal award employees, they were ‘exceptionally limited’ amongst Schedule 1A employees. Table 3.1.1 illustrates the incidence of these benefits across Schedule 1A workplaces:
### Table 3.1.1: Benefits paid by Schedule 1A workplaces by industry, percentage of Schedule 1A workplaces

<table>
<thead>
<tr>
<th>Industry</th>
<th>Higher rate of pay for overtime %</th>
<th>Penalty rates for working weekends %</th>
<th>Shift allowances %</th>
<th>Annual leave loading %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>26.6</td>
<td>15.8</td>
<td>0.0</td>
<td>26.3</td>
</tr>
<tr>
<td>Mining &amp; construction</td>
<td>49.3</td>
<td>38.8</td>
<td>10.7</td>
<td>45.2</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>51.2</td>
<td>43.0</td>
<td>14.1</td>
<td>54.2</td>
</tr>
<tr>
<td>Wholesale &amp; retail</td>
<td>64.5</td>
<td>27.8</td>
<td>13.6</td>
<td>46.8</td>
</tr>
<tr>
<td>Hospitality, recreation &amp; services</td>
<td>19.0</td>
<td>7.7</td>
<td>1.2</td>
<td>24.0</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>27.4</td>
<td>26.0</td>
<td>3.5</td>
<td>44.2</td>
</tr>
<tr>
<td>Education, health &amp; community services</td>
<td>21.9</td>
<td>9.7</td>
<td>1.5</td>
<td>25.4</td>
</tr>
<tr>
<td>Other</td>
<td>39.3</td>
<td>23.3</td>
<td>2.3</td>
<td>28.2</td>
</tr>
<tr>
<td>Total</td>
<td>40.8</td>
<td>23.9</td>
<td>5.9</td>
<td>35.2</td>
</tr>
</tbody>
</table>


Only 6 per cent of Schedule 1A workplaces paid shift allowances, less than a quarter paid weekend penalties, 35 per cent paid annual leave loading and 40 per cent continued to pay overtime rates. In hospitality, recreation and personal services only 8% per cent paid weekend penalty rates and 19 per cent overtime rates.

Nor was it generally the case that these employees were being effectively compensated for the absence of penalties and loadings through higher wage rates.
Table 3.1.2: Benefits paid by Schedule 1A workplaces according to minimum hourly rates category (percentage of Schedule 1A workplaces in each dollar bracket)

<table>
<thead>
<tr>
<th>Benefits paid</th>
<th>Minimum hourly rates in Schedule 1A</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Under $10.50</td>
</tr>
<tr>
<td>Higher rate of pay for overtime</td>
<td>28.3</td>
</tr>
<tr>
<td>Penalty rates for working weekends</td>
<td>16.0</td>
</tr>
<tr>
<td>Shift allowances</td>
<td>7.4</td>
</tr>
<tr>
<td>Annual leave loading</td>
<td>16.4</td>
</tr>
</tbody>
</table>


The lowest paying workplaces were also the least likely to pay additional benefits such as penalties and allowances. These employees suffered a double financial disadvantage.

The creation of a cheaper second-tier workforce following the removal of the award safety net in Victoria was confirmed by a Full Bench of the Australian Industrial Relations Commission in relation to the retail industry. The Shop, Distributive and Allied Employees Association (SDA) sought to rope in 17,000 Victorian retail employers to the federal award. The Commonwealth Government and employers opposed the application on the basis it was going to jeopardise employment levels by raising labour costs. On January 17 2003, the AIRC concluded it was ‘beyond doubt’ the Schedule 1A safety net was lesser than federal awards and some employees under Schedule 1A were disadvantaged because they did not receive provision for overtime, penalty rates, annual leave loading, shift loadings and severance entitlements (AIRC 2003).
Labour market deregulation and the removal of the award safety net were clearly associated with the loss of penalty rates and allowances and the growth of a low-pay sector in Victoria.

3.2 The New Zealand Experience

New Zealand also dismantled its system of awards and industrial tribunals with very similar results. Awards were removed altogether and agreements had to comply with 6 statutory minimum conditions (the statutory minimum wage, annual leave, sick/bereavement/carer’s leave, and public holidays). The Employment Contracts Act (1991) abolished the industrial tribunals and the multi-employer award system, replacing them with individual employment contracts and collective employment contracts (a contract between an employer and two or more employees), but favouring individual contracts which were considered the ‘natural’ state of affairs (Anderson, 1994: 124). The ECA completely removed the legal status of trade unions, referring only to ‘employees organisations’ without according them any legal rights or requiring employers to even recognise and bargain with these organisations.

The ECA engineered a major shift away from collective agreements. Union membership fell dramatically, the coverage of collective agreements was limited to union members and now extends to just 20 per cent of employees (mostly in the public sector). The remaining 80 per cent are covered by individual agreements. Even amongst collective
agreements, there were major concessions such as the removal of penalty rates negotiated by unions as the price of retaining representative status and a collective agreement (May & Walsh 2004: 11; Harbridge, Thickett & Kiely 2001; Conway). The absence of disaggregated wages data, or aggregate wage data which incorporated the effects of changes to allowances and penalty rates, led a New Zealand economist, Peter Conway, to undertake a minutely-detailed longitudinal study of changes to earnings in supermarkets (see below) which illustrated large falls in earnings.

3.2.1 What Happened in the New Zealand Retail Sector?

Peter Conway undertook a longitudinal study of how earnings changed for supermarket operators changed following the deregulation of the labour market. He used 1520 individual observations from 48 agreements and awards in unionised workplaces to examine how wages changed for three typical groups of workers – a part-time adult checkout operator who works 28-hours including one evening and one weekend day, a 16-year old student working 14-hours a week including two evenings and one weekend day and a full-time adult working a 40-hour, Monday-Friday week with no evenings. The results showed extraordinarily large reductions in earnings for existing employees and new commencements.
### Table 3.2: Changes in Real Hourly Rates for Supermarket Workers (%), New Zealand, 1987-97

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Existing Employees</th>
<th>New Commencements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1: Part-Time Adult</td>
<td>-30.1</td>
<td>-36.3</td>
</tr>
<tr>
<td>Scenario 2: Part-Time Student</td>
<td>-44.4</td>
<td>-43.3</td>
</tr>
<tr>
<td>Scenario 3: Full-Time Adult</td>
<td>-11.2</td>
<td>-18.2</td>
</tr>
</tbody>
</table>


Note: the data does not include non-union workplaces or new start-ups. Nor does it include other non-quantifiable changes which may influence earnings such as change to public holidays, sick leave entitlements etc. The likelihood is therefore as Conway notes that this data if anything underestimates the loss of earnings.

The longitudinal data shows the biggest losses occurred amongst employees working evenings and weekends which reflects the removal of penalty rates. Those working standard hours also lost close to one-fifth of their pay which demonstrates base rates also fell significantly in real terms.

Some of the concessions were extracted directly by employers but mostly Conway (1999) found an ‘intergenerational effect’ as new employees replaced old employees on lower rates. There were some cases of stand-over management tactics cutting rates. In an investigation by the New Zealand Department of Labour, a supermarket checkout supervisor described the experience at her workplace:
As soon as the Employment Contracts Act came in everything changed in this place ... we were called in one by one and given this printed document with a place to put your signature. Some of the young ones were not allowed to take their contracts home for their parents to read. The first year all of us who already worked there got penal rates. As people left or were sacked, the new ones went on a flat rate with no set amount ... within a year there was a 90% rollover of staff (Conway 2003).

In a sector with high levels of turnover and low levels of union organisation, rates fell furthest amongst new commencements who signed individual agreements.

There is bi-partisan party-political acceptance across the Tasman that New Zealand is now a low-wage economy. Between 1992-96, labour costs fell a staggering 22 per cent relative to capital costs (Black, Guy & McLellan 2003). These results were predicted by the New Zealand treasury (1993):

An increased dispersion in wages is expected over the next three years. Wages of professionals, managers, and other skilled people, especially those employed in the profitable and productive export sector, are likely to rise above the rate of inflation. On the other hand, the wages of the unskilled, especially part-time and young workers (where turnover may be relatively high) will probably have no wage increases and new entrants may start on lower pay rates than existing workers.

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2 See the statement by National Spokesperson for Finance, John Key (2005).
A widening wage gap reflected in average earnings – around 25 per cent once variations in the exchange are accounted for - has occurred between Australia and New Zealand, even in recent years as unemployment rates have fallen beneath 4 per cent in New Zealand (2 per cent for white New Zealanders), contributing to the drift of New Zealanders to Australia in search of better jobs. Income inequality and levels of poverty increased significantly throughout the 1980s and 90s (Dalziel 2002: 42-44; Podder & Chatterjee 1998) – and as we’ll see the low-wage economy also became a low-productivity economy.

3.3 The WA Experience: ‘We had the Cheapest Labour in All the Country’

Western Australia offers another opportunity to assess the impact of the Federal IR reforms. In 1993, Western Australia similarly introduced legislation requiring agreements only meet 10 statutory minimum standards.³

The Commissioner of Workplace Agreements produced two reports on agreements published in 1996 and 1999. Some of the key results relating to low-wage agreements and the loss penalty and overtime rates are illustrated in Table 3.3:

³ Namely, a minimum wage, annual leave, sick leave, bereavement leave, public holidays, standard 40-hour week, three procedural rights including protection against unfair dismissal.
Table 3.3: New Workplace Agreements Which Removed Penalty Rates, Overtime Rates and provided for Sub-Award Ordinary Rates of Pay, Western Australia, 1996 & 1999

<table>
<thead>
<tr>
<th></th>
<th>1996</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abolition of Penalty Rates</td>
<td>54</td>
<td>44</td>
</tr>
<tr>
<td>Abolition of Overtime Rates</td>
<td>40</td>
<td>44</td>
</tr>
<tr>
<td>Sub-Award Ordinary Time Rates</td>
<td>5</td>
<td>25</td>
</tr>
</tbody>
</table>


These results were further validated by other quantitative and qualitative research. ACIRRT’s (1996) study of 25 individual contracts also found ‘the most profound difference’ from the relevant awards was in relation to working time and the absence of penalty rates for weekends, evenings and public holidays. Todd et. al. (2004) concluded from a series of interviews with employer representatives:

Employers in the service sector who chose to use WPAs were primarily motivated by the opportunity to lower labour costs. All 9 interviewees from employer associations in the service sector concurred with this. The main issues addressed in the WPAs were the spread of standard hours and the removal of penalty rates, shift loadings and all sundry allowances. The preference was for one flat hourly rate that may or may not incorporate some loading for the trade off of penalty rates ... One representative of small business retailers commented: ‘we had the cheapest labour in all the country’
There were also compliance issues even with the remaining entitlements and a culture of lawlessness developed, especially amongst small business. One employer representative interviewed by Todd et. al. (2004) noted:

There was a significant proportion of small businesses that had come into operation under a system in which they were the only rules. When small businesses think there are no rules they don’t bother complying with such rules as there are … they thought … there were no rules … so they behaved that way.

Following the election of a Labor Government in Western Australia, employers with WPA’s moved their employees over en-masse to AWAs. The low-wages in the Western Australian agreements are reflected in the fall in earnings in AWAs.

