



Assessing the Impact of 'WorkChoices' One Year On

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ABBREVIATIONS

AAP	Australian Associated Press
ABC	Australian Broadcasting Corporation
ABS	Australian Bureau of Statistics
ACCI	Australian Chamber of Commerce and Industry
ACIRRT	Australian Centre for Industrial Relations Research and Training
AFPC	Australian Fair Pay Commission
AFPCS	Australian Fair Pay and Conditions Standard
AIM	Australian Institute of Management
AIRC	Australian Industrial Relations Commission
AWA	Australian Workplace Agreement
AWE	average weekly earnings
AWOTE	average weekly ordinary time earnings for fulltime adult employees
AWTE	average weekly total earnings for fulltime adult employees
CA	collective agreement
DEWR	Department of Employment and Workplace Relations
ECA	employee collective agreement (non-union)
EEA	employer–employee agreement (Western Australia)
EEH	Employee Earnings and Hours survey
EGA	employer greenfields ‘agreement’
LPI	labour price index
OEA	Office of the Employment Advocate
OWS	Office of Workplace Services
RULC	real unit labour costs
UDL	unfair dismissal laws
WC	WorkChoices
WA	Western Australia
WRA	Workplace Rights Advocate, Victoria
WRC	Workplace Research Centre
WRIL	Workplace Rights Information Line, Victoria

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1 EXECUTIVE SUMMARY

2 *Introduction*

- WorkChoices was justified by the economic benefits it would bring. Despite the willingness of its advocates to claim success, it is barely a year since the laws took effect, so any assessment of the impact of WorkChoices can, at this stage, only be preliminary. Assessment is also hampered by the fact that some critical information (in particular, on the content of agreements) has been withheld. (p 3)

3 *Coverage*

- Nationally, in May 2006, 3.1 per cent of employees were covered by registered individual agreements, of which the vast majority were Australian Workplace Agreements (AWAs). This was an increase on the 2.4 per cent recorded in 2004. (p 4)
 - Coverage of AWAs in Victoria was similar to the national level, at 3.1 per cent, an increase on the 2.2 per cent recorded in 2004. (p 4)
- Most states experienced an increase in AWA coverage. An exception was Western Australia, where AWA coverage fell from 8.0 per cent in 2004 to 5.8 per cent in 2006. It appears that most of the movement out of AWAs in WA has been among lower income earners. It is possible that this represents either increasingly effective employee resistance to loss of conditions, or recognition by WA employers that the gains that were expected from AWAs have not materialised. (pp 8–9)
- The data from the ABS show a far lower level of AWA coverage than claimed by the Commonwealth at the time. AWAs covered 258,000 employees nationally in May 2006, an increase of just 59,000 from May 2004. At the time, the Commonwealth was claiming 538,120 AWAs were in operation. The inadequacies of the Commonwealth methodology for estimating coverage have increased over time, with the extent of over-estimation increasing from 60 per cent in 2004 to 109 per cent in 2006. (pp 4, 10)
 - The number of operating AWAs at the end of 2006 was probably between 335,000 and 340,000 (equivalent to approximately 3.7 per cent of employees), of which 56 to 57 per cent were WorkChoices AWAs. By the end of March 2007, AWA coverage would probably still be less than 400,000, well short of the 'almost a million today' that has been claimed. (p 10)
- WorkChoices was aimed at shifting people from collective to individual forms of employment, and it is clearly having some effect in this regard, though probably not as much as its proponents would hope. (p 11)

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4 *Limits to the impact of WorkChoices to date*

- Only a small minority of employees are covered by WorkChoices agreements to date and employer surveys indicate that the majority of businesses have decided against taking advantage of the 'opportunities' WorkChoices presents. This is a factor limiting the effects of WorkChoices so far. (p 13)
 - However, the Western Australian experience from the 1990s suggests that more employers may be forced to change strategy as a result of WorkChoices, but it may take some time for this to happen and may affect employers who had not originally intended to change strategy. (p 13)
- The WorkChoices legislation is designed in such a way that many of its effects cannot take effect for some time. The effects of some provisions will probably not be felt until 2009 or 2010. (pp 13–14)
- The full effects of WorkChoices will probably only be seen when the boom slows and economic conditions deteriorate, leading a larger number of employers to make use of WorkChoices provisions while the alternatives available to employees narrow. In that sense, any evaluation of WorkChoices at the moment is, if anything, likely to provide a rosier picture than will become apparent in the fullness of time. (pp 14–15)
- Some 68 per cent of respondents to a survey indicated that, should they seek new employment, they would 'now prefer to work for a company that employed more than 100 staff', but it will probably take some time for this effect on labour supply to be felt by small and medium businesses. (p 15)

5 *Australian Workplace Agreements and Conditions of Employment*

- There is a strong focus in AWAs on reducing or removing protected award entitlements. The rate at which conditions are being removed is substantially higher under WorkChoices AWAs than under pre-WorkChoices AWAs. (p 16)
 - In the case of overtime pay, the rate at which this has been removed through AWAs has doubled, from a quarter of AWAs in 2002–03 to over half of AWAs in 2006. (pp 16–17)
 - Indeed, overtime and penalty rates are particular targets for removal. Over three-fifths of AWAs abolish penalty rates altogether. Over four-fifths of AWAs abolish or reduce overtime pay. (p 17)
 - Many other 'protected' award conditions have been excluded from AWAs. A majority of AWAs abolish shift allowances. Many abolish public holiday payments. (p 17)
 - Some, perhaps many, AWAs are abolishing redundancy pay, but no data about them have been issued as they are not a 'protected' condition. (pp 17–18)



- We would expect AWAs in industries and occupations with tight labour markets (such as mining) to be quite different to those in industries where labour has limited bargaining power (such as retailing and hospitality). Earlier survey evidence suggests that the relative effects of AWAs are more positive for workers in high paid managerial and professional jobs, more negative for 'ordinary employees' in other occupations. (pp 18–19)
- There is qualitative evidence indicating that the flexibilities often favour employers at the expense of employees. (pp 19–20)

6 *Unfair dismissal provisions*

- There are numerous press reports and anecdotes of unfair dismissals, and of the threat or actuality of dismissals being combined with cuts in pay and conditions. Examples from the Victorian Workplace Rights Information Line (WRIL) and the Centre for Work and Life low paid project illustrate developments happening. (pp 21–3)
- Anxiety about job security seems to have increased. A Morgan survey shows insecurity increasing slightly despite unemployment being seen to improve, and a more direct question in another survey shows large minorities of employees saying they feel more insecure. A major research project on the low paid by the Centre for Work and Life identified a 'climate shift underway' involving a 'deep sense of insecurity and concern...most fundamentally on the issue of unfair dismissal rights' (pp 23–4)
- Workplaces that are exempt from the unfair dismissal laws appear to be the site of the greatest employee anxiety. Amongst calls concerning dismissal made to the WRIL, a disproportionately large number came from workers in small and medium sized workplaces. (p 24)

7 *Non-union collective agreements, employer greenfields agreements and conditions of employment*

- Non-union collective agreements also appear to be cutting protected award conditions. (pp 25–6)
- Employer greenfields 'agreements' (EGAs) are not agreements in any sense of the word. They are instruments unilaterally set by the employer and prevent employees from exercising their rights to engage in collective bargaining or take industrial action. As we would expect from AWAs, there are different types of EGAs operating in different industries, with those in retailing and hospitality franchises, including petrol retailing, focusing on stripping away award conditions and cutting costs. (pp 26–7)



8 *Wage rates under individual and collective agreements*

- The ABS Employment, Earnings and Hours (EEH) survey must be considered by the Commonwealth to be the only reliable source of information on wages under AWAs. The most recent data from EEH include many AWAs signed before WorkChoices took effect, and which were protected by the no-disadvantage test, now abolished; so the data will likely exaggerate the relative benefits of AWAs. The analytical focus must be on hourly wages of non-managerial employees, to get the truest indication of the effect on ordinary employees and the closest like-with-like comparison. (p 28)
- Across Australia as a whole, AWA employees received 9 per cent more per week than employees on registered collective agreements. But to earn this, they worked for 13 per cent more hours (an extra 4.1 hours per week). As a result, the average hourly earnings of non-managerial employees on AWAs were 3.3 per cent lower than the earnings of their counterparts on registered collective agreements. (pp 30–1)
 - In Victoria, the average hourly earnings of non-managerial employees on AWAs were 12 per cent lower than those under registered collective agreements. Victorian women on AWAs earned 6 per cent less per week than women on registered collective agreements, but they worked for 4 per cent more hours. So their hourly earnings were 10 per cent less than the hourly earnings of their counterparts on collective agreements. (pp 30–1)
- The size of the shortfall is understated as a result of the influence of Western Australia, where in the high-wage, male dominated mining industry AWAs are common. Outside of Western Australia, the shortfall between AWAs and registered collective agreements is 10 per cent. (pp 32–3)
- Female permanent fulltimers were disadvantaged by 8.5 per cent if they were on an AWA. They received 5 per cent less per week on an AWA than on a collective agreement, even though they worked an additional 1.3 hours per week. Permanent part-time workers were 17 per cent worse off on AWAs than registered collective agreements, and casual employees were also 17 per cent worse off. (p 33)
- Casual employees, particularly female casual employees, do especially poorly under AWAs. Even though the no-disadvantage test was meant to prevent the overall value of conditions for AWA workers from falling below the award, average hourly earnings for casual women were 7 per cent below the average award minimum. (pp 34–6)
 - The poor relative performance of women under AWAs appears to be a result not of their being employed in a low-wage industry but rather of the loss of pay or conditions under AWAs. (p 36)



9 Wage increases under different agreement types and the Australian Fair Pay Commission

- The increase in minimum wages determined by the AFPC was less generous than what most state tribunals had provided and the second lowest minimum wage increase in real terms in a decade. It represented a real wage fall of 0.9 per cent on average for award-reliant employees. The 18-month gap between the last AIRC decision and the AFPC decision also meant real wage declines for award-reliant workers. (p 37)
- Wage increases have been higher under union agreements than under non-union agreements. The shortfall between AWAs and collective agreements increased from 2.1 per cent to 3.3 per cent between 2004 and 2006, indicating that wage increases under AWAs are less than under registered collective agreements. This is consistent with the historical pattern, in which wage increases under AWAs have been well below those under union and non-union collective agreements. (pp 37–8)
 - Wage increases in new union CAs may have fallen over the past two quarters, despite the relatively tight labour market. However, wage increases in *current* union agreements are relatively stable, reflecting the large amount of inertia in wages, and illustrating how changes in outcomes for employees affected by WorkChoices feed only slowly into wages aggregates. (p 38)

10 Wages growth and profits

- When surveyed in June 2006, 56 per cent of Victorian and Tasmanian business owners, members of the Austrian Institute of Management (AIM), stated that the impact of WorkChoices on employee wages will be negative, with only 20 per cent stating the impact would be positive. In another employer survey, 40 per cent of small business respondents considered that the legislation is 'unfair to many employees', compared to just 24 per cent who disagreed. (pp 41–2)
 - A survey of 300 middle and senior managers undertaken eight months later, in February 2007, reinforced this view: 52 per cent expected things would be worse for less skilled workers as a result of WorkChoices; only 12 per cent thought things would be better for them. The negative perceptions amongst managers about the impact of WorkChoices on employees are reflected even more strongly in the views of employees themselves. (pp 41–2)
- Over time, as technological improvements are introduced and educational and skill levels rise, productivity rises, real wages improve and living standards rise. So a reasonable reference point by which to consider WorkChoices is the long term growth rate of real wages in Australia, 1.8 per cent a year. This is also the 2006 growth rate of real earnings across the OECD. With the local labour market relatively tight and the global economy enjoying its most prosperous period since the 1960s, Australia is in an environment that should be conducive to strong wage growth. (pp 42–3)
 - We should not expect much of a WorkChoices effect on aggregate real wages at this stage. With less than 10 per cent of employees on agreements registered since WorkChoices took effect, much of what has happened will reflect the momentum of



pre-WorkChoices developments. However, it is possible we may see some impacts on specific groups that may be more susceptible to WorkChoices effects (pp 43–4)

- The real value of the labour price index (LPI), one of the two main measures of real wages, initially fell under WorkChoices but then recovered as petrol and banana prices fell, and by December 2006 had risen to be 0.6 per cent higher in real terms than in February 2006. In Victoria, away from the mining boom, real growth was only 0.2 per cent. (p 45)
- The other measure, trend real average weekly ordinary time earnings of fulltime adult employees (AWOTE), fell after the introduction of WorkChoices and by November 2006 was still 0.1 per cent below the level immediately before WorkChoices took effect. In Victoria, the fall was 1.1 per cent. (p 45)
- Normally, AWOTE grows faster than the LPI, due to compositional effects. AWOTE is growing at less than the LPI under WorkChoices, perhaps because of lower wages being offered to new employees. There are stories of this happening and the WorkChoices provisions make it much easier to lower wages for new employees than existing employees. (pp 46–7)
- Employees in retailing and hospitality, already the two lowest-paying industries, experienced a relative and real fall in earnings over the first nine months of WorkChoices. This was probably due to the loss of penalty rates in those industries, though the data to properly assess this are not published. Another factor was the delay in the first minimum wage decision by the AFPC. (pp 48–50)
- The lowest-paid occupational groups in the private sector also fared the worst in relative terms during the first nine months of WorkChoices. (pp 50–1)
- There are stories of workers from disadvantaged groups being placed into difficulty under the new laws, but statistical evidence is not available. (pp 50–1)
- While the wages share of national income is nearly at a 35 year low, the profit share has easily reached new record high levels. Growth in chief executive pay is outstripping growth in earnings of ordinary employees, despite the apparent lack of a systematic relationship between CEO pay and performance. There appears to be a widening inequality between the owners of capital and labour. (pp 52–3)

11 Women and the gender pay gap

- There are two main sources of information on gender earnings ratios. The EEH survey shows a 1.6 percentage point widening of the gender pay gap between 2004 and 2006. (p 55)
 - According to the EEH survey, all of the gains in reducing the gender pay gap between 1996 and 2004 were wiped out by 2006. (p 55)

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- the gap between male and female earnings is the most adverse for women on registered individual agreements, at 19 per cent. By comparison the gap for collective agreements is 10 per cent. (pp 55–6)
- The average weekly earnings (AWE) survey shows women doing as well as men, in terms of AWOTE, in the public sector. It is a different story in the private sector. The gender pay gap widened by 1.3 percentage points between February and November 2006. That is, 70 per cent of the gains achieved over 10 years had been wiped off in nine months of WorkChoices. (p 56)
 - After accounting for inflation, real female AWOTE in the private sector fell by 1.0 per cent in the nine months to November 2006, whereas real male AWOTE there fell by just 0.2 per cent (and could be expected to improve in the near future). (p 56)
- Poor outcomes for women in the private sector reflect the much lower level of collective agreement protection there, and the higher reliance on awards and individual arrangements. Workers reliant on awards are particularly vulnerable to losing conditions under WorkChoices, as they are in the weakest bargaining position, and they are adversely affected by delays in minimum wage increases. They are predominantly women. (pp 56–7)
 - The fall in real earnings in retail and hospitality is probably another factor in the deterioration in women's relative position. (p 57)
- In Victoria, the gender pay gap widened by 1.4 percentage points between February and December 2006, losing in nine months 94 per cent of the gains that had been made over the preceding decade. (p 58)
- From the World Economic Forum's global gender gap report, only one economic index had data that included any part of the WorkChoices period. This indicator was 'wage equality between women and men for similar work' (based on the results of a survey of executives). On this measure Australia ranked 45th. (p 58)

12 *Employment*

- WorkChoices was to deliver substantial employment growth through the partial abolition of the 'job destroying' unfair dismissal laws. Employment growth of 2.6 per cent in the first 11 months of WorkChoices was noticeably weaker than the 3.9 per cent growth after the unfair dismissal laws were introduced in 1994. It thus seems unlikely that the change to the unfair dismissal laws explain employment growth over the past 11 months. (p 59)
- The different labour market contexts of 1994 and 2006 are not enough to explain this gap. Even allowing for unfilled vacancies in this tighter labour market, the growth of 'potential employment' in the initial WorkChoices period was weaker than during the initial unfair dismissal period. (p 60)
- The share of fulltime employment amongst new jobs has increased: while growth in part-time jobs was much weaker in the initial WorkChoices period than in the initial unfair dismissal laws period, growth in fulltime employment was comparable between the two



periods. This does not appear to reflect changes in labour demand as a result of WorkChoices. Rather, it appears to be due to changes in labour supply. While there was significant growth in the voluntary supply of part-time labour in the 1990s, the vast majority of people who are offering themselves for work now want fulltime work and are not available for part-time work. (pp 62–4)

- While there have been claims that WorkChoices has enabled jobs to be converted from casual to permanent status, the EEH data suggest that AWAs may be promoting, rather than overturning, the casualisation of employment. The *number* of AWAs employees in casual jobs doubled between 2004 and 2006. In contrast, the number of AWA employees in permanent part-time jobs fell by 36 per cent (from 30,000 to 19,000) over the same period. (pp 64–5)
- The Commonwealth denied that wage cuts would be the mechanism by which WorkChoices would create jobs, and this appears to be correct. Employment growth has been below average in those industries and occupations where wage cuts have been most apparent. (pp 65–6)

13 *Economy and productivity*

- The WorkChoices economic miracle has yet to materialise. Australian inflation is above the OECD average and Australia had the sixth highest long term interest rates (out of 29 countries) in the OECD in 2006. Despite the resources boom, Australia's economic growth over the year to December quarter 2006, at 2.8 per cent, was below the OECD average and the ninth weakest out of 29 countries for which estimates were available. (p 67)
- A reference point for productivity is the 2.5 per cent annual growth achieved under the traditional award system of the 1960s and 1970s. However, trend labour productivity in the market sector grew by a mere 0.1 per cent over the period from March to December quarters 2006. The OECD ranked Australian labour productivity growth as ninth weakest out of 32 countries for which estimates were available in 2006. (p 67)
- The current growth cycle is currently showing the second poorest rate of productivity growth of the past eight cycles. (pp 68–70)
- The poor productivity performance is *not* the result of the entry into the workforce of semi-skilled and unskilled workers with low productivity. The share of 'unskilled' workers in the workforce has been the lowest average on record, and employment growth has been concentrated in more highly skilled occupations. (p 57)
- As the growth in the use of registered individual contracts has accelerated, then the growth rate of productivity has declined. (pp 70–1)
- The only completed productivity cycle under the *Workplace Relations Act 1996* (Cth), throughout which AWAs were available and growing, also failed to achieve the productivity growth rates of the traditional award system. This was consistent with the experience in New Zealand under the *Employment Contracts Act 1991* (NZ), which with a system based



on individual contracting failed, by any measure, to exceed the productivity growth performance in Australia. (pp 71–2)


- This does not necessarily mean that WorkChoices is responsible for the fall in productivity growth. But if there were productivity gains to result from the greater use of AWAs, which are avidly encouraged by WorkChoices and which have been in place for over a decade, we would expect to have seen some sign of that by now. (p 72)
- Business surveys provide some insight into the problem. They show only small minorities expecting performance gains from WorkChoices, and larger minorities expecting it to make things worse for their organisation. This probably relates to several factors: negative views of the effects of WorkChoices on employees and fairness; the complexity of the legislation; and the high degree of state intervention it involves and permits in workplace employment relations. (p 73)

14 *Industrial Conflict*

- The first nine months of WorkChoices have seen a continuation of the long-term trend towards reduction in industrial disputes, with a 44 per cent reduction in working days lost. It is possible (but not yet clear) that WorkChoices has had a bigger effect in reducing the level of legal industrial action, mainly by making many previous industrial actions illegal. (p 75)
- There has been a notable increase in the number of working days lost due to disputes over job security. As the figures are volatile it is too early to draw a trend, but this is an issue to monitor. (p 75)
- Almost all secret ballots for industrial action have seen overwhelming support from the members for taking action, with an average 88 per cent 'yes' vote. Turnout has been high and informal voting very low. (p 76)
- A number of instances have been reported of workers being docked four hours' pay as a result of being as little as two minutes late back from a union meeting – in some cases, workers were docked four' hours pay after raising funds for widows of industrial accidents. One group of workers was not paid at all for a full week's work because these workers had an overtime ban in place, an action the government initially implicitly supported but later prosecuted the company for. (p 76)

15 *Conclusions*

- Under WorkChoices, AWAs and, it appears, other non-union agreements have led to the loss of conditions of employment, particularly in areas like penalty rates, overtime rates and shift allowances. This has very likely led to lower rates of pay than workers would otherwise have enjoyed, particularly by comparison with if they were employed under collective agreements. The hourly rates of pay for workers on AWAs are, on average, lower than those for workers on collective agreements, but the impact on particular employees depends on their position in the labour market, in particular whether the particular skills they have are in short supply and the alternative employment opportunities available to them



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locally. Vulnerable groups, including women and workers in low-wage industries, appear to have been particularly disadvantaged. It is possible that WorkChoices has also had a downward impact on the wage bargaining power of workers in the unionised sector, though it is too early to be sure and wages growth in that sector is still stronger than in the non-union agreement sector. However, the impact of WorkChoices on aggregates is limited by several things, including: that only a small minority of employees are covered by WorkChoices agreements to date; that many organisations have decided against taking advantage of the 'opportunities' WorkChoices presents; and that the effects of some provisions will probably not be observed for several years. Claims of the economic benefits of WorkChoices do not appear to be supported to date. (p 77)

- In several areas, more data are urgently required, in some cases as a result of the withholding of official information. Nonetheless, the patterns we see are, in general, those we would expect to arise from a transfer of power from employees to corporations. (p 79)

2 INTRODUCTION

This report¹ uses data from a range of sources, including the Australian Bureau of Statistics (ABS), the Department of Employment and Workplace Relations (DEWR), the Office of the Employment Advocate (OEA), the Office of the Workplace Rights Advocate (WRA), private surveys, media and web reports, to analyse the experience to date under WorkChoices. It is an extension of independent academic research undertaken over several months and published in early February 2007.² This report builds on that research, taking account of new data that have become available³ and investigating several areas in greater depth. Matters considered include the level and distribution of real earnings changes; productivity and economic performance; employment growth; conditions of employment and the content of agreements; dismissal behaviour by employers; and the minimum wage decision by the Australian Fair Pay Commission (AFPC).

The *Workplace Relations (Work Choices) Amendment Act 2005* (Cth) (hereafter 'WorkChoices') made the most revolutionary changes to Australian industrial relations law in a century. These changes, detailed more extensively elsewhere,⁴ included: abolition of the 'no disadvantage' test by which registered individual and collective agreements were assessed and approved, replacing it with five minimum standards; abolition of unfair dismissal protections for workers in firms with less than 101 workers or for whom part of the reason for their dismissal was 'operational'; privileging individual contracts (Australian Workplace Agreements or AWAs) over collective agreements (CAs), for example by enabling them to override CAs at any time or place and making it illegal to include in CAs 'prohibited content', such as provisions restricting AWAs or enabling union training or unfair dismissal protections; restricting the right to undertake collective action in ways that are unusual or unique by international standards (for example, by prohibiting pattern bargaining or the involvement of non-members in planning or executing industrial action); restricting union entry to workplaces; forcing many employers previously covered by state legislation into the federal jurisdiction; and removing core functions of the independent Australian Industrial Relations Commission (AIRC), handing them either to specially established government agencies or private corporations. The Commonwealth seeks to achieve this by using the corporations power in the constitution to secure control of industrial relations regulation from the states and create 'one simpler national workplace relations system for Australia'.⁵

The antecedents of WorkChoices date back to the 1990s. In 1991, the conservative New Zealand government introduced the *Employment Contracts Act 1991* (NZ), which abolished awards and the tribunal system, removed all official recognition of unions and promoted individual contracts. Six weeks after being elected in 1992, the Kennett Government in Victoria passed its *Employee Relations Act 1992* (Vic) which, while not going quite as far as New Zealand, effectively abolished awards for many workers and replaced them with individual contracts, removed unions' compulsory role in dispute resolution, diminished the powers of the state tribunal and abolished

¹ My thanks go to Dr Georgina Murray for editorial assistance.