3.4 The AWA Experience

Research into AWA’s has consistently found that the vast majority of AWA’s are primarily if not solely focused on wages and hours (Cole et. al. 2001; Mitchell & Fetter 2003; Roan et. al. 2001). Agreement wage data has consistently found without exception that union agreements deliver higher wage increases than collective non-union agreements which deliver higher wage increases than AWA’s. The OEA stopped releasing AWAs to ACIRRT in 2001. The last comparison, released in 2001, was typical:
Figure 3.4: Annualised wage increases under currently operating agreements, December 2001

Source: ACIRRT 2001; van Barneveld 2003 cited by Peetz 2005a

Note: These were the last data on AWAs made available to ACIRRT

Primarily reflecting the transfer of Western Australian employers with low-wage individual agreements into the Federal system following the election of a Labor Government, average earnings under AWA’s has fallen dramatically between 2002-04.
Figure 3.4.1
Change in average weekly earnings, by agreement type, 2002-2004

Source: ABS Cat No 6306.0, Peetz (2005a).

Average pay data can be misleading and is likely to inflate AWAs compared to other types of agreements, primarily because of their concentration in sectors with higher than average earnings such as mining, the public service and telecommunications. However, ABS data still illustrates that for all but male, permanent full-time workers collective agreements pay better than individual agreements.
Figure 3.4.2: Average hourly earnings, non-managerial employees by method of setting pay, May 2004

Source: ABS Cat No 6306.0, Peetz (2005a)

As Baird and Todd (2005) further note, the gender pay in male and female earnings is larger under AWA’s – around 20 per cent – than other types of agreements.

Other key findings in relation to AWA’s by independent academic studies were:

- AWA’s were much less likely to contain a specified wage increase. Only 20 per cent of AWA’s in the ACIRRT database in 2001 included a quantified wage increase though a further 20 per cent contained some reference to wages (be it a dollar amount, CPI etc.). 60 per cent of AWA’s were silent on wages.
AWA’s were more likely to extend ordinary working hours and absorb penalty rates and the like into a single-hourly rate. The primary focus was on hours flexibility with few other ‘soft’ provisions relating to staff development and employee involvement.

AWA’s were more likely to include wage increases ‘at risk’ which were contingent upon individual performance assessments by management (ACIRRT 2001a; ACIRRT 2001b; Van Barneveld & Arsovska 2001).

Independent assessments of AWAs have universally reached the conclusion that the ‘overwhelming proportion’ of AWAs were focused on short-term cost-cutting rather than productivity enhancement (Cole et. al. 2001; Van Barneveld & Waring 2001): “only a small number of employers … used AWAs to introduce work practices consistent with the ‘high performance’ model of workplace relations” (Mitchell & Fetter 2003: 320).

The results from AWAs are consequently very much in line with experiments in labour market deregulation in Victoria, Western Australia and New Zealand.
4 Projected Outcomes: How Will Labour Market and Regulatory Arrangements Change?

One of the key objectives of these reforms is clearly to engineer a switch in the mechanisms through which employment is regulated – from state to federal jurisdiction, from awards and collective agreements to individual agreements and from employment to commercial contracts.

Our projection is that these reforms are indeed likely to succeed in substantially reconfiguring the way in which wages and employment conditions are determined. In developing a map of wage-setting arrangements, precise data does not currently exist but our best estimate from a variety of sources is as follows:

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Current (%)</th>
<th>Medium-Term (5-10 Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awards</td>
<td>20</td>
<td>5-10</td>
</tr>
<tr>
<td>Over-Awards</td>
<td>10-15</td>
<td>5-10</td>
</tr>
<tr>
<td>Certified Agreements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>. Union</td>
<td>40</td>
<td>35-40</td>
</tr>
<tr>
<td>. Non-Union</td>
<td>35</td>
<td>20-25</td>
</tr>
<tr>
<td>. 5</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td>Individual Common Law Contracts</td>
<td>20-25</td>
<td>25-30</td>
</tr>
<tr>
<td>AWAs</td>
<td>2.5</td>
<td>15-20</td>
</tr>
</tbody>
</table>

Unpacking this table, our key projections are as follows:

1. The coverage of employees by awards will fall substantially in the medium-term as employees are transferred from state and federal awards to AWAs and non-union collective agreements;

2. Steady growth in individual common law employment contracts will continue as a consequence of employment growth in professional occupations outside the award system;

3. The coverage of certified agreements will decline and the composition will change as the reach of union certified agreements will decline and non-union collective agreements will rise. As in other nations with deregulated labour markets, coverage of certified agreements is likely over time to gradually become increasingly confined to union members. Presently, around 15 per cent of employees are covered by union-negotiated certified agreements but are not union members. There are significant opportunities for union recruitment and organising here as these employees will lose legal protections previously available. It is not inconceivable – though unlikely - that union membership could be more or less steady whilst union agreement coverage falls. Collective bargaining will also probably become even more concentrated in the public sector;

4. The number of employees will fall significantly as employers increase their usage of contractors, primarily at the expense of the certified agreement stream but also award-dependent employees.
4.1 The End of Awards?

Whilst these reforms notionally retain awards, they will set in motion changes which will almost certainly lead to the withering away of awards. It is important to understand the role of awards extends significantly beyond the award-dependent workforce which is the focus of the annual safety-net case. There is also a significant group of employees who are substantially dependent on awards but whose employers pay them over-award wages. The last survey conducted by the Department of Employment, Workplace Relations in 2002 found around 20 per cent of employees fitted into this category but more recent ABS data (cat. no. 6206.0) suggests this group has probably declined to somewhere between 10-15 per cent of employees. Awards also underpin employment standards for most of the 40 per cent of employees who are regulated by a certified agreement.

The following profile of the award workforce focuses on the purely award-dependent because of the absence of publicly-available data on the over-award workforce. However, it should be borne in mind that the reforms to change the NDT and the award safety net are likely to impact significantly on 30-35% of employees (award dependent and over-award employees) and potentially affect the 40 per cent of employees covered by a certified agreement.

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4 The Prime Minister, John Howard, has pointed to the retention of awards as evidence that these reforms will not disadvantage workers. However, the Minister for Workplace Relations, has more accurately (or truthfully) noted: ‘I can’t see why anyone would be on awards in 5 to 10 years’ (Skully & Davis 2005).
Why will awards wither away? Let’s start by looking at where the awards-only workforce is located.

**Table 4.1: Where is the Awards-only Workforce?**

<table>
<thead>
<tr>
<th>Occupation (%)</th>
<th>Industry (%)</th>
<th>Employer Size (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elementary Clerical, Service &amp; Sales (CSS)</td>
<td>39.9</td>
<td>Accommodation, Cafes &amp; Restaurants 60.1</td>
</tr>
<tr>
<td>Labourers</td>
<td>37.9</td>
<td>Retail 31.3</td>
</tr>
<tr>
<td>Intermediate CSS</td>
<td>25.8</td>
<td>Health &amp; Community Services 26.6</td>
</tr>
<tr>
<td>Trades</td>
<td>22.5</td>
<td>Personal &amp; Other Services 23.5</td>
</tr>
<tr>
<td>Intermediate Production &amp; Transport</td>
<td>17.3</td>
<td>Property &amp; Business Services 19.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>20.0</strong></td>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

Table 4.1 highlights the vulnerable character of the awards-only workforce and its preponderance in small businesses:

- around 40 per cent of low-skill white-collar and blue-collar employees remain completely dependent on awards for their employment conditions and the annual safety net case for a wage increase;
the bulk of these employees are located in small/medium enterprises.

Around 1/3 of employees here are on awards compared to less than 5 per cent of employees in big business;

They are mostly concentrated in service industries – hospitality, retail, health/community services – though blue-collar industries such as manufacturing also have significant minorities (15%) on awards;

They are also consequently often casuals, mostly women and often students. One-quarter of women workers are award-only. There is also high turnover in many parts of the award-only workforce.

There are two fundamental reasons why employees remain covered by awards instead of agreements:

1. The employees lack the bargaining power, skills or knowledge to negotiate better wages and conditions. An increasing gap has opened up between awards and agreement rates (illustrated by the fall in the ratio between the minimum and average pay rates; AIRC 2005) so there is more than adequate ‘incentive’ for employees to negotiate agreements. At the bottom end of the labour market, it is employers who set arrangements for determining pay and conditions.
2. Employers, especially small businesses, continue to use awards because the administrative costs of making an agreement outweigh the benefits. If they have thought about this at all – many are too busy running their businesses and surveys have consistently found most small businesses are quite satisfied with the award system precisely because it sets wages and conditions for them – they have decided the time and expenses of negotiating an agreement outweigh the gains. Small business owners, in particular, often lack the resources and expertise for bargaining and an agreement covering a handful of employees will only deliver marginal increases in efficiency which do not compensate for the time and expense of negotiating and certifying an agreement.

That will now change for many of these businesses. The replacement of the no-disadvantage test with the six statutory minimums will radically alter the cost-benefit calculations of award-only employers. As agreements no longer have to meet a no-disadvantage test – indeed they will take effect upon lodgement - the process for registering an agreement will be greatly streamlined. More significantly, the opportunity to make enormous cost savings are available because employers can strip out a raft of common award conditions without compensating, or only part-compensating, employees. Common award conditions which can now be stripped out include overtime rates, shift penalties, weekend penalties, casual loadings, leave loadings, on-call allowances, payments for dangerous work, study leave and lunch/tea breaks. The so-called ‘protection’ of some award conditions such as public holidays and penalty rates is no
such thing. It merely requires the new agreement to refer to their removal in the fine-print of the agreement. Allowing the 38-hour week to be ‘averaged’ also enables employers to alter employee working hours as they wish without paying overtime and penalty rates.

The shift away from awards will occur through the following processes:

1. **Inter-Generational Effect.**

New employees engaged in what are now award-workplaces can be offered AWAs on a take-it-or-leave-it basis as a condition of employment. Major award-only sectors such as hospitality and retail have high levels of casualisation and turnover. Just under 25 per cent of the workforce in general left their job during 2003-04. The highest rates of turnover, the largest proportion of the workforce who have been in their current job for a year and the smallest proportion of long-term employees are in the major award-only sectors such as accommodation, cafes & restaurants and retail (ABS 2005a). The exemption of employers with up to 100 employees from unfair dismissal remedies is also likely to increase ‘churn’.

Existing employees on awards will simply be replaced over time with new employees on AWAs. Applicants for jobs, especially those applying for low-skill positions in non-union small/medium businesses, have little bargaining power. Many don’t carefully read their
conditions or indeed understand what they’re entitled to under the award. Notionally they are entitled to use a bargaining agent but in practice it is improbable that the unemployed, the young and the unskilled will seek out and hire a bargaining agent. New employees will no doubt often sign agreements without realising what they’re signing away. Over time, many award employees will be superseded by employees on AWA’s which remove penalty and overtime rates for a single, lower hourly rate. Casual employees, especially non-union casualse, will be especially vulnerable. Casual loadings vary between 15 and 33 1/3 per cent (Watson 2004: 13). The incentives to place casuals on AWA’s removing or diluting these casual loadings are clearly substantial and many will have little effective capacity to resist. But again it is something which will mostly occur substantially over time as new casual employees are engaged.

If there were to be a recession or significant economic downturn, this process would be greatly accelerated. The early 1990s recession was the catalyst for the substitute of permanent, full-time jobs with a flexible, disposable workforce comprising casuals, labour hire and contractors in many workplaces. If a recession were to occur in the next five years, it would be a major catalyst for the spread of AWAs as new employees were re-engaged on individual agreements as business picked up again.

2. Exit Routes from the Award System
Businesses have a myriad of paths for exiting the award system and to create award-free workplaces under *Work Choices*:

- An employer can ‘terminate’ any federal agreement as it is expiring which will permanently excise employees from the award system.

- Under the new transmission of business regulations, if a business transfers operations to a new entity only the existing employees will be bound by the existing agreement and only then for a year. New employees would not be subject to minimum award conditions.

- The greenfield agreement provisions can also be used to construct award-free workplaces for new businesses and new projects and undertakings for existing businesses.


AWA’s can be offered to award-based employees on a take-it-or-leave-it basis. Whilst they cannot legally be compelled to sign, the employer can make signing the AWA a quid-pro-quo for receiving a pay increase, a promotion or a transfer. In reality, these measures are often un-necessary because more subtle pressures which make signing the AWA a test of loyalty or a factor in future prospects are equally effective. Additionally,
even though it is not legal, the loss of protection against unfair dismissals is also likely to make employees less likely to resist signing an AWA even where they do have doubts or believe they’ll be worse off. The employer can also initiate a bargaining period for a non-union collective agreement on a similar basis that pay increases will only be available through the employer’s chosen form of agreement.

4. The ‘Race to the Bottom’: the Post-Award Dynamics of Product Market Competition

It’s unlikely to happen overnight, it may take some time, but sooner or later the competitive advantages gained by employers who do manage to lower their labour cost structures will drive other employers to follow suit. In sectors where small/medium businesses are competing against each other for contracts and customers, especially where margins are thin and labour represents a significant component of their cost structure, once a competitor manages to cut their labour costs by removing penalty rates, loadings etc. then others will have little choice to do likewise if they are to survive in the marketplace.

Consider the example of the Western Australian cleaning sector. Contract cleaning is an extremely competitive sector which across Australia employs over 90,000 – mostly women, often from a non-English speaking background. Labour costs account for between 60-80 per cent of contract costs. Where awards exist they place cleaning contractors on a level playing field. When the Western Australian legislation was
introduced, the initial response of employers was to reject using WPA’s to lower labour costs because it would lead to ‘unhealthy competition’ – a downward spiral in which companies would have to offer lower and lower wages, work their employees harder leading to poor morale, turnover and ultimately lower profits because margins are derived as a percentage of total costs. However, when a number of cleaning companies from outside Western Australia started to win tenders with lower labour costs, they had little choice but to follow suit. The ordinary hourly rate under the award was $11.75 and $12.85 and $16.76 - $27.93 on weekends but under workplace agreements cleaning companies offered a flat hourly rate of $9 - $11. Once the award floor is removed, product market competition drives wages and conditions down in sectors like contract cleaning with adverse effects for already low-paid workers (Watson et. al. 2003).

The OEA and intermediaries such as consultants, employer associations and solicitors will facilitate the process. The OEA places ‘template’ AWA’s on its website for entire sectors such as fast food and hospitality. Consultancies, offering fee-based services for organising the transition of employees onto AWAs, will design agreements from the OEA template. In all likelihood, whilst anti-pattern bargaining statutes are applied to union-negotiated agreements, there will be pattern AWAs (and non-union collective agreements) diffused through sectors such as hospitality. In a sign of things to come, the President of the Pharmacy Guild, John Bronger, told Workplace Express (2005a) his organisation was working with the OEA on a ‘template’ AWA to be applied to the 30,000 assistants and 15,000 pharmacists employed by their members.
The effect of these reforms will be to entice or induce employers with little interest in agreement-making off awards. These employers have displayed little interest in agreement-making because they don’t have the resources for bargaining or the scope to realise efficiencies through bargaining. These reforms will encourage employers to move off awards because by removing the safety-net and the no-disadvantage test they will be able to make major labour cost savings still without having to commit major time and resources to bargaining. These employers will now also start to set standards for the bargaining or agreement sector.

4.2 The Certified Agreement Sector

Our projection is for modest decline but significant recomposition within the certified agreement stream. There are three strata of employees within the certified agreement stream: union members, non-union members covered by union agreements and those covered by non-union collective agreements.

Non-union collective agreements will grow. Some of the employers who switch their workers from awards are likely to choose non-union collective agreements in preference to AWAs. Non-union collective agreements have some administrative advantages over AWAs. For instance, whereas AWAs have to be signed individually, and then applied individually with each new commencement, non-union collective agreements apply
across entire sites and encompass new employees. Non-union collective agreements are especially preferred to AWAs by employers in areas with high turnover. Monitoring AWAs can also be a complex logistical exercise with serious administrative costs. The usage of Non-union collective agreements will probably increase steadily in absolute terms and as a proportion of certified agreements.

The strata of non-union members covered by union agreements may prove to be of vital importance. Exactly how managers will approach these employees is uncertain. In some workplaces, they may prefer to ‘let sleeping dogs lie’. But over time it is probable that managers will seek to move increasing numbers onto AWAs or LK agreements. There will also be organising opportunities for unions because these ‘free-riders’ will lose some of the statutory protections, notably unfair dismissal protections, and become more vulnerable to managerial discretion. The experience of other deregulated labour markets suggests that the coverage of certified agreements will fall towards union membership. For trade unions, it will be extremely important they pick up members here, in workplaces where they already have a presence, if they are to effectively withstand these reforms.

Some commentators predict little change for the unionised sector. Labour and skill shortages will certainly discourage a significant number of employers from revisiting their bargaining arrangements and entitlements. However, it is unlikely nothing will change because Work Choices offers such extensive scope for downward flexibility,
systematically tilts bargaining power towards employers and enhances their ability to evade or undermine trade unions through AWAs, non-union collective agreements or contractors.

For purposes of illustration, it is useful to think of scenarios in ‘Up-Market’ (high-wage) and ‘Down-Market’ (low-wage) union agreements. Just as competitive pressures are likely to drive award-only employers to use AWA’s, so competitive pressures are also likely to drive firms with union agreements to re-examine their bargaining arrangements and labour cost structures. The opportunities to rationalise labour costs through award-free workplaces or diminishing existing entitlements are equally important here. Amongst firms which remain unionised, the likelihood is an increase in concession bargaining or low-wage agreements to retain representative status (as occurred in New Zealand). For up-market agreements with high rates of pay, labour and skill shortages do place some unions and workers in traditional union heartlands in a good position to weather these changes, notably mining and blue-collar trades. However, it would be naive to assume some employers will not seek to utilise the new bargaining rules to weaken or remove union representation. Take the mining sector as an example. The flipside to booming business and labour shortages is a heavily indebted workforce and firms well-positioned financially to try and buy-out workers from unions through generous AWAs. This is a strategy mining firms have already used with some success. If mining companies take the view that this is an historic opportunity to weaken trade
unions, backed by a supportive government and a favourable Act, there may be renewed efforts to switch unionised workers to AWAs.

The removal of the award safety net, the downward pressures on wages and conditions, the loss of unfair dismissal protections will probably lead to renewed interest in joining unions. But whilst there will be opportunities for unions to organise and represent new groups of employees, the capacity for unions to take advantage of these opportunities will be challenged by resource-intensive, defensive struggles to maintain their representative status, wages and conditions amongst their existing membership. Most unions will in all likelihood have to make hard, unpleasant choices about where to allocate their resources. Much here will depend on the approaches employers choose to take and the effectiveness of union counter-strategies - but it is probable there will be further de-unionisation, especially in private sector services, leading to a further concentration of union membership in the public sector.

4.3 Individual Contracts

Individual, common law employment contracts have been increasing as a proportion of employment growth outside the award system upmarket in the professions and downmarket in informal, local service employment. These trends are likely to continue.
AWA’s currently cover just 2.5% of employees – notwithstanding millions of dollars of public money, a statutory body to promote and encourage their usage and major campaigns by the Federal Government and some large corporations in mining, finance and telecommunications. However, these reforms will see a substantial increase in the uptake of AWAs mostly in the non-union award sector but also union workplaces where the union is weak or where employer militants successfully confront unions.

4.4 Contractors

Our projection is for rapid growth in contractors, dependent and independent, following the amendments to the Workplace Relations Act and Independent Contractors Act. By increasing the usage of contractors, employers can evade financial responsibilities such as superannuation, shift personnel, administrative and labour costs to the contractor, engineer cultural change and undermine union membership and bargaining power.

The areas in which contractors could be expected to grow can be grouped into three categories:

- Extending the use of contractors in sectors where there is already a significant presence e.g. mining, construction, transport
- Using contractors in areas where deeming provisions apply in state jurisdictions e.g. cleaning
Using contractors in areas where certified agreements and unions currently inhibit employers e.g. manufacturing

The prohibition of agreement provisions on contractors, the removal of deeming and unfair contract provisions in State jurisdictions and statutory activism to counter the development of tests to determine whether contractors are genuinely independent give employers enhanced freedom to engage both independent and dependent contractors.

4.5 Into the Quagmire: New Complexity, Risks and Costs for Employers

One of the key objectives of the IR reforms is to simplify employment matters for employers, especially small businesses. The major ways in which simplification could occur is the removal of dual federal/state award regulations in some workplaces/organisations, exemption from unfair dismissals and simplified procedures for making and registering agreements. However, in reality there will still be multiple systems of employment regulation and there are going to be added complexities, risks and costs for employers as a consequence of these reforms.

4.5.1 A Single System?

In the immediate future, the Commonwealth Government will not be able to create a single system of employment regulation. As the Corporations Power is going to be the
vehicle for over-riding the state systems, there are three categories of employee who will not be covered by the Federal system:

1. Unincorporated small businesses in the state systems
2. Unincorporated agencies in the state public sector (crown employees)
3. Unincorporated small businesses in the Federal system that will drop out of the system.⁵

Consequently, the exemption to unfair dismissals and other reforms to the Federal IR system will still not apply to unincorporated entities. These unincorporated entities will then face a choice: incorporate to join or remain in the Federal system, which will have tax implications and lead to other compliance costs such as increased reporting requirements, or remain unincorporated outside the Federal system.

Unless the State governments hand-over their industrial relations responsibilities, there will continue to be dual federal-state systems and employment regulation. Firstly, estimates vary but it appears somewhere between 15 to 25 per cent of employees will remain or fall outside of the Federal System (potentially up to forty per cent of employees in some states – see Stewart 2005b). Secondly, although Work Choices aims to over-ride State and Territory ‘industrial laws’, State and Territory laws will still operate in relation to areas such as workers compensation, discrimination and occupational health and

⁵ The Commonwealth Government would have to use the conciliation and arbitration power in parallel to the corporations power to prevent unincorporated businesses dropping out of the federal system.
safety. Thirdly, there will be complexities associated with the remaining interface between federal and state systems. As Stewart (2005b) illustrates, there is uncertainty as to whether Work Choices will over-ride all State and Territory employment laws. In the immediate future, there will still be multiple systems of employment regulation.

Proponents have also in any case probably over-sold the potential gains. The Productivity Commission (2005) recently concluded there would be ‘little pay-off’ from a single national industrial relations system and the Federal Government should focus on other areas of Federal-State relations (see also Wooden 2005).

4.5.2 Transitional Arrangements: Complexity and Costs for Employers and Employees

There will be an extended transition period involving extensive litigation to settle complex questions of law, uncertainty and transition costs for business whilst there will be employees who lose benefits and entitlements and/or find their wages frozen. Leaving aside the inevitable High Court challenge to the constitutionality of the use of the Corporations power in WorkChoices – and the legal costs associated with determining which employers are or are not Constitutional Corporations – there are the transitional arrangements for corporations entering and exiting the Federal system. Constitutional Corporations now in the state system have three years to shift into the Federal System. Current state awards and agreements will become transitional agreements. Non-
constitutional corporations currently in the Federal System will remain in the Federal System for up to five years.