² D. Peetz, 'Brave new WorkChoices: What do we know so far?' *Diverging employment relations patterns in Australia and New Zealand? 21st AIRAANZ conference*, Association of Industrial Relations Academics of Australia and New Zealand, Auckland, data current up to 8 February 2007.

³ The report uses data current up to 19 March 2007.

⁴ A. Stewart, 'WorkChoices in overview: Big bang or slow burn?' *Economic and Labour Relations Review*, vol 16, no 2, 2006.

⁵ Australian Government, *WorkChoices: One simpler, national Workplace Relations System for Australia*, advertisement in all daily papers, Canberra, 12 October 2005.



compulsory conciliation and arbitration. Legislation a year later in Western Australia followed in the same general direction, though it retained the shell of the award and tribunal systems. The New Zealand and Western Australian laws were later repealed and replaced, but Victoria followed a different path. Before being defeated, the Kennett government handed the remnants of its industrial relations system to the Federal government in 1998, and a specific section (Section 1A) of the *Workplace Relations Act 1996* (Cth) was created to accommodate those employees with a set of minimum standards and rights much weaker than those applying to other employees in the federal jurisdiction.

In Victoria, individual contracts were available under the state jurisdiction from late 1992, and later under the Schedule 1A provisions in the federal Act to which the state jurisdiction was transferred. So a workplace with individual contracts became a Schedule 1A workplace. A survey of 835 Victorian workplaces in June 2000 indicated that employees under this jurisdiction were twice as likely as other employees in the federal jurisdiction of being low paid. There was also greater inequality between low and high paid employees in Schedule 1A workplaces. Only 41 per cent of Schedule 1A workplaces paid overtime rates, less than a quarter paid penalty rates for working on weekends. Those Schedule 1A workers who did not have these entitlements were not compensated through higher wages, and instead were more likely to be in low wage workplaces.⁶ Other research found that, following the abolition of awards and the introduction of individual contracts in 1992, complaints regarding unfair work conditions, illegal deductions from pay, harassment, and termination of employment arising from the abuse of managerial prerogative all grew following legislation promoting individual contracts.⁷

Many comparisons have correctly been made between WorkChoices and the radical New Zealand and Victorian reforms of the early 1990s. However, there are also fundamental differences. In particular, while the *Employment Contracts Act 1991* (NZ) was a radically deregulatory approach, and the *Employee Relations Act 1992* (Vic) followed broadly similar lines, WorkChoices is a radical interventionist approach. The Minister is given powers to intervene in enterprise negotiations that are not matched elsewhere. The simplicity of the now repealed New Zealand law in particular contrasts with the complexity of WorkChoices, with 1388 pages of legislation, 414 pages of regulations and 890 pages of explanatory memoranda – 2692 pages in total. Hence an email survey of 1428 Victorian and Tasmanian members of the Australian Institute of Management (AIM) in May and June 2006 found that 37 per cent had a moderately to very poor understanding of the new laws, while only 2 per cent rated their understanding as 'very good'.⁸

Proponents made various claims about the impact that WorkChoices would have, including that it would lead to 'more jobs, higher wages [and] a stronger economy',⁹ would enable workers to 'continue to enjoy the benefits of...low inflation and low interest rates',¹⁰ and would generate 'productivity improvements...driven by the shift of workers reliant on awards to other methods of


⁶ I. Watson, 'Kennett's industrial relations legacy: The impact of deregulation on wages in Victoria', *AIRAANZ 2001: Proceedings of the 15th AIRAANZ conference*, Association of Industrial Relations Academics of Australia and New Zealand, Vol 2, 31 January–2 February 2001, pp 139–46.

⁷ E. Underhill and H. Fernando, 'Complaints to Job Watch: Are all Victorian jobs precarious?' *Precarious Employment*, Centre for Research in Employment and Work, Griffith University, Conference Proceedings No 2, Brisbane, 1997.

⁸ Australian Institute of Management, *The New Workplace Relations System: June 2006 Survey Results*, Australian Institute of Management – Victoria and Tasmania (AIM VT), Melbourne, 2006.

⁹ Australian Government, *More jobs, higher wages, a stronger economy*, advertisement, various newspapers, July 2005.

¹⁰ *ibid.*



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pay setting such as collective and individual agreements',¹¹ while 'employment growth will be stimulated by changes to the unfair dismissal laws which represented a barrier to employment'.¹²

WorkChoices came into force on 27 March 2006 and, according to its advocates, all positive expectations have been confirmed. The 'successes of Work Choices' include that 'there has been strong wages growth since the introduction of Work Choices...[and] labour productivity grew by 2.2 per cent in this financial year'.¹³ 'What Australians have got, as a result of WorkChoices, is 100,000 more jobs this year than the average for the last 20 years.'¹⁴ The 'overwhelming reason for the huge spike in employment – the huge decrease in unemployment – was the removal of the unfair dismissal laws'.¹⁵ 'Industrial disputes are at the lowest levels ever recorded, as a result of WorkChoices.'¹⁶ 'Since WorkChoices started, real wages have gone up 1.5 per cent...whether you're a man or a woman.'¹⁷

Despite the willingness of its advocates to claim success, it being barely a year since the laws took effect, any assessment of the impact of WorkChoices can, at this stage, only be preliminary. Assessment is also hampered by the fact that some critical information (in particular, on the content of agreements) has been withheld.¹⁸ This paper aims to assess the impact of WorkChoices on the evidence available to date. The emphasis is on quantitative data that are available, and in each case we shall try to identify the effect, if any, that WorkChoices appears to have had to date.

¹¹ K. Andrews, Answer to Question 2611, (reply to question asked by Mr Murphy [Lowe], 9 November 2005), House of Representatives Hansard, Canberra, 8 August, 2006.

¹² Ibid.

¹³ E. Abetz, Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 2 November, 2006.

¹⁴ K. Andrews, Transcript: Doorstop interview Melbourne, Media Centre, Department of Employment and Workplace Relations, Canberra, 22 September, 2006.

¹⁵ E. Abetz, Commonwealth Parliamentary Debates: Senate Hansard, Canberra, 1 December, 2006 80.

¹⁶ G. Pearce, Legislative Council Hansard, 28 September, 2006.

¹⁷ J. Hockey, Australian Workplace Relations, speech to Australian Workplace Relations Summit, Dockside Convention Centre, Sydney, Department of Employment and Workplace Relations, Canberra, 14 March, 2007.

¹⁸ P. McIlwain, evidence to November Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 2 November, 2006, 5–7.



3 COVERAGE

The number of employees covered by the WorkChoices legislation is no clearer now than before WorkChoices was implemented. In Victoria, all employees are affected by it because of the referral of industrial relations powers to the Commonwealth in 1998. Similarly all employees are covered in the Territories because Commonwealth law prevails. In other states, WorkChoices only covers constitutional corporations and Commonwealth employees, leaving State legislation to cover employees in unincorporated businesses, non-profit corporations that do not meet the test of a trading or financial corporation (eg some charities) and State public sector employees who are not employed in constitutional corporations. Commonwealth estimates were that 80 to 85 per cent of employees would be covered by WorkChoices,¹⁹ but Queensland estimates based on 2004 ABS data were that only 75 per cent would be covered nationally, with the figure falling to around 60 per cent in the four smaller states.²⁰

The only authoritative data on coverage of *agreements* under WorkChoices comes from the ABS. Unfortunately, the most recent ABS data,²¹ issued in February 2007, only relate to May 2006, when WorkChoices was barely two months old. To estimate coverage since then it is necessary to consider OEA data on agreements lodged since then and apply a discount factor for AWA exits (the discount being necessary to reconcile the ABS and OEA series).

But first to the ABS data (Tables 3.1 and 3.2). They show that, nationally, in May 2006, 3.1 per cent of employees were covered by registered individual agreements, of which the vast majority were Australian Workplace Agreements (AWAs). This was an increase of the 2.4 per cent recorded in 2004, but much less than expected or claimed by the Commonwealth government.

Coverage of AWAs in Victoria was similar to the national level, at 3.1 per cent, an increase on the 2.2 per cent recorded in 2004 (Table 3.1).

Drawing also on ABS labour force data,²² we can estimate that AWAs covered 258,000 employees in May 2006 (Table 3.2).²³ This was an increase of just 59,000 from May 2004. Although coverage of registered collective agreements fell slightly, from 38.3 per cent to 38.1 per cent of employees, the *number* of employees covered by collective agreements rose by about 154,000, well over double the increase in AWA employees.

For Victoria (Table 3.3), we can estimate that there were approximately 68,000 employees on AWAs in May 2006, a rise of 22,000 in the number from May 2004. Again, this was less than half

¹⁹ K. Andrews, WorkChoices 7, Speech to Australian Business Limited, Sydney, 11 October, 2005.

²⁰ Department of Industrial Relations, Estimating the Coverage of a New Industrial Relations System, DIR (Queensland), Brisbane, 2005.using unpublished data from Australian Bureau of Statistics, *Employee Earnings and Hours, Australia*, Canberra, 6306.0.

²¹ Australian Bureau of Statistics, 6306.0.

²² Australian Bureau of Statistics, *Labour Force, Australia, Detailed – Electronic Delivery*, Canberra, 6291.0.55.001.

²³ This estimate is actually slightly higher than one derived from using only the EEH survey. That survey (in table 5 of ABS Cat No 6306.0) estimates there were some 8,341,800 employees in Australia in May 2006. On that basis, AWA coverage across all employees would be only 242,000. However, the labour force survey estimates that there were 8,894,900 employees at that time. As the labour force survey is generally considered to be the superior source for estimating actual numbers of employees and employed persons, it has been used as the denominator for generating estimates of the number of employees covered by various pay-setting methods.



the increase of 50,000 in the number of employees covered by registered collective agreements, with registered collective agreements' share of coverage growing slightly from 39.6 per cent to 40.0 per cent.

Nationally, the small decline in the proportion covered by registered collective agreements was more than offset by the growth in unregistered collective agreements, from 2.6 per cent to 3.0 per cent of employees (a similar coverage share to that for AWAs). Total collective agreement, coverage, then grew slightly from 40.9 per cent to 41.1 per cent of employees.

However, not all collective agreements are union agreements. Unfortunately, the ABS does not make the critical distinction between union and non-union agreements. To estimate coverage of non-union collective agreements, we have to go to DEWR data on wage agreements. These indicate that, as of June 2006, 10.6 per cent of employees covered by current federal agreements were in non-union agreements. This was slightly lower than 11.3 per cent recorded in June 2004. Applying these ratios to ABS data on federal agreements produces estimates of 2.8 per cent coverage of all employees by non-union federal agreements in both 2004 and 2006 (Table 3.2). Union agreements in the federal and state systems therefore accounted for 35 per cent of employees in 2006.

Coverage by unregistered individual agreements (mostly common law contracts paying above the minimums set out in awards and the Australian Fair Pay and Conditions Standard (AFPCS), but also including some private sector managers and similar workers with no underpinning awards) grew slightly, from 31.2 to 31.7 per cent.

Interestingly, the number of owner-managers of unincorporated enterprises was constant between May 2004 and May 2006, so their share of total employees fell from 5.4 per cent to 5.1 per cent. If these are the 'enterprise workers', then their relative numbers are in decline. Other ABS data indicate that the number of 'own account' employed persons grew only slightly, from 901,000 to 908,000, between May 2004 and May 2006; so again their share of total employment fell from 9.4 per cent to 9.0 per cent, to be lower in 2006 than it had been 20 years earlier.²⁴ Claims of the growing importance of self-employment amongst workers are oft exaggerated.