Aside from the significant adjustment costs for firms, representative bodies and public institutions, there are added costs and complexities associated with the transitional arrangements. Incorporated businesses currently under state awards ‘will be thrown into confusion as to their rights and obligations’ (Stewart 2005b). They will have to determine which state award and statutory provisions qualify for inclusion under the new arrangements and which are ‘prohibited content’. Unincorporated businesses in the Federal system will find themselves operating under a ‘parallel regime’ governed by the old and new act and forced to ‘continually cross-reference’ between the two (Stewart 2005b).

The design of the transitional arrangements will also lead to employees losing entitlements and wage increases in the change-over. For employees of constitutional corporations in the state system, as Taylor notes (2005), as the only way to gain a wave increase will be to make a federal agreement (including an AWA), they could suffer a three-year wage freeze if their employers refuse to bargain (leaving employees in low-skill occupations with little bargaining power particularly vulnerable). State employees will also lose some benefits in the transition because some entitlements are non-allowable matters under Federal awards. Employers may be able to evade state awards if they are determined to have made a ‘genuine effort’ to negotiate an agreement in which case the
lesser AFPCS would apply. In this context, employers transferring into the Federal System will also therefore enjoy considerable bargaining power.

4.5.3 The Complexity of the Federal System

Employers roped into the Federal system who are used to operating under state systems are going to find it is much more complex and that navigating it will require greater use of expensive legal representation. In the determination of the Coalition to limit the autonomy of the tribunals and control the outcomes of workplace bargaining, the Workplace Relations Act is already extremely technical, detailed and complex – as noted by Andrew Stewart (2005a):

… the Workplace Relations Act 1996 is bloated, convoluted and in parts almost unintelligible … It forces employers and unions to seek legal advice at almost every turn, adding cost to what ought to be simple transactions or proceedings.

The drafting of the new Bill is extraordinarily convoluted, leading labour lawyers are genuinely unsure as to the meaning of many provisions and layers of complex regulation will be added by the Bill.

The mere fact that the new legislation will be so difficult to read and understand will impose unnecessary costs on businesses, who will require extensive legal advice simply to understand how the legislation affects them … But the complexity does not simply lie in the drafting. The Bill
would create a system that is a mish-mash of the old and new, over-laid by heavy-handed and partisan intervention that at every turn authorises the government to step in and prevent parties from conducting their relations in ways of which the government disapproves (Stewart 2005b).

An already ‘bloated’ Act is going to be super-sized by Work Choices.

### 4.5.4 Unfair Dismissals

Nor will the exemption from the unfair dismissal remedies be the clean break envisaged by many businesses. Exempting firms up to 100 employees from unfair dismissal remedies will significantly diminish the job security, legal remedies and standards of management behaviour for many employees. The perception amongst many businesses and employees is that this is the end of any right to challenge dismissals. That in itself is a powerful effect. However, as solicitors and barristers consulted for this report noted, there are significant other avenues to pursue claims currently pursued through unfair dismissal remedies.

1. Unlawful Dismissals

The redirection of unfair dismissal applications into unlawful dismissals will have added risks and costs for employers. The qualifying exclusions which apply to unfair dismissals such as casuals employed for less than 12 months do not apply to unlawful dismissal claims. The onus of proof is reversed so employers have to prove they did not dismiss an
employee for an unlawful reason. As they are adjudicated upon in the Federal Court, the process will be longer, legal costs will be higher and where employers are found to have unlawfully dismissed an employee, the penalties and compensation will be greater.

2. Discrimination

There will also be some increase in claims challenging dismissals on the grounds of unlawful discrimination. With the alternative of unfair dismissal remedies, discrimination claims are less attractive because it’s a lengthy process requiring conciliation by HREOC before proceeding to the Federal Court. Discrimination claims will however now be another avenue further explored by employees seeking redress after dismissal. Discrimination cases could lead to negative, costly publicity as well as the costs associated with unlawful dismissal claims.

4. Implied Contractual Terms

Dismissals can also be challenged insofar as they constitute a breach of implied contractual terms such as reasonable notice and the implied duty to act in mutual trust and confidence. Unlike the 21-day limitation on unfair dismissal claims, cases alleging contractual breaches can be brought up to six years after the event. Whilst it will be more expensive to pursue such actions – prohibitively so for many employees - there may also be compensating developments to facilitate the capacity of individuals to undertake such
cases. Solicitors are likely to take claims on a contingency basis, individuals can take small claims to the Chief Industrial Magistrate and kits could be developed to assist individuals, pro-bono lawyers and community legal centres to run cases. Unions may also run some cases where they see significant ability to set useful precedent establishing common law rights.

4.5.5 Industrial Action and Dispute Resolution

There will probably be fewer work stoppages but they may be harder to settle, more volatile and more costly for some employers. Firstly, employers in state systems will now operate in a jurisdiction with protected industrial action with the potential for longer strikes. Secondly, the introduction of mandatory secret ballots is also likely to add significantly to the complexity and legalism of dispute resolution. The role of lawyers will be greatly enhanced. The ballot process, getting or stopping the majority vote, may become the focus of the dispute – rather than settling the issues. Once industrial action has been approved by ballot, the experience of the United Kingdom is that after such a time-consuming process the effect can be to polarise the parties and lengthen the industrial action.

It is worth noting just how low work stoppages are as it stands. Only 2-3 per cent of employees have been involved in a stoppage in any given year for the past five years and almost 90 per cent of stoppages last less than 2 days (ABS 1999-2004). The effect of the
ballot process may be to make it harder to access protected action but also to drag disputes out for weeks. Some employers may gain a short-term advantage out of mandatory secret ballots but other employers will be pulled into the quagmire with their unions.

The other unknown is the extent to which the reforms themselves lead to disputes. Work Choices places basic rights to organise and take industrial action at stake. In that context, a greater propensity to strike amongst well-organised employees is to be expected, non-unionised employees may organise to protect wages and employment conditions and strikes and disputes which are just bargaining conflicts under the current system may develop a volatile, political edge if they become part of a campaign to resist Work Choices. The open-ended powers of the Minister to suspend or terminate strikes almost certainly sets the scene for strikes to become political disputes. Labour disputes could also result from the pressures on employers to match competitors who lower their labour cost structures. Downward flexibility also sets the scene for some bitter disputes in workplaces with well-organised unions. Another contingency which should be kept in mind is that if the restrictions on industrial action do start to significantly inhibit the use of protected industrial action, they are likely to encourage the trend for unions to use alternatives to industrial action such as ‘corporate campaigns’ and ‘shareholder activism’. These techniques apply pressure to companies by targeting public perceptions of brands instead of stopping work. The costs can therefore be much greater and lasting for businesses.
4.5.5 Competitive Disadvantages and Loss of Remedies for Unfair Contracts

Some employers are going to be disadvantaged, perhaps fatally, by the downward flexibility now available. For some employers in areas with labour shortages and who are experiencing difficulties sourcing labour, there may be little scope to reduce labour costs through removing penalty rates and the like. However, they may find themselves squeezed between local labour market conditions and lost-cost competitors in other areas able to take advantage of the downward flexibility, unable to respond.

Consequently, whilst WorkChoices is designed for the benefit of employers, there will also be new risks, complexities and costs for many employers under these changes. Although there is a perception amongst small business people that they now have an open-ended right to sack at will, there will be some redirection of claims into unlawful dismissal, discrimination and breach of contract cases. There will be fewer claims but those that proceed will be lengthier, more costly and proceed under legal rules where the onus of proof is placed on the employer. There will be an extended transition period of uncertainty and employers will be roped into a notoriously complex system which requires them to pour more money into the pockets of lawyers. Employers used to the State system will now be exposed to protected action, the complexities of the secret ballot process and labour disputes will be more volatile and unpredictable.
5 Projected Outcomes: the Growth of Low-Pay Jobs, Inequality and Fragmented Hours

In relation to the non-bargaining sector, there are two broad policy alternatives. The first policy model is a ‘living wage’ strategy in which minimum wages are kept at a level which allows wage earners to be self-reliant and not dependent on government transfers to protect them from poverty. The second policy model is a ‘low wage sector’ strategy in which the earnings of the low-paid are allowed to fall to very low levels, and government transfers are then used to lift some people out of poverty. Tax transfers and the social security system have been used to offset the growth of wage inequality throughout the 1990s in Australia but Australia still adheres to a living wage policy through the maintenance of the award safety net. WorkChoices will cement a shift to a low-wage sector strategy.

5.1 Wage Inequality and Low-Pay: Australia in International Perspective

Labour market deregulation in the English-Speaking nations is universally acknowledged to have accelerated the growth of inequality and low-pay jobs. The OECD (2004: 166), in its last year’s Employment Outlook Report, concluded their review of evidence on wage-setting and earning trends:

Confirms one robust relationship between the organisation of collective bargaining and labour market outcomes, namely, that overall earnings dispersion tends to fall as union density and
bargaining coverage and centralisation/coordination increases. It follows that equity effects need to be considered carefully when assessing policy guidelines related to wage-setting institutions.

The OECD failed to confirm significant differences in the economic performance of different bargaining systems – though some of the evidence was suggestive that systems of coordinated flexibility combining multi-employer bargaining with decentralised flexibility delivered superior outcomes. However, on the impact of collective bargaining, coordinated wage-setting and minimum standards the evidence was unequivocal: the deregulated systems of English-Speaking nations such as the United States and the United Kingdom were associated with higher levels of low-pay, inequality and poverty.

Australia already has much in common with other English-speaking nations, notably the growth of wage inequality arising from a highly fragmented and decentralised bargaining system, but the award system and annual safety net adjustments have moderated the impact. Figure 5.1 illustrates changes in hourly rates by decile from the poorest 10 per cent (1) to the richest ten per cent (10) for men and women between 1989-2001:
Figure 5.1: Changes in median earnings by deciles, Australia 1989 to 2001 (Absolute amounts in 2001 dollars)

![Graph showing changes in median earnings by deciles](image)


Figure 5.1 graphically illustrates the growth in wage inequality throughout the 1990s as the top two deciles experienced phenomenal growth, the middle experienced moderate growth and the bottom deciles experienced stagnation. However, figure 5.1 also shows that the decline in real median earnings of the bottom three deciles for men between 1989-1997 was overturned between 1997-2001 primarily reflecting the healthier safety net
adjustments. In the case of women, trends were more varied between these three deciles but real median earnings generally grew between 1997-2001 after decline or stagnation between 1989-97. Using another measure, hourly rates of pay as a ratio between deciles, Table 5.1 also illustrates earnings amongst the bottom decile have stabilised in relation to median earnings since 1997 after falling through the 1990s:

**Table 5.1: Percentile ratios for hourly rates of pay, Australia, 1989-2002**

<table>
<thead>
<tr>
<th>Year</th>
<th>10/50</th>
<th>90/50</th>
<th>90/10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1989</td>
<td>0.70</td>
<td>1.60</td>
<td>2.28</td>
</tr>
<tr>
<td>1990</td>
<td>0.66</td>
<td>1.64</td>
<td>2.48</td>
</tr>
<tr>
<td>1993</td>
<td>0.66</td>
<td>1.69</td>
<td>2.55</td>
</tr>
<tr>
<td>1994</td>
<td>0.67</td>
<td>1.72</td>
<td>2.55</td>
</tr>
<tr>
<td>1997</td>
<td>0.64</td>
<td>1.78</td>
<td>2.77</td>
</tr>
<tr>
<td>2001</td>
<td>0.64</td>
<td>1.84</td>
<td>2.87</td>
</tr>
<tr>
<td>2002</td>
<td>0.64</td>
<td>1.80</td>
<td>2.80</td>
</tr>
<tr>
<td>Female</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1989</td>
<td>0.71</td>
<td>1.53</td>
<td>2.17</td>
</tr>
<tr>
<td>1990</td>
<td>0.67</td>
<td>1.58</td>
<td>2.37</td>
</tr>
<tr>
<td>1993</td>
<td>0.67</td>
<td>1.61</td>
<td>2.40</td>
</tr>
<tr>
<td>1994</td>
<td>0.70</td>
<td>1.58</td>
<td>2.28</td>
</tr>
<tr>
<td>1997</td>
<td>0.71</td>
<td>1.61</td>
<td>2.27</td>
</tr>
<tr>
<td>2001</td>
<td>0.69</td>
<td>1.68</td>
<td>2.43</td>
</tr>
<tr>
<td>2002</td>
<td>0.70</td>
<td>1.62</td>
<td>2.31</td>
</tr>
</tbody>
</table>

Source: STE, IDS, HILDA. Population: All employees in non-agricultural industries. Weighted by cross-sectional weights.

There is no more recent data for 2002-04 but it is probable that the healthy minimum wage increases of these years have also more or less maintained the relative share of wage-earners in low-pay jobs.
Consider now the incidence of low-paid employment in Australia by comparison with the UK and the USA in Table 5.1.1.

**Table 5.1.1: Incidence of low-paid employment by occupation, age and sex (%)**

<table>
<thead>
<tr>
<th>Measure</th>
<th>Australia</th>
<th>UK</th>
<th>USA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Professional/Technical</td>
<td>4</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>Managers</td>
<td>10</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>Clerical</td>
<td>13</td>
<td>29</td>
<td>30</td>
</tr>
<tr>
<td>Sales</td>
<td>20</td>
<td>40</td>
<td>28</td>
</tr>
<tr>
<td>Personal services</td>
<td>40</td>
<td>53</td>
<td></td>
</tr>
<tr>
<td>Trade/Craft</td>
<td>20</td>
<td>16</td>
<td>18</td>
</tr>
<tr>
<td>Labourers</td>
<td>19</td>
<td>28</td>
<td>36</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less than 25</td>
<td>35</td>
<td>46</td>
<td>63</td>
</tr>
<tr>
<td>25-54</td>
<td>9</td>
<td>15</td>
<td>21</td>
</tr>
<tr>
<td>55 and over</td>
<td>13</td>
<td>23</td>
<td>24</td>
</tr>
<tr>
<td>Sex</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>12</td>
<td>13</td>
<td>20</td>
</tr>
<tr>
<td>Female</td>
<td>18</td>
<td>31</td>
<td>33</td>
</tr>
<tr>
<td>Total</td>
<td>14</td>
<td>20</td>
<td>25</td>
</tr>
</tbody>
</table>

Source: OECD (1996, p. 72–73)
Reproduced from Briggs, Buchanan & Watson (forthcoming).

Note: Low-paid workers defined as those full-time workers earning less than 2/3 of the median earnings for all full-time workers. Figures for sales and personal service workers are reported together in the Australian data.

Australia has a much lower incidence of low-paid employment by comparison with the UK and the USA. The differences are particularly marked for women, as almost twice as many women are in low-paid employment in the UK and the USA than Australia, and for low-skill occupations such as clerical, sales and labourers. These figures give some indication of how wage inequality and low-pay jobs can grow once the bottom end of the labour market is deregulated. Over time, the incidence of low-paid employment and the working poor in Australia will rise towards the levels found in the UK and the USA under the reforms proposed by the Coalition.
5.2 How will the Low-Wage Sector be Expanded?

There are five mechanisms through which low-pay jobs will expand under these reforms:

1. Award-dependent employees with low bargaining power will be shifted by their employers to low-pay AWAs/non-union collective agreements. The replacement of the ‘no-disadvantage test’ based upon awards for workplace bargaining with the five minimum standards of the Australian Fair Pay and Conditions Standard (AFPCS) will lead to the loss of important sources of earnings such as overtime/penalty rates and casual loadings – especially in non-union service sector jobs. By allowing the 38-hour week to be ‘averaged’ over a 12-month period, employers can easily contract out of the 38-hour week without paying overtime and penalty rates;

2. The Independent Contractors Act will make it easier to convert employees into contractors outside the system of minimum labour standards whilst removing remedies against exploitative arrangements such as unfair contracts provisions will lead to quasi-unregulated, sub-award standard jobs in some occupations such as security guards and contract cleaning;

3. There will be an ‘inter-generational’ effect in some sectors whereby new employees work under lower rates and conditions than existing or previous employees. New
employees can be presented with take-it-or-leave-it AWAs which undercut existing rates and conditions. Liberalised transmission of business arrangements, greenfield agreement options and unfair dismissal provisions will also make it easier to replace existing workers or set up new businesses with cheaper alternatives;

5. There are expanded opportunities to lower the wages and conditions of existing employees. There are gaping holes in the statutory protections for employees against pressure to sign AWAs, terminated agreements will become award and agreement-free and bargaining power is systematically tilted towards employers under WorkChoices.

6. The changes to the wage-setting principles and selection of personnel associated with the establishment of the Fair Pay Commission will almost certainly led to the stagnation of minimum wages and their decline as a ratio of average earnings. Minimum wage-setting will pass from the AIRC to the AFPC whose personnel lack the same independence because they are only fixed-term appointments. The objects of the Act which shape their wage rulings have also been rewritten, removing the requirement to ‘provide fair minimum standards for employees in the context of living standards generally prevailing in the Australia’ (Workplace Relations Act, s.88B (2) (a) ) from the principles. There is also no specification on how regularly minimum wages
should be increased and no mechanism for triggering a review which could lead to less frequent adjustments. The clear objective is to further widen the gap between minimum wages and average wage rates.

The dynamics of product market competition in a deregulated labour market will sooner or later trigger a ‘race to the bottom’ in cost-sensitive, competitive markets. To survive in the market place, firms will be forced to match competitors who do lower their labour cost structures by using cut-price contractors and casuals, replacing existing workers with cheaper labour or lowering wage and conditions of existing workers.

The IR reforms are complemented by the welfare-to-work reforms which tighten, lower and remove eligibility for benefits, notably if workers refuse jobs – even take-it-or-leave-it AWAs which remove award entitlements such as overtime and penalty rates. Welfare reforms will forcibly generate a labour supply for low-pay jobs which undercut existing wage and employment standards.

5.3 Welfare to Work Reforms: Constituting Labour Supply for Low-Wage Jobs

In the 2005 Federal budget, the Coalition announced major reforms to welfare-to-work arrangements focused on those receiving parenting and disability allowances. Ostensibly, these reforms are directed at solving labour shortages - dealing with the demographic ‘time-bomb’ of an aging population by prodding single parents and
disability pensioners into work. However, these changes fail to tap into the richest sources of unutilised labour – married women with children and mature-aged workers. Their real impact is likely to be in generating a labour supply for low-wage jobs rather than as a genuine solution to labour and skill shortages in other more skilled occupations.

From 2006 onward, new welfare recipients on supporting parents benefits and disability benefits will be expected to undertake job seeking activities. Those who are assessed as being able to work will be moved from disability and single parent allowances to unemployment benefits which are lower and subject to tighter eligibility criteria. They will also become subject to the policing of both Centrelink and Job Network providers. The latter will be given, for the first time, the power to breach their clients.

If the object is to address labour shortages, de-regulating the bottom of the labour market and punitive welfare-to-work measures are mis-directed as the biggest sources of untapped labour are married mothers with children. As Ross Gittins (2005a: 8) notes:

Employers are reluctant to take on older workers, those who have been out of the workforce for years and those with disabilities . . . The silly thing about scouring the bottom of the employment barrel is that the Government, for its own ideological reasons, is ignoring a much more fruitful source of recruits to the paid labour force: married mothers.
Comparative analyses of the employment rates of women with children clearly illustrate Australian policy settings and workplace practices constitute an abnormally high disincentive to work for married mothers.

Table 5.3: Employment Rates for Women Aged 25-54 by Presence of Children, Australia and OECD

<table>
<thead>
<tr>
<th></th>
<th>No Children</th>
<th>One Child</th>
<th>Two or More Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>68.4</td>
<td>55.3</td>
<td>43.2</td>
</tr>
<tr>
<td>OECD</td>
<td>73.7</td>
<td>70.6</td>
<td>61.9</td>
</tr>
</tbody>
</table>

Note: The employment rate is the number of employed persons expressed as a percentage of the working-age population.

Employment rates for women fall moderately as women enter motherhood across the OECD but extremely sharply in Australia. As Campbell & Charlesworth (2004: 12) conclude: “These data suggest that there is something distinctive about the labour market transitions in relation to motherhood in Australia. The balance of rewards and costs from employment may be loaded against mothers.”

There are three primary reasons – tax/welfare disincentives, difficulties accessing quality and affordable childcare and poor quality jobs (lower pay and entitlements) in workplaces where the uptake of family friendly practices is rare outside professional and skilled occupations.
The tax welfare system – especially the Family Tax Benefits system - creates powerful disincentives to work for mothers (Apps 2005; Apps & Rees 2002). Social security benefits in Australia are paid according to very precise means-testing guidelines. One of the consequences of this is that ‘poverty traps’ are common. When low income recipients earn additional money, they lose a very large percentage of that extra income by way of tax payments and reduced benefit payments. In this context, the Family Tax Benefit System is particularly important as it amounts to a system of joint taxation, raising effective marginal tax rates on the earnings of a second earner – often women with children looking for part-time work. For part-time second earners in the bottom quintile of earnings, there is an effective marginal tax rate of just under 45 per cent (Apps 2005). Importantly, these calculations also do not include the cost of childcare. Under the 2002-03 system, once childcare payments were also included, Toohey and Beer (2004) found when mothers worked between 10-19 hours the family’s disposable income barely increased and would actually fall in some cases.

When there are young children present, the output of household production becomes a close substitute for market output. The most important example of this is child care, which can be provided at home or bought on the market. If the second earner, typically the mother on a lower wage, faces a high effective tax rate and quality child care is not available at an affordable price, she is likely to switch from market to domestic work. This substitution contracts measured GDP and expands the domestic sector. Jobs go from the market place to the home. Employment and the tax base of the economy contract (Apps 2004).
Families doing cost-benefit analyses simply conclude it is not worthwhile for mothers to work.

Compounding these disincentives is the absence of supportive arrangements inside and outside the workplace. Enterprise agreements have a low and very uneven incidence of family friendly entitlements (Whitehouse 2001). At least 40 per cent of the female workforce has no access to paid maternity leave which is a standard entitlement throughout the OECD - a figure which rises substantially for low-skill clerical, sales and service workers (82 per cent) compared to professional workers (46 per cent). The quality, cost and accessibility of childcare to support women combining paid employment and motherhood is also poor (Taskforce on Care Costs 2005; Pocock 2003).