Most states experienced an increase in AWA coverage. An exception, however, was Western Australia (Table 3.1). In 2004 Western Australia had by far the highest AWA coverage of any state, with 8.0 per cent of employees on AWAs. A small proportion, (0.3 per cent), were on state-registered individual agreements (Employer–Employee Agreements). By 2006 AWA coverage had dropped by over a quarter, to just 5.8 per cent. This fall is too large to be due to sampling error. In May 2004 WA accounted for 34 per cent of AWA-covered employees but by May 2006 this had fallen to 24 per cent. Western Australia accounted for only 23 per cent of AWA lodgements in December quarter 2006.

²⁴ Australian Bureau of Statistics, 6291.0.55.001.

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Table 3.1 Coverage by different methods of pay setting, States and Australia, May 2004 and May 2006

	Collective			Individual		
	2004 (%)	2006 (%)	Change	2004 (%)	2006 (%)	Change
VIC						
Federal	39.6	40	+0.4	2.2	3.1	+0.9
State	0	0	0	0	0	0
total registered	39.6	40	+0.4	2.2	3.1	+0.9
Unregistered	2.7	2.9	+0.2	33	33.6	+0.6
<i>total regtd & unregistered</i>	<i>42.3</i>	<i>42.9</i>	<i>+0.6</i>	<i>35.2</i>	<i>36.7</i>	<i>+1.5</i>
WOIB				6.3	5.5	-0.8
award only	16.1	14.9	-1.2			
NSW						
Federal	16.2	17.5	+1.3	1.2	1.9	+0.7
State	18.6	15.3	-3.3	0	0	0
total registered	34.8	32.8	-2.0	1.2	1.9	+0.7
unregistered	2.4	3.3	+0.9	33	32.9	-0.1
<i>total regtd & unregistered</i>	<i>37.2</i>	<i>36.1</i>	<i>-1.1</i>	<i>34.2</i>	<i>34.8</i>	<i>+0.6</i>
WOIB				6.2	6.2	0
award only	22.5	22.9	+0.4			
QLD						
Federal	16.4	18.6	+2.2	1.4	2.9*	+1.5
State	22.6	20.5	-2.1	0.1	0.1**	0
total registered	39	39.1	+0.1	1.5	3	+1.5
Unregistered	2.4	2.5	+0.1	30	29.2	-0.8
<i>total regtd & unregistered</i>	<i>41.4</i>	<i>41.6</i>	<i>+0.2</i>	<i>31.5</i>	<i>32.2</i>	<i>+0.7</i>
WOIB				4.1	4.3	+0.2
award only	23	22	-1.0			
SA						
Federal	22	27.4	+5.4	3.2	1.4	-1.8
state	20.3	16.7	-3.6	0	0	0
total registered	42.3	44.1	+1.8	3.2	1.4	-1.8
unregistered	2.5	4.7	+2.2	21.3	27.5	+6.2
<i>total regtd & unregistered</i>	<i>44.8</i>	<i>48.8</i>	<i>+4.0</i>	<i>24.5</i>	<i>28.9</i>	<i>+4.4</i>
WOIB				4.5	3.4	-1.1
award only	26.2	18.9	-7.3			
WA						
Federal	22.4	25.3	+2.9	8	5.8	-2.2
State	15.2	12.8	-2.4	0.3	1.2**	+0.9
total registered	37.6	38.1	+0.5	8.3	7	-1.3
unregistered	3.2	2.9	-0.3	33.5	37	+3.5
<i>total regtd & unregistered</i>	<i>40.8</i>	<i>41</i>	<i>+0.2</i>	<i>41.8</i>	<i>44</i>	<i>+2.2</i>
WOIB				4.8	3.9	-0.9
award only	12.6	11.1	-1.5			

(continued...)

Assessing the Impact of 'Workchoices' One Year On



	Collective			Individual		
	2004 (%)	2006 (%)	Change	2004 (%)	2006 (%)	Change
TAS						
Federal	17.7	24.2	+6.5	3.3	4.4*	+1.1
State	20.8	21.5	+0.7	0	0.3**	+0.3
Total registered	38.5	45.7	+7.2	3.3	4.7	+1.4
Unregistered	4.8	1.6	-3.2	28.4	20.9	-7.5
<i>total regtd & unregistered</i>	<i>43.3</i>	<i>47.3</i>	<i>+4.0</i>	<i>31.7</i>	<i>25.6</i>	<i>-6.1</i>
WOIB				4.2	3.8	-0.4
award only	20.9	23.2	+2.3			
NT						
Federal	49.9	51.4	+1.5	1.9	4*	+2.1
State	0	0	0	0	0	0
total registered	49.9	51.4	+1.5	1.9	4*	+2.1
Unregistered	2.8	2.9	+0.1	29.8	27.6	-2.2
<i>total regtd & unregistered</i>	<i>52.7</i>	<i>54.3</i>	<i>+1.6</i>	<i>31.7</i>	<i>31.6</i>	<i>-0.1</i>
WOIB				3.8	2.7	-1.1
award only	11.9	11.3	-0.6			
ACT						
Federal	53.5	55.6	+2.1	4	6.2	+2.2
State	0	0	0	0	0	0
total registered	53.5	55.6	+2.1	4	6.2	+2.2
Unregistered	2.1	1.4	-0.7	20.3	17.4	-2.9
<i>total regtd & unregistered</i>	<i>55.6</i>	<i>57</i>	<i>+1.4</i>	<i>24.3</i>	<i>23.6</i>	<i>-0.7</i>
WOIB				3.1	2.5	-0.6
award only	17	17	0			
Australia						
Federal	24.3	26.2	+1.9	2.4	2.9	+0.5
State	13.9	11.9	-2.0	0.1	0.1	0
total registered	38.3	38.1	-0.2	2.4	3.1	+0.7
Unregistered	2.6	3	+0.4	31.2	31.7	+0.5
<i>total regtd & unregistered</i>	<i>40.9</i>	<i>41.2</i>	<i>+0.3</i>	<i>33.7</i>	<i>34.8</i>	<i>+1.1</i>
WOIB				5.4	5.1	-0.3
award only	20	19	-1.0			

* Estimate has a relative standard error of 25% to 50% and should be used with caution.

** Estimate has a relative standard error greater than 50% and is considered too unreliable for general use.

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Table 3.2 Coverage of the Australian workforce by type of instrument, Australia, May 2002 and May 2004

	proportion of employees			approximate no of employees		
	(%)			2004	2006	Change
	2004	2006	change	2004	2006	Change
Collective agreements	40.9	41.2	+ 0.3	3,437,000	3,665,000	+ 228,000
Registered collective agreements	38.3	38.1	- 0.2	3,218,000	3,388,000	+ 171,000
– union (federal and state)	35.5	35.3	- 0.2	2,987,000	3,141,000	+ 154,000
– non-union (federal)	2.8	2.8	0	231,000	248,000	+ 17,000
Unregistered collective agreements	2.6	3.0	+ 0.4	218,000	267,000	+ 48,000
Individual arrangements	39.1	39.9	+ 0.8	3,285,000	3,549,000	+ 264,000
Registered individual contracts	2.4	3.1	+ 0.7	201,000	276,000	+ 74,000
- AWAs	2.4	2.9	+ 0.5	199,000	258,000	+ 59,000
- state-registered individual contracts	<0.1*	0.1**	+ 0.1**	2,000**	9,000**	+ 7,000**
Unregistered individual contracts	31.2	31.7	0.5	2,621,000	2,820,000	+ 198,000
Owner-managers of unincorporated enterprises	4	5	0.3	454,000	454,000	0
Award-only	20.0	19.0	- 0.5	1,680,000	1,690,000	+ 10,000
Total	100.0	100.0	0	8,403,000	8,894,000	+ 492,000

Sources: ABS Cat Nos 6306.0 and 6291.0.55.001, and DEWR, *Wage Trends in Enterprise Bargaining*, Canberra, various issues.

na: not available

** Estimate has a relative standard error greater than 50% and is considered too unreliable for general use.

Notes: Coverage proportions for most instruments from ABS 6306.0. Coverage estimates of non-union collective agreements calculated from *Wage Trends*, inflated for expired agreements by ratio of total federal agreement coverage in ABS 6306.0 and *Wage Trends*. Employee estimates calculated as a proportion of estimated total employment. Total number of employees estimated from ABS 6310.0 for August, extrapolated to May by employment growth estimates in ABS 6202.0. Non-union collective agreements comprise employee collective agreements plus employer greenfields agreements. Union collective agreements comprise federal excluding s 170LK/non-union collective agreements, plus state collective agreements.

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Table 3.3 Coverage by different methods of pay setting, Victoria, 2004–06

	Collective			Individual		
	2004	2006	Change	2004	2006	Change
Registered	828,000	877,700	+49,700	46,000	68,000	+22,000
Unregistered	56,500	63,600	+7,200	690,000	737,300	+47,300
total	884,500	941,300	+56,900	736,000	805,300	+69,300
Owner-managers of unincorporated enterprises award only	336,600	326,900	-9,700	131,700	120,700	-11,000
Total employees (collective and individual)				2,090,900	2,194,300	+103,400

Some of the fall in AWA coverage was probably due to movement onto Western Australian state agreements (which grew to roughly 1.2 per cent coverage), with their higher minimum standards than AWAs, but this could explain less than half of the drop in AWA coverage, as overall coverage by registered individual contracts still fell by 1.3 percentage points. It appears that most of the movement out of AWAs in WA has been among lower income earners, as WA AWAs went from being the second lowest paying (at just 82 per cent of the national average weekly earnings for AWAs) in 2004 to the highest paying AWAs outside the ACT (at 117 per cent of the national average) in 2006. Low-income earners, lacking as they do strong bargaining power, are the group that we would expect are most likely to lose benefits and conditions under AWAs. So one possible explanation is that the movement out represents either increasingly effective employee resistance to loss of conditions, or recognition by employers that the gains that were expected from AWAs have not materialised. Were it not for the changes brought about by WorkChoices, it is possible that WA could have signalled a 'saturation point' for AWAs.

Another possible explanation is that WA employers have chosen to move employees from AWAs onto non-union 'collective' agreements. However, there are reasons to question this:²⁵ there is no reason to assume that the growth in collective agreement coverage would be mainly in non-union collective agreements, especially as, nationally, the apparent share of non-union agreements in employee coverage remained constant between 2004 and 2006.

Amongst non-managerial employees, nationally 45 per cent of permanent part-time workers were covered by a registered collective agreement, as were 51 per cent of permanent part-timers. But little more than a quarter of casual employees had this protection. Instead, 45 per cent of casual employees were dependent on the award for their terms and conditions. Coverage by registered individual contracts was also higher for permanent fulltimers (2.8 per cent) and permanent part-timers (2.6 per cent) than it was for casuals (1.7 per cent).

The data from the ABS show a far lower level of AWA coverage than claimed by the government and its agencies at the time. In evidence given to a Senate Estimates Committee in May 2006, the

²⁵ While the increase in federal collective agreement coverage in WA is one percentage point greater than the national average, that could partly reflect the above-average shift out of WA state collective agreements.

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Employment Advocate said that 'based on our methodology, we estimate that, as at 31 March 2006, 538,120 AWAs were in operation'. This is over double the actual coverage estimated by the ABS, at 3.1 per cent of employees, equivalent to 258,000 employees. It is impossible to explain this as being the result of the ABS being a survey estimate.²⁶ The reason for the overestimation is that the Commonwealth methodology assumes that every AWA signed in the preceding three years is still in force – that is, no employee who has signed an AWA in the past three years has resigned, or been promoted, dismissed or replaced. The inadequacies of the Commonwealth methodology have increased over time, with the extent of over-estimation increasing from 60 per cent in 2004 to 109 per cent in 2006.