The industrial relations reforms will worsen these disincentives. De-regulating minimum standards will lower the quality and earnings of part-time jobs and allow for more irregular and unpredictable hours. The impact of removing the award safety net and the NDT is likely to be strongest in areas with high proportions of part-time, female employment such as retail, hospitality and health/community services. Lowering the earnings and the quality of these jobs can only discourage women with children from working. As one-in-four women are award-only employees, the impact will be felt much more sharply amongst women than men.
Nor is there any evidence that greater usage of AWA’s will address this shortcoming. Only 7 per cent of AWA’s provide for paid maternity leave and only 4 per cent for unpaid maternity leave (Baird & Todd 2005). Past studies have found the presence of unions has a more significant effect on the earnings of women than men and the wider wage differential on AWA’s also fits with this research. Over-riding the State systems will also remove the scope to mount pay equity cases which have allowed some female-dominated occupations to significantly realign pay rates.

However, the work-to-welfare reforms dovetail with the industrial relations reforms because they constitute a policy for reorganising the unemployed and others dependent on welfare into a large-scale, low-paid workforce. The hypothetical example of ‘Billy’ in the WorkChoices (Commonwealth of Australia 2005) booklet makes this clear. Billy is offered a job contingent on him accepting an AWA which removes public holidays, rest breaks, bonuses, annual leave loadings, allowances, penalty rates and shift/overtime loadings. If Billy were to reject the job, his welfare payments would be frozen. Squeezed by the double-bind of industrial relations laws which allow for take-it-or-leave-it AWAs and welfare reforms which remove his welfare payments, Billy clearly doesn’t have much of a choice. Coercive and punitive IR and welfare laws in this way will generate a supply for low-wage jobs, undercutting the wage and employment standards of existing workers, and even facilitating replacement strategies to substitute new for existing workers.
Clearly, a low wage strategy cannot also work unless the standards of the welfare system are eroded. Entitlements will have to be either withdrawn or lose their purchasing power in order to maintain the incentive to work. As Briggs, Buchanan & Watson (forthcoming) note:

Such an approach is very disturbing. For those most immediately affected, it promises to load onto their already disadvantaged lives a greater burden of disadvantage. From a labor market perspective, this approach ignores the fact that most employers don’t want to hire them. Welfare policy should focus on the challenges faced by all citizens in managing risk and in smoothing the transitions between the different stages in their working lives. Family formation, child care resources, tax disincentives and issues of female labour supply should be the major starting point for contemporary debates, not whether the disabilities suffered by aging factory workers are genuine or not.

The end-product will be to deepen poverty whilst leaving intact disincentives to work for those with some degree of choice.

5.4 **Labour Shortages and an Aging Population: Countervailing Factors?**

One common response to the Federal Government’s IR reforms has been to say: low unemployment and labour shortages will prevent employers from exploiting the removal of the NDT and the award safety net to lower the entitlements and earnings of employees. An aging population will intensify these labour shortages. The Prime Minister, John
Howard, and Minister for Workplace Relations, Kevin Andrews have repeatedly claimed it’s a ‘workers market’. Labour market conditions will protect employees (and indeed necessitate legislation enhancing the bargaining power of employers).

Labour shortages are a significant countervailing factor. Employers experiencing chronic skill shortages certainly are not in a position to be cutting wages and entitlements if they are to attract scarce labour. But loose, generalised statements about labour and skill shortages obscure their uneven character: labour shortages in some areas and some sectors co-exist with surplus labour in other areas and sectors where the unemployed report they can’t find work because of too many applicants, lack of jobs, their age or skills mismatches. The effect in the short-to-medium term will be uneven development, increased inequality and the accelerated emergence of low-pay/single hourly rate jobs.

The official unemployment rate is at its lowest level since the 1970s but, as the ABS illustrates, this figure over-states the level of labour utilisation. The unemployment rate does not incorporate either:

- the under-employed (i.e. part-time employees who wish to work more hours) who as a group are roughly the same size as the unemployed;
those who are ‘marginally attached’ to the labour force (i.e. actively seeking work but not available to start in the week of the survey or not actively looking for work but available to start within the next four weeks).

As of September 2004, the ABS (2005b) measured the ‘extended labour underutilisation rate’ to be almost 2 and a half times the official unemployment rate at 12.2%.

Ken Henry, Secretary to the Treasury, in contesting the ‘capacity constraints’ thesis being promoted by the Reserve Bank, observed that an hours perspective on the labour market was most revealing:

... the proportion of the 15+ population in employment is at historically high levels. But if we take into account the changing mix of full-timers and part timers in the workforce, and their average hours of work, and derive a measure of average hours worked per head of the whole population of working age (15+ years) ... labour utilisation does not look so high by historical standards ... we have been at or around present levels on a number of occasions in this cyclical expansion (Henry, 2005, p. 3)

Nor do these figures account for the extraordinary growth in discouraged job-seekers and disability pensions. If we add to this, the involuntary exodus from the labour force of mature age workers—particularly men in their late 50s and early 60s with backgrounds in blue-collar occupations—we glimpse still higher levels of unemployed labour. As Evan Thornley observed in his Alfred Deakin Innovation Lecture:
We used to have about a million unemployed and about 100,000 disability pensions. Now we’ve got half a million unemployed and 600,000 disability pensions. We’ve just rearranged the deck chairs, and declared victory (Thornley, 2005).

ABS data on the reasons the unemployed can’t find work also highlight the uneven character of labour shortages. The latest ACCI/Westpac (2005: 7) survey of industrial trends found 18 per cent of employers reported labour was ‘harder to find’. Table 5.4 illustrates similar proportions of the unemployed report the ‘main difficulty’ experienced in finding work is too many applicants or no vacancies:

**Table 5.4: Main Difficulty of Unemployed People in Finding Work**

<table>
<thead>
<tr>
<th>Main Difficulty</th>
<th>Percentage of Unemployed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insufficient Work Experience</td>
<td>13%</td>
</tr>
<tr>
<td>Too many applicants for available jobs</td>
<td>12%</td>
</tr>
<tr>
<td>Considered Too Old by Employers</td>
<td>11%</td>
</tr>
<tr>
<td>Lacked Necessary Skills or Education</td>
<td>10%</td>
</tr>
<tr>
<td>No Vacancies in Line of Work</td>
<td>8%</td>
</tr>
<tr>
<td>Too Far to Travel/Transport Problems</td>
<td>8%</td>
</tr>
<tr>
<td>Own ill Health of Disability</td>
<td>7%</td>
</tr>
<tr>
<td>No Vacancies at All</td>
<td>6%</td>
</tr>
<tr>
<td>Other reasons</td>
<td>25%</td>
</tr>
</tbody>
</table>

Note: Other reasons were unsuitable hours, other difficulties (ethnic background, considered too young), childcare/family responsibilities, no feedback from employers, language difficulties, no difficulties. Source: ABS (2005b: 28).
Aside from young workers coming up against ‘insufficient work experience’, the most common reasons were ‘too many applicants’ (the number one reason for 35-44 year olds), being considered ‘too old’ (number one reason for over-45 year olds), lacking necessary skills or no vacancies. Just as a significant number of employers report difficulty in finding labour, so a significant number of the unemployed report a surplus of applicants, no jobs, skills mismatch or employer age-ism.

These results are not contradictory. They reflect variations in labour market conditions between and within sectors and regions. Labour shortages may stop employers in some areas or sectors from removing award conditions such as penalty rates but conditions of labour surplus will allow many other employers to take advantage of the removal of the award safety net and no-disadvantage test. There are also major regional imbalances between supply and demand: labour shortages in affluent parts of the major cities and some regional areas currently co-exist alongside a paucity of jobs in many regional areas and outlying suburban areas.

The projections of an aging population are not in question. However, much commentary on labour shortages appears to assume incorrectly all other factors will remain constant. The economy is softening as three of the ‘strong tailwinds’ which have been propelling growth will ease up sooner or later in the short-to-medium future – low interest rates, the highest terms of trade in 30 years and falling savings/rising household debt (Hughes 2005). As Reserve Bank Governor, Ian McFarlane, recently said: ‘we will have to get used
to seeing GDP growth rates starting with the numbers 2 or 3 rather than 3 or 4 for a time’. There are also policy mechanisms available to increase labour supply, notably immigration policy (one can expect proposals for ‘guest workers’ to re-surface after being raised for the first time earlier this year) but also measures to better utilise mature-aged workers and women with children.

In short, Australia is not about to ‘run out of workers’ and it is more than likely labour and skill shortages will co-exist with labour surpluses. It is worth noting that these reforms will do little to solve skill shortages. The link between low levels of training and casualisation has been ‘overwhelmingly documented’ (see Buchanan 2004). Opening up pay differentials between permanent and casual jobs and encourage competition on the basis of labour costs hardly creates an environment conducive to lifting our training performance and addressing skill shortages. The intensity of competition already has led to a preoccupation with deploying labour eroding the capacity to develop labour through skill formation at enterprise level. However, the character of shortages is already highly uneven and work-to-welfare measures will boost the supply of labour for low-wage jobs. The potential for growing inequality and social divides, especially between affluent and poorer areas of cities and between the cities and regional areas, are obvious.

5.5: Low-Wage Jobs and Labour Productivity
Australian productivity growth has stagnated since 1999 after strong growth from the early/mid 1990s. During the 1990s, some championed the emergence of a ‘miracle’ or ‘new economy’ on the basis of all-time high productivity growth rates (Banks 2003). After a period in which it was claimed productivity was merely ‘taking a breather’, the productivity slowdown is now acknowledged - sometimes used as justification for the IR reforms. What will be the effect of these IR reforms on productivity?

It should be clearly understood that the causes of productivity growth are complex, multi-faceted and contentious. There are a multitude of factors outside labour markets which are arguably more important in determining productivity levels such as capital investment and usage of information and communications technology. Additionally, a vigorous debate is still in progress over Australian productivity trends over the past decade. During the 1990s, there were technical criticisms of the new multi-factor productivity index and the new ABS concept of ‘productivity cycles’ (as productivity tends to move in line with business cycles). Productivity growth figures for the 1994-99 cycle were also subsequently revised downwards from the all-time high of 2.4% per annum to 1.8% which is comparable with the 1960’s (Parham 2002; Quiggins). Commentators who argued at the time the 90’s productivity surge would prove to be temporary, as it was significantly caused by unsustainable work intensification are now claiming some vindication – though they also agree the debate is yet to be conclusively settled.
Notwithstanding these caveats, there are serious reasons to doubt that these reforms will contribute positively to productivity growth. There is no convincing evidence individual contracts will lift productivity. Peetz (2005b: 16) concludes from a review of the academic literature and ABS data:

The most appropriate conclusion to draw from the quantitative studies appears to be that there is no consistent relationship between unionism and productivity, but that unionism can raise productivity. And equally, there is no consistent relationship between individual contracting and productivity.