This makes estimating *current* AWA coverage problematic. A simple way of estimating coverage since May 2006, using OEA data, is to make allowance for people leaving AWAs jobs by applying a decay function to the quarterly OEA data, and set it at a level at which the ABS and OEA data can be reconciled. By assuming that 12 per cent of AWAs in one quarter are no longer operating a quarter later, and that this rate of decay continues in subsequent quarters, OEA records of AWA lodgements can be reconciled with the ABS coverage estimate for May 2004. This rate of loss has to be increased to 16 per cent per quarter to reconcile lodgement data with the more recent, May 2006 ABS estimates. It is certainly feasible that the rate of loss of AWAs has increased in the last two years, as the OEA reports increased penetration of AWAs into the retailing and hospitality (accommodation, cafes and restaurants) industries. Workers in these industries have relatively high turnover, and this would be especially the case if they were employed under agreements that did not provide for penalty rates or other previously standard conditions of employment.

In the period after WorkChoices came into force, there had been 211,800 AWAs lodged with the OEA by the end of 2006. Applying a 16 per cent loss rate to the quarterly figures would imply that around 187,000 of these AWAs were still 'live' at the end of 2006. A 12 per cent loss rate to WorkChoices AWAs would imply that around 194,000 were still in operation. This would bring the number of operating AWAs at the end of 2006 to between 335,000 and 340,000, of which 56 to 57 per cent were WorkChoices AWAs.²⁷ This is equivalent to approximately 3.7 per cent of employees. By the end of March we would expect 'live' AWA coverage to continue to rise but probably still be less than 400,000.²⁸ This is well short of the 'almost a million today' that has been claimed,²⁹ and it is very unlikely that such a target will be even approached by the end of 2007.³⁰

²⁶ To be precise, as the difference between the OEA estimate and the ABS estimate is 10.5 standard errors, the probability of the discrepancy being due to sampling error is 1 in 646,970,704,914,759,000,000,000, which is somewhat less than the alleged probability that a meteor will split the earth in two tomorrow (Frontline, 'Interview with General Vladimir Dvorkin', *Russian Roulette*, Public Broadcasting Service, 23 February 1999).

²⁷ There would be 147,000 pre-WC AWAs still in operation (assuming the 16 per cent decay rate necessary to align the ABS and OES data), in addition to the 187,000 (16 per cent decay rate) to 194,000 (12 per cent decay rate) WC AWAs in operation.

²⁸ Between 1 January and 11 February 2007, a further 39,166 AWAs brought the total lodgements since WorkChoices to 250,964 (Evidence by P McIlwain to Senate Estimates, 15 February 2007, p 63). If this rate continued through the rest of the March quarter, by the first anniversary of WC, on 27 March 2007, there will have been close to 300,000 lodgements, of which 240,000 to 255,000 would be 'live'. With about 120,000 pre-WC AWAs remaining in operation, this would bring the total number of live AWAs to 360,000 to 375,000, about two-thirds of which would be WC AWAs.

²⁹ J. Howard, *Building Prosperity: The Challenge of Economic Management*, Address to the Menzies Research Centre, Parliament House, Canberra, 27 February, 2007.

³⁰ Assuming that 90,000 AWAs are lodged per quarter after March 2007 would bring the number of AWAs signed over the preceding three years to approximately 820,000 by the end of 2007, but only 430,000 to 490,000 of those would be 'live', with 370,000 to 410,000 of those being WC AWAs.



Initially, take-up of new agreements under WorkChoices was very slow compared with the pre-WorkChoices period (an average of around 50,000 AWAs per quarter had been signed over the two preceding years). Just 6263 AWAs were lodged in April as the new simplified system took effect. There was a rush to finalise union CAs before WorkChoices took effect, so only 16 union CAs covering 1239 employees were lodged in April. Take-up accelerated in the September and December quarters of 2006. By December 2006 around 420,000 employees, representing 5 per cent of employees, were covered by new union CAs signed under WorkChoices, while 97,000 (slightly over 1 per cent of employees) were covered by non-union CAs (employee collective agreements) under WorkChoices.³¹ (These numbers compare with the 187,000–195,000 employees covered by WorkChoices AWAs at the end of 2006.) WorkChoices also allows for a new form of 'agreement', the employer greenfields 'agreement' (EGA), discussed later. By December 2006, 17,200 employees were covered by EGAs, and a further 5,400 were covered by union greenfields agreements. In total, then, approximately 730,000 workers (8 per cent of employees) were working under new agreements signed under WorkChoices at the end of December.

WorkChoices AWAs are more common in larger than smaller businesses: over three fifths of lodgements in December quarter 2006 were in businesses with 100 or more workers. But they were in the minority in large firms: amongst businesses with 500 or more employees, union CAs accounted for the majority of WorkChoices agreement-covered workers in December quarter 2006 lodgements. In businesses with less than 100 employees, however, AWAs accounted for over three-fifths of WorkChoices agreement-covered workers in the same quarter.³²

Overall, at the end of December 2006, employees under new union CAs represented the majority (58 per cent) of WorkChoices agreement-covered employees. However, this number was lower than the 81 per cent of federal agreement-covered employees working under union CAs recorded in May 2004. Conversely, the share of WorkChoices agreements employees accounted for by new AWAs, at 26 per cent, was higher than AWAs' share in May 2004 (9 per cent). The share of non-union collective agreements was relatively stable, rising from 10 per cent in 2004 to 13 per cent under WorkChoices.³³ WorkChoices was aimed at shifting people from collective to individual forms of employment, and it is clearly having some effect in this regard, though perhaps not as much as its advocates would hope.

In summary, as a result of WorkChoices, more employees are moving onto AWAs than before, and fewer onto union CAs. Award coverage is declining. However, the coverage of AWAs has been greatly exaggerated, with well below 400,000 employees on AWAs at the end of 2006.

³¹ Australian Bureau of Statistics, *Labour Force, Australia*, Canberra, 6202.0; Office of the Employment Advocate, *Workplace agreement statistics*, Sydney, 5 October 2006.

³² Office of the Employment Advocate, *Workplace agreements quarterly fact sheet October–December 2006*, Sydney, 2007.

³³ Calculated from Australian Bureau of Statistics, 6306.0; Department of Employment and Workplace Relations, *Wage Trends in Enterprise Bargaining*, DEWR, Canberra, December quarter and previous editions 2004; Office of the Employment Advocate, *Workplace agreement statistics*; D. Peetz, *Brave New Workplace: How Individual Contracts are Changing our Jobs*, Allen & Unwin, Sydney, 2006.



4 LIMITS TO THE IMPACT OF WORKCHOICES TO DATE

As mentioned above, as it is barely a year since the laws took effect, any assessment of the impact of WorkChoices can be, at this stage, only preliminary. This is for several reasons. First, only early data are available and, as pointed out, some data are suppressed.

Second, only a small minority of employees are covered by WorkChoices agreements to date and, more importantly, many organisations have decided against taking advantage of the 'opportunities' WorkChoices presents. This is a factor limiting the effects of WorkChoices so far. In no small part, the relatively tight state of many parts of the labour market is currently an impediment to many employers making use of the 'flexibilities' available. A small business survey found that 62 per cent of respondents said they would retain their present approach to employment, pay and conditions in light of WorkChoices, with only 9 per cent clearly indicating they would not retain their present approach while 18 per cent gave a 'maybe' response.³⁴ Hence in a later survey, 71 per cent of small and medium businesses believed that the workplace relations law changes would have 'no real impact' on them, and only small proportions reported planning or having made changes as a result of the laws.³⁵ From the other side of the table, in a web-based survey of 1595 employees with undisclosed sample design, 24 per cent of employees indicated they had noticed a change in their organisation's HR policies since WorkChoices took effect, but the other 76 per cent detected no change.³⁶ Though the survey did not appear to be representative of occupations (it under-represented more vulnerable, blue collar occupations), these employee results were broadly consistent with the employer surveys above.

Employer strategy could not be expected to respond instantly. A survey of its members by the NSW Business Chamber found that only 26 per cent intended to make changes as a result of WorkChoices. This comprised just over 3 per cent who intended to make immediate changes, 18 per cent who planned to make changes within 12 months, and another 5 per cent for whom the 'time horizon' was three years.³⁷

In the end, more employers than this may be forced to change strategy as a result of WorkChoices, but it may take some time for this to happen and may affect employers who had not originally intended to change strategy. This was the case in the Western Australian contract cleaning industry, when laws broadly comparable to WorkChoices, promoting individual contracting, were introduced in 1993. For three years after this, wages in the industry remained stable, until 'one day a Perth cleaning contractor tooling around on the internet saw how much the going rate was, and by how much he could cut it'.³⁸ Once one contractor cut wages, competitors had to follow: 'a tacit agreement among the Perth contract cleaning firms – that cleaners were already paid little enough and it would be too hard to recruit if pay fell further – collapsed. The cleaners' pay dropped from

³⁴ AMR Interactive, *MYOB Australian Small Business Survey*, MYOB, Melbourne, July 2006, p 20.

³⁵ Sensis, *Sensis Business Index – small and medium enterprises*, Telstra Corporation Ltd, Melbourne, February 2007, p 20.

³⁶ Talent2, *Industrial relations reform – raw*, Data tables from survey of 1595 employees, August, Sydney, 15 August, 2006.

³⁷ Australian Business State Chamber (NSW), *What's the uptake on WorkChoices?* Sydney, 2006.

³⁸ N. O'Malley, 'Sign on the dotted line', *Sydney Morning Herald*, 1 April 2006.



more than \$9 an hour to below \$8. Many were forced on to casual work, so they lost sick leave and holiday leave.³⁹

The low initial take-up of the 'opportunities' presented by WorkChoices in turn is seen by some as likely to blunt the social and political impact of WorkChoices. However, there are large variations in labour market conditions across industries, occupations and regions, and often these are experienced within family or friendship networks. As discussed later, many people, though not directly affected themselves, know someone who has been affected by WorkChoices.⁴⁰ Perhaps because of this, public antagonism to WorkChoices did not soften in the first nine months after WorkChoices took effect.⁴¹

The third reason why any assessment of WorkChoices at this stage must only be preliminary is that the WorkChoices legislation is designed in such a way that many of its effects cannot be observed for some time. This is particularly the case for workers covered by federal agreements signed before WorkChoices came into force. Those employees continue to be covered by their pre-WorkChoices agreements until their formal expiry date, and even after that these agreements continue to operate unless and until one party (the employer) makes successful application to the AIRC to terminate the agreement. In doing so the employer has to convince the AIRC that it is not against the public interest test to do so. Although this protection is considerably weaker than that which existed before the *Workplace Relations Act 1996* (Cth) came into force (the party had to prove that termination was *in the public interest* to succeed), it is nonetheless much stronger than the protection that exists for agreements signed under WorkChoices. Once a WorkChoices agreement expires, the employer can (with 90 days notice) unilaterally terminate the agreement⁴² and employees revert to the Australian Fair Pay and Conditions Standard, plus the seven 'protected award conditions'. All other award conditions cease to apply (and indeed ceased to apply from the moment a WorkChoices agreement was signed).⁴³ The only exception is redundancy pay, the agreement provisions of which continue to apply, but only for a period of 12 months after the agreement is unilaterally terminated.⁴⁴ These provisions will not only directly affect the pay and conditions of employees in agreements that are unilaterally terminated; they will also influence the bargaining environment for replacement agreements, in effect creating a lower 'floor' under bargaining and affecting the power relationships between the parties. As WorkChoices agreements would typically go for two to three years, sometimes longer, the effects of these provisions will probably not be felt until 2009 or 2010. A respondent to a survey of Australian Institute of Management members commented:

These changes will eat away at workers conditions over the next few years, the real impact of these changes will not be felt for a number of years as more and more contracts come up for renewal.⁴⁵

³⁹ Ibid.