Some workplace will increase productivity following the introduction of individual contracts but others will experience productivity declines through the loss of trust, voice and morale. Studies of AWA content have to date found they are focused on cost-reduction through wage cuts, work intensification and casualisation rather than high-performance work models centred on a skilled workforce in collaborative work systems with high levels of investment in staff development (Cole et. al. 2001; Mitchell & Fetter 2003). Using OEA survey data, Peetz (2002) illustrated that ‘ordinary’, non-managerial employees on AWAs were less satisfied with their pay and conditions than non-AWA employees. As Wooden (2005) notes, by delivering unilateral managerial control, AWAs could effectively abrogate managers from having to manage which is likely to lead to lower employee commitment and productivity.
Removing the safety net at the bottom of the labour market enhances incentives and pressures for firms to compete on the basis of lowering labour costs instead of innovation and productivity. An effective floor of employment and minimum wage standards acts as a ‘productivity whip’ because it maintains pressure on firms to invest in labour-saving technology and find efficiency improvements in how they utilise labour to offset cost increases. Enabling firms to cheapen labour through the removal of entitlements such as penalty rates operates much like a subsidy much like a tariff. It allows inefficient firms to survive by passing on the costs of its inefficiency to its workers where they would otherwise by displaced by more efficient rivals. Even worse, by gaining short-term competitive advantages, these firms can pull other firms down the low-cost road with them. The focus on short-term cost-cutting can displace efforts for long-term strategies based on skill development, investment, better products and services (Brosnan 2005).

Consider again the example of New Zealand. Figure 5.5 compares labour productivity for Australia and New Zealand from the 1970s:
Figure 5.5 illustrates that labour productivity increased at roughly the same rate for Australia and New Zealand from the late-1970s and 80s until the introduction of the Employment Contracts Act – from which point Australian labour productivity was demonstrably superior. As Dalziel (2002: 42) concludes:

The introduction of the Act appears to have marked the end of a long period of strong comparability between New Zealand and Australian labour productivity growth, to New Zealand’s great disadvantage.

Australia circa 2005 is not New Zealand circa early 1990s. Our economy is much more diverse, modern, better integrated into global capital flows and more sophisticated in its usage of new technologies such as ICT. New Zealand also moved almost overnight from an award system to a deregulated labour market at the depth of a recession so the
magnitude of the change was greater. But just as deregulating the bottom-end of the labour market led to a focus on cost rather than innovation and productivity, so the same effect on a smaller scale is likely in Australia.

The danger is that a low-wage/low-productivity cycle could be forged. Low-wage jobs are low-productivity jobs with low capital investment, low skills training and export performance (see ABS data in ACTU 1998). Again, the USA is instructive. The emergence of a large pool of low-wage jobs in the service sector has had a serious and adverse impact on productivity growth. In the US manufacturing productivity growth between 1979 and 1990 was 2.9 percent and between 1990 and 1996 it was 4.2 percent. In non-manufacturing, it was 0.3 percent and 0.2 percent respectively. These latter growth rates were a tenth of those prevailing in German non-manufacturing over the same period (Brenner, 1998, p. 241). Labour productivity growth rate per annum from 1979 – 96 was just 0.8% - well beneath the OECD average (excluding the United States) of 1.9% (Mishel et. al. 1999: 360). As Robert Brenner concluded:

The upshot has been a truly vicious circle, in which low wages have made for low labour productivity growth which has in turn rendered ‘unrealistic’ any significant growth of wages and thereby provided the basis for continued low productivity growth (Brenner, 1998, pp. 206-07).

The assertions by the Federal Government that these reforms will lead to higher productivity are not backed by international or Australian evidence; in fact, no major
industrial relations academic has supported these claims (see Lansbury 2005; Gregory 2005; Wooden 2005).
6  Projected Outcomes: Social and Community Impacts

The effects of these far-reaching reforms will not stop in the workplace and the labour market. There are social dimensions to IR reform which will change the relationship between the sphere of work, private households and the community. Fragmenting working time erodes the common time for families, friends and community activities so it also fractures social relationships. The quality of family life, parenting, relationships and health - already under strain because of the well-known ‘work-life collision’ (Pocock 2003) - will deteriorate further for those where the quality of jobs and earnings is affected. The emergence of social exclusion, dis-connected areas and welfare dependency (including employers) will also grow over time.

6.1  Fragmented Hours: the End of Common Time?

There have been three major trends in relation to working time since the 1970s: lengthening hours for full-timers (now amongst the longest in the OECD), less standard and more irregular hours and increased work at ‘family unfriendly’ hours. Greater variability in working hours often meets the needs of business for flexibility and of workers for greater diversity. However, working time preference data also now clearly illustrates a growing proportion of under-employed workers who cannot find sufficient hours, rising dis-satisfaction with irregular and erratic hours and rising dis-satisfaction with extended hour jobs with ‘long hour cultures’ (Watson et. al. 2003: 87-91).
These trends will be intensified by these reforms. Researchers such as Bell and Freeman (1994) and Bosch (1999) have noted that as earnings inequality increases, so the quality of hours worked decreases as full-timers work longer hours to maintain income and part-time hours become more erratic and fractured. Removing award entitlements to penalty rates for long or unsociable hours will accelerate and deepen the trend to jobs with single-hourly rates. The removal of financial disincentives to weekend and evening work will lead to greater variation in hours and the structure of the working week6 – undermining and fracturing working time standards but also families, friendships and communities: ‘this change in the timing of work, assaults common family and recreational time’ (Pocock 2003).

6.2 Work/Family Balance, Family Relationships and the Quality of Parenting

The endemic ‘collision’ between work and family is by now universally acknowledged by academic researchers and in public debate. John Howard has referred to it as the ‘barbeque stopper’. The changing nature of work and changing patterns of workforce participation are making it harder to balance work and family life in terms of reconciling time pressures, caring and parenting responsibilities, intimate and close relations and health and well-being (Buchanan & Thornthwaite 2000: 61). Long-hour working cultures

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6 Part-time employees will also lose entitlements to minimum hours. Employees could find themselves called in at short notice. Refusal to work as requested could also lead to dismissal so the removal of unfair dismissal protections leaves employees vulnerable to unreasonable requests.
leads to absentee fathers who feel they have too little involvement with their children (Russell et al. 1999). Both parents worry about the absence of male role models for their children, especially boys. Work, inadequate support networks and increased travel times leads to mothers who are constantly rushed (ABS 1999). One-third of all workers say work leaves them with little energy or time to be the parent they want to be and just under half say work leads them to miss out on some of the rewarding aspects of being a parent - for employees who work more than 45 hours a week these figures increase to just under half and nearly two-thirds respectively.

As ex-Director of the Australian Institute of Family Studies, Don Edgar (2005), notes:

Sitting sadly in the middle of this tug of war (between work and family) are the nation’s children, hurried from one carer to another, missing out on both quantity and quality time with either parent, unsure where they stand in the priorities of Mum’s and Dad’s busy lives

These pressures also erode the quality of intimate and work relationships for mums and dads. Time spent together is poor quality time because they are tired and irritable. This too has indirect effects on children. Indeed, whilst factors such as family income and housing quality affect the development of children, it is parental satisfaction with working arrangements and social relationships which are the biggest influence because otherwise ‘their unhappiness carries over to the children’ (Edgar 2005).
The IR reforms are likely to deepen these trends and work-family pressures. As Don Edgar continues:

Yet in Australia, we have a government hell-bent on resisting paid maternity leave, let alone parental leave; a government insisting that only paid work – not caring work – is of value to the economy; not seeing that the work of carers is crucial to the good society; a government driving everyone into a paid job, regardless of its pay level or its suitability for meeting family and community needs, yet pretending to be in favour of ‘family values’. In my mind, this is hypocrisy at the highest level … proposed new industrial relations laws are likely to damage the fabric of family life and make it even more difficult for Australia’s parents to raise their children to become competent, confident citizen’s in a globalising future (Edgar 2005).

Certainly, there is no encouragement to be gained from other experiments with labour market deregulation. As Buchanan & Thornthwaite (2001: 12) noted from a review of international studies:

In the international comparative literature we did not find any references that reported market based initiatives (such as those that prevail in the US) delivered superior outcomes in terms of the general choices for workers or the quality of care for children.

Professional families also feel these strains and pressures but they are better equipped to cope. These reforms are going to make life much harder for low-income families.
6.3 Work-Life Balance and Community Participation

Similar pressures will affect work-life balance and the strength of community. The locus of community has already shifted from the neighbourhood towards the workplace because of long and variable working hours and increased mobility with more short-term employment in different locations. Friendships, social bonds and community participation suffer:

most employees working long hours describe giving up hobbies, sport and voluntary work because of lack of time, because they come home from work exhausted, or because they cannot predict when they will be available ... voluntary work in social clubs, charities and organisations like the army reserve is also constrained for those working long hours and their partners, many of whom describe a ‘closing in’ of their social circle and community: a work/eat/sleep cycle which constrains their days and leaves their personal community impoverished (Pocock 2003: 56).

Australians are still strongly committed to volunteer work and community participation but long and fractured working time lowers the capacity to participate:

6.4 Welfare Dependency, Poverty and Social Exclusion

An associated by-product of a growing low-wage sector will be increased welfare dependency.
In their submissions to annual safety net hearings, business lobbies and the Federal Government have consistently advocated shifting the emphasis for poverty alleviation from minimum wage increases to transfer payments. As Chris Richardson observed:

> The problem is that we have been using our industrial relations system like a welfare system, using companies to try and achieve fairness when that’s not what they’re good at . . . They’re good at making money, and we should let the tax and welfare systems get the fairest system we can make (quoted in Garnaut (2005b: 7).

So although the effect of welfare reforms will be to prod disability and single parent allowance holders in short-hour, low-pay jobs, the countervailing effect will be a larger group who rely on transfer payments to supplement their incomes. The use of tax credits or transfer payments are widespread in the US as a consequence of low-wages. In New Zealand, also, the number of persons on income support and tax credits to supplement income from paid work increased by over 100,000 from 1991-99 (Conway 2001)

There are important social changes involved in excessive use of the welfare system to offset stagnant wages. A living wage can underpin a society of self-reliant individuals in a way in which government subsidies to low wage employment can never do. The recipient, despite a partial income from paid employment, remains ‘dependent’ on welfare. A secure livelihood, based on a living wage, earned in the workplace, remains
a far preferable basis for citizenship and social inclusiveness. The balance has already shifted in Australia but further shifting the balance would have negative equity and social consequences (Briggs, Buchanan & Watson, forthcoming).

The effect will be to ratchet downwards earnings for low-income earners, swelling the numbers of the working poor and placing a ceiling on welfare benefits to retain incentive to work. A common response from business economists and lobbyists is to say these criticisms are mis-guided because the real source of poverty is unemployment. The implicit assumption is that falling wages at the bottom end of the labour market is a positive development – though this is rarely explicitly stated for political reasons - because it will increase unemployment. Although this is an article of faith for many economists, based on abstract modeling and aprior assumptions about the elasticity of labour demand (i.e. the responsiveness of employment to changes in wages), there is a vigorous but unsettled debate based on empirical evidence (see AIRC 2005). Put simply, opponents of minimum wage standards and increases have been unable to empirically prove the safety net increases of recent years have cost jobs. Pulling out the ‘floor’ to the labour market is a leap into the unknown with serious risks – as the OECD (2004: 142) notes.

Allowing downward flexibility for the wages of low-skilled workers could do very little to increase employment should labour supply elasticity be high for this workforce segment. In many OECD countries, the interaction of the tax system and income-tested benefits is such that the net income returns to working become very low (or even vanish) once wages fall below a certain level. In such
a context, the main impact of downward wage flexibility may be to worsen inactivity, unemployment and low-pay traps.

This is especially so for low-income mothers as these reforms will encourage higher rates of complete withdrawal from the paid workforce which can have lasting effects:

If you subscribe to the stepping stone argument – that a low paid casual or part time job now may lead on to a higher paid job with more hours in the future – then this result should be worrying. The very people who stand to benefit from greater participation in the workforce are the ones who face the highest financial disincentives to do so. This may contribute to long-term reliance on welfare: if low income mothers are discouraged from taking the first step, then they are much less likely to make the second and subsequent steps on the path to a more self-reliant future (Apps 2002: 68).

These reforms will land on the most vulnerable members of society and will have noticeable regional dimensions. Conditions of surplus labour exist in affluent parts of the major cities but the reverse is often the case in outer-suburban areas. Labour shortages also exist in some regional areas whilst others are becoming ‘black holes’. These IR reforms will accelerate these processes of uneven development, the growth of zones of social exclusion and, broadly, stimulate the drift of young people away from small regional centres to bigger regional centres and the cities in search of better quality jobs.
6.5 The Social Gradient: Inequality, Work and Health Outcomes

The linkages between IR reform and the health of a society are not commonly made. It may seem far-fetched to assert IR reform could worsen life expectancy and rates of morbidity (illness). However, epidemiologists have amassed a compelling body of scientific evidence across Europe, North America and Australia of a ‘social gradient’ (Marmot 2004: 2) in population health linked to income distribution, the quality of work and community. ‘In the developed world’, as Professor Wilkinson (1996: 3) notes, ‘it is not the richest countries which have the best health, but the most egalitarian.’ The Hon. Kevin Andrews says there should be no place for ‘fairness’ in designing an industrial relations system. But inequality has health costs: unequal societies usually have lower life expectancy, higher rates of ‘excess’ mortality and morbidity and worse physical and mental health for low and middle-earners.

It is well-established that persons of ‘low’ socio-economic status have higher mortality rates for most major causes of death and higher rates of morbidity, both in Australia and internationally. In relation to Australia, Turrell & Mathers (2000: 434):

With few exceptions, the evidence shows unequivocally that people of ‘low’ SES (socio-economic status), however defined, have higher mortality rates for most major causes of death, experience more ill-health (both physiological and psychosocial), and are less likely to take action to prevent disease or detect it at an asymptomatic stage. Socioeconomic differences in health are evident for
both men and women at every stage of the life course, and the relationship exists irrespective of how SES and health are measured.

This much would probably not come as much of a surprise to many people.

However, the startling insight of contemporary social epidemiologists is that there is a social gradient which operates along the entire occupational and social hierarchy – for life expectancy and rates of morbidity across a range of conditions such as stroke, heart disease, cancer, mental illness and gastrointestinal disease. So persons at the top of the occupational and social hierarchy on average live longer and are less likely to develop illnesses than those in the middle whose life expectancy and rates of morbidity are in turn better than those at the bottom. The social gradient even operates in white-collar workplaces where employees are not poor or exposed to dangerous or hazardous work environments. The social gradient, as Marmot (2004: 14) is at pains to stress, is not just an affliction for the poor: widening inequality will also impact on ‘people in the middle of the hierarchy’ as the gradient steepens.

ABS data on the ‘probability of dying’ offers one particularly stark illustration of the social gradient.
There is a linear relationship between socio-economic status and the probability of dying. Consequently, as Turrell & Mathers (2000) observe, ‘mortality differentials are finely stratified from top to bottom of the socioeconomic hierarchy, suggesting that in Australia … health inequalities are not confined to a single disadvantaged under-class.’

This is what Marmot refers to as the ‘social gradient’ – and it can be observed in relation to most sources of mortality and morbidity which afflict wealthy nations:

> Which diseases follow the social gradient? The easy answer is: most. In general, the lower the social position the higher the risk of heart disease, stroke, lung diseases, disease of the digestive
tract, kidney diseases, HIV-related, tuberculosis, suicide and other ‘accidental’ and violent deaths (Marmot 2004: 23).

Once societies reach a certain level of economic development, the distribution of wealth and the level of egalitarianism is a more powerful determinant of health outcomes than economic growth. Absolute wealth is vital for improving population health in poor societies because extra income and resources allow them to tackle malnutrition and poor sanitation. However, in wealthy societies, where degenerative diseases take over from malnutrition and poor sanitation as the major causes of mortality, improvements in mortality rates and life expectancy appear to be largely unrelated to economic growth. The United States is the wealthiest nation but it only ranks 26th in terms of life expectancy (Wilkinson 1999). International studies generally find mortality, especially infant mortality, in wealthy nations is more closely related to the distribution of income within these societies than differences in income between nations (Hales et. al. 1999; Kawachi & Kennedy 2002; Marmot 2004; Waldmann 1992; Wannemo 1993; Kaplan et. al. 1996; Kennedy et. al. 1996; Le Grand 1987; Rodgers 1979; Stainstreet et. al. 1999; Van Doorslaer et. al. 1999)⁷: ‘There is a strong relationship between income distribution and national mortality rates. In the developed world, it is not the richest countries which have the best health, but the most egalitarian’ (Wilkinson 1996: 3).

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⁷ For a summary of the dozen projects which have found such a relationship see Wilkinson (1996). Some scholars have mounted methodological challenges, claiming the extent of the relationship between inequality and health outcomes has been over-stated, question whether it is universal and may be offset but more evenly distributed social investments in public health. None, however, challenge the basic relationship between inequality and health outcomes. As two such critics note: ‘would anyone seriously anyone seriously argue that the decades of greater general social (and income) equality of the Nordic countries has had nothing to do with generating better population health profiles? … Redistribution works, especially in those countries like the UK and US where income deprivation is a particularly salient component of the multiple deprivations that exist in those countries. Lets take up the challenge and see how well it really works’ (Lynch & Davey-Smith 2002: 550).
Why is this so? It appears there are economic factors and social or psychosocial factors at work. Economically, there are diminishing health gains at the individual and societal level from additional income. The relationship between health outcomes and income is not linear but curved. In simple terms, this means every extra dollar of income has a bigger impact on the health of the poor than the rich. An unequal distribution of income therefore leads to worse population health – as Subramanian & Kawachi (2004: 81) usefully explain in this hypothetical example:

In a hypothetical society consisting of just two individuals, that is, a rich one and a poor one, transferring a given amount of money from the rich to the poor will result in an improvement in the average health because the improvement in the health of the poor person more than offsets the loss in health of the rich person. Indeed, it is possible … there may be no loss in health for the wealthy.

However, the social gradient is not just the product of income distribution. It is also the product of the quality of working life, community and social cohesion. Inside the workplace, Marmot and other epidemiologists have found those in routine jobs with less control over their work, autonomy and satisfaction and their lives have higher rates of heart disease, depression and other health problems. The absence of reciprocity at work, rewards for effort, and outlets to control stress and balance work-life affects health risks such as coronary heart disease. Lifestyle and risk factors such as smoking, lack of exercise and alcohol consumption only account for a small percentage of the social
gradient (and are also linked as persons with low control and satisfaction are more likely to engage in unhealthy behaviours). Low self-esteem, chronic stress and sustained activation of stress mechanisms from an absence of social participation and control over work and life lead to physiological changes that in turn lead to increased risk of contracting degenerative conditions such as heart disease. Studies across western nations and Eastern Europe have consistently found strong linkages between control over life and health outcomes (see Marmot et. al. 1978; Marmot et. al. 1997; Bobak et. al. 1998; Bobak et. al. 2000).

We found the link between inequality and poor health was low control. The study suggested a causal chain: the greater the degree of inequality, the less control people had over the lives; the less control the worse the health (Marmot 2004: 214).

Unequal societies tend to be characterised by lower levels of trust, fraternity, social cohesion, supportive networks, community involvement and participation. Unequal societies tolerate higher levels of social exclusion, economic insecurity and less control over their lives for the low-skilled – all of which are psychosocial health risk factors:

In the age of the genome and high-tech medical care, thinking about health typically turns to biology and technology. The discovery of how important control and participation are for health leads in a different direction: to the circumstances in which we live and work ... these social inequalities in health – the social gradient – are not a footnote to the ‘real’ causes of ill-health in countries that are no longer poor; they are heart of the matter (Marmot 2004: 3).
A ‘culture of inequality’ is not conducive to good health.

Aside from its effects on the distribution of income and quality of working life, there are direct linkages between some aspects of IR policy and health outcomes, especially in relation to infant/child mortality and development. Notably, international studies have found the statutory provision of paid parental leave ‘significantly decreases’ infant and child mortality (Ruhm 2000; Tanaka 2005). Australia virtually stands alone amongst the OECD in not legislating for paid maternity leave – effectively tolerating a higher level of infant and child mortality (Pocock 2005). A 10-week increase in paid leave could result in a 2.3 to 2.5 per cent decline in infant death rate, 4.1 per cent for babies aged between 28 days and 1 year and 3 per cent for children aged 1 – 5 years. Paid maternity leave is only offered by just under one-in-four workplaces, primarily higher-income earners, which reinforces the social gradient.

It is, therefore, reasonable to infer the proposed industrial relations reforms are likely to worsen overall population health, especially for those on the lower side of the labour market and the social gradient. An insight into how these reforms might influence health outcomes can be gauged from Thatcher’s Britain. Figure 6.5.1 compares changes in life expectancy by social class from before and after the Thatcher Government.
Source: Marmot 2004: 27

The factors shaping rates of mortality and morbidity are of course complex and multi-causal. In the United Kingdom, other factors drove rising life expectancy but rising socio-economic inequality meant persons in the lower and middle rungs missed out on most of these gains (life expectancy rose only 2 years in the bottom one-fifth compared to 6 years for the top fifth) and there was a rising gap between the top, the middle and the bottom. Even the second quintile fell back behind the top quintile where they had been previously equal.

This is what is known as ‘excess’ morbidity and mortality - the ‘mortality burden’ attributable to socio-economic inequality calculated by determining rates of mortality and morbidity if the whole population enjoyed the health of the advantaged. For Australia, Turrell & Mathers (2001: 238) made the following calculations of the mortality burden in 1997 for men and women aged 25-64:
(eliminating the) excessive all-cause mortality ... would have resulted in a saving of approximately 12,418 premature deaths. The corresponding figures for circulatory system disease and cancer were 4190 and 2944 deaths respectively. For females in the same age group, the number of premature deaths attributable to socioeconomic inequality was approximately 14,532 for all causes, 3504 for circulatory system disease, and 3038 for cancer.

The evidence from the epidemiologists is that there will be health costs arising from industrial relations reforms that will turbo-boost inequality. Excess morbidity and mortality can be expected to increase. Life expectancy for low to middle-income earners will be lower than it otherwise would be, rates of morbidity will be higher and mental and physical health will be lower. Low and middle income earners will benefit less fulsomely from any advances leading to increases in life expectancy and health, especially the growing army of low-paid and working poor which will be generated in the longer-term by these reforms. As Wilkinson puts it: “the poor pay the price of increased social inequality with their health.”

The Federal Government has publicly spoken against ‘fairness’ as a criterion for designing an industrial relations system. The inference is usually it’s better to focus on efficiency which will leave us all better off even if does lead to increased inequality. This is not the case with mental and physical health. As Marmot (2004: 18-19) further notes: ‘Many politicians, however, preach the virtues of inequality (set the wealth producers
free). If bigger social and inequalities, i.e. a steeper social gradient, are related to bigger health differences, this might give the politicians pause.'
7 References


ABS. (2005a) *Labour Mobility*, Cat. no. 6209.0


Stewart, A. (2005b) Submission to Senate Employment, Workplace Relations and Education Inquiry into the Work Choices Bill.


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