⁴⁰ M. Farr, 'IR the real election issue', *Daily Telegraph*, 27 February 2007. L. Silmalis, 'IR reforms backlash', *Sunday Telegraph*, 31 December 2006.


⁴¹ Newspoll, 'National telephone survey of 1200 adults, 15–17 December 2006', *Australian*, 3 January 2007, p 2, <http://newspoll.com.au/image_uploads/cgi-lib.13778.1.0101quality_of_life.pdf>. Negative perceptions of the legislation are also analysed among a self-selected sample in A. Knox, 'Fear and loathing in Australia: Gauging employee responses to the WorkChoices Act', *AIRAANZ conference 2007*, Association of Industrial Relations Academics of Australia and New Zealand, Auckland, 7–9 February 2007.

⁴² *Workplace Relations Act 1996* (Cth) s 393.

⁴³ *Workplace Relations Act 1996* (Cth) s 399.

⁴⁴ *Workplace Relations Act 1996* (Cth) s 399A.

⁴⁵ Australian Institute of Management, *The New Workplace Relations System: June 2006 Survey Results*, p 10.



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The effects on employee career strategies will also take time to have an impact. Some 68 per cent of respondents to the above survey indicated that, should they seek new employment, they would 'now prefer to work for a company that employed more than 100 staff',⁴⁶ but it will probably take some time for this effect on labour supply to be felt by small and medium businesses.

In summary, the effects of WorkChoices are being reduced because few employees are presently covered by WorkChoices agreements and many firms are not taking advantage of the opportunities WorkChoices present, the full effects are unlikely to be felt for some time because some of the provisions of WorkChoices can only affect parties' behaviour several years after WorkChoices came into force, and because employer strategy may take some time to adjust, especially if firms are wary of the effects of cutting pay and conditions. The full effects of WorkChoices will probably only be seen when the boom slows and economic conditions deteriorate, leading a larger number of employers to make use of WorkChoices provisions while the alternatives available to employees narrow. In that sense, any evaluation of WorkChoices at the moment is, if anything, likely to provide a rosier picture than will later become apparent.

⁴⁶ Ibid. p 22.



5 AUSTRALIAN WORKPLACE AGREEMENTS AND CONDITIONS OF EMPLOYMENT

There are many stories of cuts in pay and conditions through AWAs, some of which have made it into the media.⁴⁷ For example, workers at a Melbourne call centre operated for Lufthansa were told to sign AWAs cutting their base pay by between 3 and 10 per cent, reducing penalty rates and loadings, and to allegedly offset this, providing a complex bonus scheme that required workers to get the targets and not take more than one day of sick or carer's leave.^[VR1] The Equal Opportunity Commission of Victoria said that there was 'considerable potential for the proposed performance bonus scheme... to discriminate against employees who need to utilise their leave entitlements because they experience personal illness and/or have parental or carer responsibilities.'⁴⁸ However, there are only limited quantitative data on changes in pay and conditions under AWAs published by the Office of the Employment Advocate (OEA), the government agency responsible for collecting and promoting AWAs. The disclosure of information on the loss of 'protected award conditions' (that is, award conditions that were, according to government advertisements, 'protected by law'), based on a sample of the first batch of AWAs in May 2006,⁴⁹ led to considerable public debate. Subsequently, dissemination of such data was terminated, due to the Advocate's 'serious concerns about the methodology' and his view that 'focusing on certain characteristics in isolation, without considering what else the parties may have agreed, had the potential to produce misleading and distorted results'.⁵⁰ The latter concern should have led to more, not less, information being disseminated. As to the former concern, the sampling method was apparently identical to one that had been used to generate data for the OEA's last major official report to parliament on AWAs, covering the years 2002 and 2003.⁵¹

In May 2006, all AWAs in the OEA's sample removed at least one 'protected' award condition, and 16 per cent excluded all protected award conditions. The remaining limited information available on WorkChoices AWAs, and a comparison with pre-WorkChoices AWAs, is shown in Table 5.1. Several observations stand out.

There is a strong focus in AWAs on reducing protected award entitlements. The rate at which conditions are being removed is substantially higher under WorkChoices AWAs than under pre-WorkChoices AWAs. In the case of overtime pay, the rate at which this has been removed through AWAs has doubled, from a quarter of AWAs in 2002–03 to over half of AWAs in 2006. The rate at which penalty rates have been removed has gone up by 17 per cent, the same increase applies to the

⁴⁷ Australian, 'Young people "losing fight" against IR laws', *Australian*, 26 September 2006; M. Schubert, 'Penalties, overtime, holiday pay worth 2¢ an hour', *Age*, 25 May 2006; Workplace Express, 'Victorian watchdog refers AWA allegations to OWS', *Workplace Express*, 1 December 2006; WorkplaceInfo, 'Labor, PM, in parliamentary battle over AWAs', *WorkplaceInfo*, 10 October 2006; Young Workers Advisory Service, *Submission to QIRC Inquiry into the impact of WorkChoices on Queensland workplaces, employees and employers*, YWAS, Brisbane, 2006, <http://www.ywas.org/filestore/WC%20Inquiry%20FINAL%202021.pdf>.

⁴⁸ Quoted in Office of the Workplace Rights Advocate, *Report on the investigation into a complaint regarding Australian Workplace Agreements being offered by Global Tele Sales Pty Ltd*, Melbourne, 8 August 2006.

⁴⁹ P. McIlwain, evidence to May Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 29 May, 2006.

⁵⁰ McIlwain, evidence to November Estimates hearing.

⁵¹ Department of Employment and Workplace Relations and Office of the Employment Advocate, *Agreement Making in Australia under the Workplace Relations Act, 2002 and 2003*, DEWR, Canberra, June 2004.

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removal of allowances, the rate at which annual leave loading has been removed has increased by over half, and the rate at which shiftwork loading is removed has nearly tripled under WorkChoices.

Overtime and penalty rates are particular targets for removal. Over three-fifths of AWAs abolish penalty rates altogether. Over four-fifths of AWAs abolish or reduce overtime pay. Over three-fifths abolish penalty rates. We do not know how many AWAs reduce penalty rates without abolishing, because the data have been suppressed.

Most AWAs abolish or reduce meal breaks. Most do the same to public holiday payments. A majority of AWAs abolish shiftwork loading. Large numbers abolish allowances, incentive payments/bonuses and other conditions.

Table 5.1: Reductions or losses of protected award conditions under AWAs, 2002–03 and April 2006 (%)

	2002-03	2006			2002-03	increase in rate of abolition
	Absorbed (abolished)	abolished	'modified' (reduced but not abolished)	total reduced	Un-changed	
overtime pay	25	51	31	82	18	+104%
penalty rates	54	63	na	na	na	+ 17%
annual leave loading	41	64	na	na	na	+ 56%
shiftwork loading	18	52	na	na	na	+189%
rest breaks	na	40	29	69	31	na
public holiday payments	na	46	27	73	27	na
days substituted for public holidays	na	44	na	na	na	na
declared public holidays	na	36	na	na	na	na
incentive based payments/bonuses	na	46	na	na	na	na
allowances (expenses; skills; disabilities)	41	48	na	na	na	+ 17%

na = not available

Sources : calculated from Department of Employment and Workplace Relations and Office of the Employment Advocate, 2004; McIlwain, May 2006; Office of the Employment Advocate, 2006.

We have no inkling as to how many AWAs reduced or abolished redundancy pay, because it is not a 'protected' award condition and the OEA issued no data about unprotected conditions. However, at least some AWAs are abolishing redundancy pay. The following example comes from the Victorian Workplace Rights Information Line:

Jean⁵² has been working on a permanent full time basis for over 6 years as a merchandiser for a large company...Her employer is offering individual 'employment arrangements' and is claiming the employees are only covered by the Australian Fair Pay and Conditions Standard, not any award. Jean said the proposed agreement does not contain entitlements to redundancy...Jean said other employees have been bullied into signing the agreement.⁵³

⁵² Fictitious names have been used to preserve anonymity.

⁵³ Workplace Rights Advocate, WRIL Case Study Summaries: 27/10/06 to 01/11/06 unpublished data, Melbourne, November, 2006.

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An AWA for employees at Australian Sweets, a company recently created by a private equity-funded 'management buy in' of two confectionery manufacturers,⁵⁴ includes a provision that says:

No entitlements for severance pay arise in the event of your position becoming redundant. You will not be eligible for any redundancy entitlements at all. We have no obligation to consult with you in relation to Our operational requirements, restructuring or the redundancy of your position. We have no obligation to assist you to obtain other employment or to provide alternative employment.⁵⁵

The covering letter describes the AWA as offering 'a significant increase in your terms and conditions of employment'.⁵⁶ The management buy in was advised by one of the legal firms whose lawyers assisted in the drafting of WorkChoices.⁵⁷

The OEA does not collect or publish data on wage rates, rises or falls under AWAs. For statistical evidence on that, we must rely on the ABS. However, qualitative research points to some patterns. According to Helen Masterman-Smith and Jude Elton from the Centre for Work and Life, who interviewed 130 participants including 84 low-paid workers, 'Through personal experience or social networks most employees we interviewed were aware of instances in which the new regulations had been used to cut pay rates or conditions.'⁵⁸ They cited several examples including this one:

Where I'm from, there's people on the vines down there in Coonawarra...their wages have gone down and also in the meat industry down there...they're trying to drop them about \$4 an hour (Mandy, 30s, childcare worker).⁵⁹

Unfortunately, statistical data were also never made available by the OEA on differences in patterns between industries or occupations. For example, we would expect that AWAs in industries and occupations with tight labour markets (such as mining, where AWAs are common) would have quite different characteristics to those in industries where labour has limited bargaining power (such as retailing and hospitality, where they are also expanding). An earlier survey of employees on AWAs and a control group not on AWAs showed that the attitudes of employees on AWAs varied hugely according to their position in the labour market, as indicated by occupation: those in managerial and professional occupations were quite happy, while those in other occupations ('ordinary employees') were dissatisfied on several key issues, by comparison with workers not on

⁵⁴ Australian Sweets, ANZ Capital facilitates private equity acquisition of Ric's Confectionery and Prydes Sweets, news page, Australian Sweets website, 2006.

⁵⁵ Australian Sweets, Australian Workplace Agreement (AWA), Sydney, 20 September, 2006.

⁵⁶ Ibid. The agreement also provides for 'one flat ordinary time rate' for all work done, whether day, night, weekend, public holiday or 'additional hours', exclusion of all protected award conditions, no long service leave (but the potential to cash out the long service leave they accrued until the AWA), and the right to 'deduct payment for any time that you cannot be usefully employed for any reason'. The base rate of pay was allegedly \$36.55 per week less than the relevant state award. Most employees were from a non-English speaking background. P. Primrose, Legislative Council Hansard, Sydney, 27 September, 2006. J. P. Murphy, House of Representatives Hansard, Canberra, 30 November, 2006.

⁵⁷ Australian Sweets, ANZ Capital facilitates acquisition; M. Priest, 'Employers' advocates help draft IR Bill', *Australian Financial Review*, 19 August 2005, p 57.

⁵⁸ H. Masterman-Smith and J. Elton, 'Cheap labour – the Australian way', *AIRAANZ conference 2007*, Association of Industrial Relations Academics of Australia and New Zealand, Auckland, 7–9 February 2007.

⁵⁹ Ibid.



AWAs.⁶⁰ Pre-WorkChoices research showed that there were different types of AWAs that focused on different issues,⁶¹ and we would not expect that, under WorkChoices, all AWAs would focus exclusively on cost cutting, particularly in areas of labour shortage. There are claims of 'bucketloads of flexibility', the evidence for which, at the most recent Senate Estimates hearing, appeared to come from the Minister's 'backbench colleagues...and his own consultations'.⁶² However, the information is not presently made available to develop a proper typology of WorkChoices AWAs, or identify which types of AWAs, if any, contain flexibilities that are of benefit to employees.

That said, there is qualitative evidence indicating that flexibilities often favour employers at the expense of employees. According to Masterman-Smith and Elton

Many interviewees raised concerns about new 'flexibilities' around working time. The general picture is one of employers having gained greater power to control working hours, while employees have correspondingly less influence...Anxieties around working time centred on four key issues: penalty rates for unsocial hours; predictability of hours; access to holidays and leave loadings and casualisation.

Some workers interviewed were not in receipt of any penalty rates despite regularly working extended hours or on weekends. For example, Susan, a private childcare worker in her 50s, receives \$12 per hour gross and often works 10 hour days and occasionally on Saturday nights. May, a luxury hotel worker in her 30s, sees the denial of penalty rates at her workplace as a disturbing sign of things to come: 'I'm really insecure because of that law and because we haven't got penalty rates and sick leave. But, I don't know in the future. I'm really afraid' (30s, luxury hotel worker). For some workers, the loss of penalty rates means even longer hours at work and fewer hours for family and social engagement.⁶³

They add:

According to Henry and other hotel workers, WorkChoices 'takes away the flexibility' working families need to juggle their work and care commitments (20s, luxury hotel worker). For example, changed regulations around annualised average hours of work mean that some employers are forcing workers to take annual leave at times that do not suit their families:

They seem to think if regular hours are too high you've got to take annual leave...It's terrible...they seem to think that the new laws...[mean] they can force people to take annual leave when they don't want it – if the hotel is quiet. All they seem to be worrying about is their budget (Simone, 50s, luxury hotel worker).⁶⁴


⁶⁰ D. Peetz, 'How well off are employees under AWAs? Reanalysing the OEA's employee survey', *New Economies: New Industrial Relations*, Proceedings of the 18th AIRAANZ conference, Association of Industrial Relations Academics of Australia and New Zealand, Volume 1: Refereed Papers, Noosa, February 2004, pp 371–80; Peetz, *Brave New Workplace*.

⁶¹ M. Cole, R. Callus and K. Van Barneveld, *What's in an agreement? An approach to understanding AWAs*, paper to joint ACIRRT/OEA seminar, University of Sydney, Sydney, September 2001.

⁶² E. Abetz, Additional Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 15 February, 2007 66.

⁶³ Masterman-Smith and Elton, 'Cheap labour – the Australian way'.

⁶⁴ *Ibid.*

The top of the page features a collage of various job advertisements and a line of human silhouettes. The advertisements include text such as 'aol.com', 'Executive ASST needed', 'local real estate investment', '\$13+/hr.', 'NEVER BE A', and 'Tucson'. The silhouettes are arranged in a line that tapers to the right, representing a diverse group of people.

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In sum, the available data indicate a substantial loss of conditions of employment, for many workers signing AWAs, as a direct result of WorkChoices, though we would not expect this to be the case in all sectors.



6 UNFAIR DISMISSAL PROVISIONS

No data are available on the extent to which unfair dismissals by employers have increased under WorkChoices, as the only previous information was from administrative collections and the abolition of protections for workers in many firms means data are no longer collectable. Some workers who would previously have pursued a claim in the AIRC under unfair dismissal laws are forced to use the more expensive unlawful termination procedures. However, the shift to the unlawful termination jurisdiction is unlikely to meet the needs of all eligible workers: as Western Australia's Equal Opportunity Commissioner warned, one consequence of WorkChoices is a fear among workers about lodging complaints concerning discrimination.⁶⁵ There are numerous press reports and anecdotes of unfair dismissals, and of the threat or actuality of dismissals being combined with cuts in pay and conditions.⁶⁶ Some examples from the Victorian Workplace Rights Advocate's Workplace Rights Information Line (WRIL) illustrate developments:

Don's son Warren had been working on a permanent fulltime basis for a medium sized company for over 6 months. Warren received a call at 7 pm asking him to start at 6 am on Saturday, and he told his employer that he could not make it. Warren was terminated from his job.⁶⁷

Gerard had been employed on a permanent part time basis as a cleaner for nearly 2 years. The company has between 50 and 100 employees. His employer has kept giving Gerard more duties and increasing his workload but has refused to give him more hours to accomplish the extra work. At the start of August Gerard was sacked for not agreeing to a significant increase in his workload.⁶⁸

Josie's son Mac did a carpentry apprenticeship with his employer, he then became permanent and his employer had to pay him higher wages. Mac's employer has been trying to get rid of him. Recently Mac had a motorbike accident and shattered his wrist – he has medical certificates for the days he has been absent. The doctors have told him his injury will take up to 6 months to heal. His employer came to see him yesterday and said there were no grounds to sack him but he would not pay him his remaining 3 weeks sick leave and 3 weeks annual leave unless he agreed to resign. Mac agreed verbally to resign because he felt he had no other option and no money. Mac made a claim to Centrelink for sickness benefits but they have refused to pay him for 12 weeks as he resigned from his job.⁶⁹

Several of the participants in the Centre for Work and Life project had comparable stories:

⁶⁵ ABC, 'IR laws 'make workers fear complaining'', *ABC News Online*, 15 November 2006, <<http://www.abc.net.au/news/newsitems/200611/s1788736.htm>>.

⁶⁶ K. Burke, 'Same work, \$40 less: take it or leave it', *Sydney Morning Herald*, 10 April 2006; D. Cooke, 'First his job, then his house: why one man is beyond anger', *Age*, 25 October 2006; D. Humphries, 'A lot to beef about for abattoir workers', *Sydney Morning Herald*, 4 April 2006; NSW Nurses Association, Desperate Federal Government wrong about Parkes nurses, whose rights at work were reduced, press release, 28 July, 2006; Young Workers Advisory Service, *Submission to QIRC Inquiry into the impact of WorkChoices on Queensland workplaces, employees and employers*.

⁶⁷ Workplace Rights Advocate, WRIL Case Study Summaries: 27/10/06 to 01/11/06.

⁶⁸ Ibid.

⁶⁹ Ibid.

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...one of my daughters...she's in retail...and worked there for four years. She's got two kids. She juggled them to suit the job...In that four years she only took two days off. She was brought up to the management and they told her...unless you go down to [the other side of the city] you have to hand in your resignation...And if she didn't take [it], well it was bad luck, you're out of job, and now she's out of job (Diana, 50s, cleaner).⁷⁰

Without a tribunal process to test those that fall outside of unlawful termination, it is impossible to know how extensive has been the change in employer behaviour. In some cases, publicity and union pressure led to workers being reinstated,⁷¹ demonstrating, as the Chaser team commented, that 'the new IR system guaranteed fair outcomes for workers in all cases where there was national media attention and a huge public outcry'.⁷²

In many cases appearing on the WRIL, the threat of dismissal has been (illegally)⁷³ used, sometimes in the context of transmission of business,⁷⁴ to attempt to coerce people into signing AWAs:

Meredith's boyfriend Kelly works as a laser operator on a permanent full time basis for an engineering firm. He has worked for the firm for over 6 years. Last week he was given an AWA to sign by Monday. Kelly has heard that if he doesn't sign the agreement, he will be sacked. The AWA proposes a lower pay rate, does away with penalty rates and demotes him (was performing a supervisory role, will now simply be operating the laser). The employer also said that if does not sign the AWA, he will simply be covered by the Standard.

Danielle has been working as a receptionist for over 2 years in [organisation]. She has been asked to sign an AWA but she is unhappy about it and doesn't want to sign it. The employer has indicated that if she doesn't sign then her job will be in jeopardy. Danielle wants to stay under the old certified agreement.

Dara has worked over 16 years as a leading hand in a large manufacturing firm. The company has changed hands and they are forcing employees to sign AWAs. At present, the workers are on a CA due to expire in September next year. The workers want to continue working under these terms and conditions until that time. Dara's employer has flatly rejected this and has threatened employees with the sack if they don't sign the AWAs. The site is a union one but the employer has effectively banned the union from entering the workplace.⁷⁵

Jayne has been working in the hospitality industry for over 12 months on a permanent full time basis. She is currently on a pre-Work Choices AWA and has been offered a new AWA. Jayne has been told that the employer no longer likes the hours of work provisions under the

⁷⁰ Masterman-Smith and Elton, 'Cheap labour – the Australian way'.

⁷¹ ABC Radio National, 'Govt says Cowra outcome shows IR laws fair', *The World Today*, 5 April 2006.

⁷² ABC Chaser Team, 'The Chaser's year in review', *Sydney Morning Herald*, 31 December 2006.

⁷³ eg ABC, 'Hotel owner accused of pressuring staff into AWAs', *ABC News Online*, 19 October 2006, <<http://www.abc.net.au/news/newsitems/200610/s1768340.htm>>.

⁷⁴ eg ABC, 'Irons workers told to sign AWAs to keep jobs, union says', *ABC News Online*, 25 October 2006, <http://www.abc.net.au/news/newsitems/200610/s1772780.htm>; N. Adlam, 'Work contract row in spotlight', *Northern Territory News*, 11 December 2006.

⁷⁵ Workplace Rights Advocate, WRIL Case Study Summaries: 27/10/06 to 01/11/06.



AWA. He wants to be able to make her work 60 to 80 hours per week on a flat rate of \$48K p.a. There would be no compensation for working public holidays or working extra hours (whereas she is currently paid for them). It will be a just a flat rate. Jayne is concerned that if she doesn't agree she will be dismissed – it has happened to her before.⁷⁶

Rachel works as a Practice Manager for a medical clinic, which is being taken over by new management in a couple of month's time. Currently Rachel and the other employees are covered by the Health and Allied Services Award. She and the other staff have been told that if they want to be employed by the new employer they have to sign AWAs, which exclude penalty rates and shift allowances. Rachel and the other employees get shift allowances currently as the clinic is open between 8 am to 8 pm.⁷⁷

'Operational reasons', which if demonstrated under WorkChoices prevent an unfair dismissal case even being heard, have led to a number of strange dismissals. In one case concerning a Doncaster worker with 19 years service for a cinema chain, the AIRC ruled that, under the new law, he could not bring an unfair dismissal claim against the employer, which demolished the cinema to make way for another one:

I was just amazed and disappointed. I didn't think it would come that way... I believe it's unfair because while, yes, the cinema closed, it was a branch. It's like if one McDonald's closes do all those employees at McDonald's lose their jobs? But no, they relocate them. They relocated every other employee at that cinema complex except for me.⁷⁸

Anxiety about job security seems to have increased. A Morgan survey showed small movements in perceived job security. The proportion of respondents expecting unemployment to rise over the coming year fell by one percentage point. While in normal circumstances we would expect this to lead to an increase in job security, the proportion of people who thought their job was safe actually fell by two percentage points, though most respondents remained in this category.⁷⁹ A more substantial shift is observed when people are directly asked if they feel more insecure: the web survey mentioned earlier, while not representative of occupations, claimed that 39 per cent of clerical administrative workers (and, with a small sample, 42 per cent of blue collar workers) felt more scared about their job security now than they did before the IR reforms came into effect – while such fears were felt by only 24 per cent of senior managers and 15 per cent of CEOs.⁸⁰ Such results should not surprise: a June 2006 survey found that 55 per cent of Victorian and Tasmanian business owners considered that WorkChoices would have a negative impact on job security, while only 21 per cent expected a positive impact on job security. Middle and junior managers were even clearer in their views: 66 per cent of supervisors and team leaders claimed job security would decline, with just 12 per cent expecting it to improve.⁸¹

⁷⁶ Ibid.


⁷⁷ Ibid.

⁷⁸ W. Cutler interviewed on Australian Broadcasting Corporation, 'WorkChoices back in spotlight after latest IRC ruling', *7.30 Report*, ABC TV, 16 January 2007.

⁷⁹ Roy Morgan Research, *Australians & New Zealanders Optimistic about Job Security – Majorities Say They Could Find a Job Quickly if Need Be*, Morgan Poll, Sydney, 22 December 2006.

⁸⁰ Talent2, Industrial relations reform – raw.

⁸¹ Australian Institute of Management, *The New Workplace Relations System: June 2006 Survey Results*, p 18.



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Perhaps the strongest evidence comes from the academic research project by the Centre for Work and Life. The researchers found that:

The most striking aspect raised by low paid workers concerns the climate shift underway in workplaces since the introduction of WorkChoices. Interviewees reveal a deep sense of insecurity and concern based around the industrial relations reforms – most fundamentally on the issue of unfair dismissal rights. The removal of protections against unfair dismissal has forced some into a new world of arbitrary hiring and firing at the discretion of employers. Reflecting on her community service client base, Charlie observed ‘job security definitely is a thing of the past even if you are full [time] permanent...what you’ve got today might not be there tomorrow’ (community service officer). Similar views were expressed by many individual interviewees irrespective of their job tenure or hours. May remarked that under the new laws: ‘...[It] doesn’t matter [if]...you are permanent or not. If they don’t need you – “bye”. So I don’t feel secure’ (30s, luxury hotel worker). Rhonda describes a similar vulnerability: ‘I am really worried about it you know... if the employer wants to sack you they just can sack you like that. Give you the flick...without any say’ (40s, luxury hotel worker).⁸²

Workplaces which are exempt from the unfair dismissal laws appear to be the site of the greatest employee anxiety. Amongst calls concerning dismissal made to the WRIL, a disproportionately large number came from workers in small and medium sized workplaces (ie those with less than 100 employees) when compared with the distribution of employees as a whole. Workplaces of this size also appeared to be overrepresented amongst calls concerning other matters (procedural unfairness, underpayment, leave, discrimination, harassment, individual contracts, etc).⁸³

This suggests that the unfair dismissal changes may be having a broader effect on workplace relations and may be leading to increased anxiety at the workplace.

⁸² Masterman-Smith and Elton, ‘Cheap labour – the Australian way’.

⁸³ Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership, Australia*, Canberra, various years 6310.0; P. Gahan, *WorkChoices & Workplace Rights in Victoria: Evidence from the Workplace Rights Information Line*, Report to the Office of the Workplace Rights Advocate, Melbourne, 2006, p 25.

7 NON-UNION COLLECTIVE AGREEMENTS, EMPLOYER GREENFIELDS AGREEMENTS AND CONDITIONS OF EMPLOYMENT

Conditions of employment

In the first Estimates hearing, the duty Minister observed that '33 per cent of collective agreements expressly excluded all protected award matters',⁸⁴ double the rate for AWAs. This was based on data for April 2006, during which most 'collective' agreements were non-union 'employee collective agreements'. It seems likely, then, that non-union CAs were removing protected award conditions at least as rapidly as AWAs. Minister Andrews later claimed on television that one third of union CAs 'also had the removal of those conditions',⁸⁵ but it provided no supporting evidence and it has since proved impossible to verify this.

The idea that union agreements would remove conditions at a higher rate than AWAs is also inconsistent with evidence from the Victorian Workplace Industrial Relations Survey, conducted in May–June 2006, which found that workplaces in which collective agreements dominated were over twice as likely to pay penalty rates and overtime rates as workplaces in which individual contracts dominated.⁸⁶

In the absence of any more data from the OEA, our only other source to date is the Workplace Research Centre (WRC, formerly ACIRRT), which analysed a sample of 64 collective agreements – 25 union CAs and 39 non-union CAs, comprising 17 employee collective agreements and 22 EGAs.⁸⁷ Although not statistically representative, the results, summarised in Table 7.1, show a pattern consistent with the idea that non-union agreements are more likely than union agreements to involve cuts in conditions. WRC data indicated that a majority of non-union CAs excluded allowances, and minorities excluded a range of other 'protected' conditions of employment. There were no union agreements in their sample that excluded protected award conditions.

⁸⁴ Abetz, Estimates hearing, 102.

⁸⁵ ABC TV, 'Industrial relations debate', *Lateline*, Australian Broadcasting Corporation, 21 June 2006.

⁸⁶ G. Considine, *Working conditions snapshot 2006: Victorian Workplace Industrial Relations Survey 2006 – Special Summary Report – Non-managerial employee compensation*, Industrial Relations Victoria and Workplace Research Centre, University of Sydney, Melbourne, 2006.

⁸⁷ Workplace Research Centre, 'The impact of WorkChoices on agreement making – a first glance', *ADAM Report*, vol. 50, September 2006. This represented a sample of 27 per cent of EGAs and 7 per cent of other collective agreements at the time.



Table 7.1: Loss of conditions in a small sample of union and non-union collective agreements, Workplace Research Centre, June quarter 2006.

	Union CAs	Non-union CAs		
	(%)	ECA (%)	EGA (%)	total non-union (%)
annual wage increase	3.8	3.0	2.8	
excluded rest breaks	0	35	5	18
excluded bonus pay	0	18	14	15
excluded leave loading	0	12	9	10
excluded public holiday provisions	0	12	9	10
excluded allowances	0	59	45	51
excluded overtime	0	24	5	13
excluded weekend penalty rates	0	18	0	8
removed all award entitlements	0	18	36	28
N	25	17	22	39

Source: WRC, *ADAM Report 50*

Employer greenfields 'agreements'

Employer greenfields 'agreements' (EGAs) are not agreements in any sense of the word. They are unilateral instruments setting pay and conditions, determined solely by management of an organisation before it establishes a new 'project' or 'undertaking' (which appears to include, under WorkChoices, a new branch of a franchise or a business that has been sold in certain circumstances). Workers cannot legally take industrial action for 12 months after an EGA comes into force. Their right to engage in collective bargaining is thereby suspended. EGAs were created by WorkChoices. Prior to WorkChoices, greenfields agreements could only be made with unions, for bona fide new businesses. Since WorkChoices took effect, the number of union greenfields agreements has fallen sharply, and the majority of greenfields 'agreements' have been EGAs.

WRC looked at 47 EGAs and found they were concentrated in hospitality, retail, construction, and property and business services. It also found that 'a significant function of employer greenfields agreements appears to be the eradication of protected award provisions', and they had, on average, a longer span of ordinary hours (14 hours) than other current agreements (13 hours).⁸⁸

The *Australian Financial Review* examined a batch of 20 EGAs in October 2006 and concluded that they were being used to 'bypass trade unions and industrial awards and streamline their employment conditions'. It divided them into three categories: construction and engineering projects, particularly in the Western Australian resources sector; stand-alone new factories and mines that would otherwise employ union labour; and new branches of established retail, food and financial services chains, the latter having 'more emphasis on stripping away award allowances and penalty rates and on provisions on flexible working hours'.⁸⁹

Newsletter *Workplace Express* analysed the content of 34 EGAs in November 2006.⁹⁰ It also found that EGAs fell into three categories: fast food EGAs (the biggest category, which included various fast food and hospitality franchises) which provided for low wages (typically \$13–\$15 per hour), mostly abolished penalty rates and excluded protected award conditions; finance EGAs (mostly

⁸⁸ Workplace Research Centre, 'Employer greenfields agreements', *ADAM Report*, vol. 51, December 2006.

⁸⁹ M. Davis, 'Firms rush to non-union wage deals', *Australian Financial Review*, 30 October 2006, pp 1, 60–1.

⁹⁰ Workplace Express, 'Greenfields agreements true to predictions', *Workplace Express*, 13 November 2006.



franchisees of one bank) which provided for low wages but retained most protected conditions and severance pay; and construction EGAs (in roads and mines, in Western Australia and Queensland), which provided for higher wages (\$20 or more per hour) due, it seems, to labour shortages. These analyses suggest that, as with AWAs, there will be different types of EGAs: in some areas, where labour demand is high, they will need to match the market and offer good wages and conditions; but in others where labour supply is less an issue, they are able to undercut existing standards and lock employees in without any means of legal resistance other than exit.

Stories about EGAs are emerging.⁹¹ One particular EGA worth noting was one covering United Petroleum petrol stations in Tasmania. Having bought the stations from another company, the new owner was able to persuade both the OEA and the Office of Workplace Services that it was a 'new undertaking', allowing him to unilaterally establish an EGA covering pay and conditions for existing employees of the stations. Through the abolition of penalty rates and other conditions, their pay was cut by up to \$190 per week, and any industrial action in protest at this would have been illegal and attracted fines of \$6000 per day.⁹²

Assessing the impact of EGAs on wage increases is not easy because barely one-quarter of EGAs specify a wage increase during their lifetime, probably principally because they have a maximum duration of only twelve months.⁹³ DEWR estimates that average wage increases under EGAs (3.48 per cent) over the June and September quarters 2006, below those under WorkChoices union greenfields agreements (3.64 per cent) and indeed the lowest of any time of agreement for which data are available.⁹⁴ WRC estimates of average wage increases in EGAs were lower again, at 2.5 per cent among the minority that included provision for a wage increase (most do not, at least partly because of the 12 months maximum duration).⁹⁵ In December quarter 2006, according to DEWR, average wage increases under EGAs rose to 4.4 per cent, suggesting that in that quarter they were more concentrated in areas facing issues of high labour demand.⁹⁶

In sum, WorkChoices has created a new instrument, the EGA, which is associated with the loss of conditions for a significant number of new (and, in some cases, existing) employees, though depending on their position in the labour market, this is not the case for all employees covered by EGAs.

⁹¹ A. Horin, 'Young workers warned to spot pay rip-offs', *Sydney Morning Herald*, 28 December 2006.

⁹² ABC Radio National, 'Tas petrol station workers lose entitlements under new AWA', *PM*, 5 October 2006; M. Paine, 'More work for less pay', *Hobart Mercury*, 8 December 2006; WorkplaceInfo, 'Tas petrol station deal may be loophole in transition laws', *WorkplaceInfo*, 6 October 2006.

⁹³ Workplace Research Centre, 'Employer greenfields agreements'.

⁹⁴ Department of Employment and Workplace Relations, *Wage Trends in Enterprise Bargaining*, DEWR, Canberra, September quarter and previous editions 2006.

⁹⁵ Workplace Research Centre, 'Employer greenfields agreements'.

⁹⁶ Department of Employment and Workplace Relations, *Wage Trends in Enterprise Bargaining*.



8 WAGE RATES UNDER INDIVIDUAL AND COLLECTIVE AGREEMENTS

The only source of representative data on wages payable under AWAs and other agreements is the ABS Employee Earnings and Hours (EEH) survey from May 2006.⁹⁷ Although these data were collected only two months after WorkChoices took effect, the Employment Advocate concluded that this 'large employee earnings and hours survey' rendered it unnecessary for the OEA to collect wages data on AWAs as this would be 'a duplication and not a sensible use of the Commonwealth's resources'.⁹⁸ Thus we must conclude that the EEH survey is considered by the Commonwealth to be the reliable source of information on wages under AWAs. This survey is the source of the famous claim that 'workers on AWAs currently earn 13% more than workers on certified agreements and 100% more than workers on award rates'.⁹⁹ The EEH survey is based on data on 57,000 employees working for 9,000 employers around Australia. WorkChoices aims to discourage collective bargaining and promote individual contracting through AWAs, and so an appropriate way to evaluate WorkChoices is to compare the wages of workers on AWAs with those on registered collective agreements.

One major caveat with the data from this source is that, although the data were collected during WorkChoices, a majority of agreement-covered employees will have been on agreements signed before WorkChoices took effect. For AWA employees, this means that the majority of AWAs will have been protected by the no-disadvantage test that purported to ensure that employees were no worse off under an AWA than under the relevant award – in particular, if they lost penalty rates, overtime rates or other conditions they were meant to be no worse off overall. This in effect meant that they had to have a higher base rate to offset the loss of such conditions. This protection does not apply to AWAs signed under WorkChoices. Although the no-disadvantage test was not always properly applied,¹⁰⁰ it still meant that employees signing AWAs were subject to higher minimum standards before WorkChoices took effect. Thus the figures here will provide an overly positive picture of earnings for employees under WorkChoices AWAs.

The ABS publishes data on average weekly earnings for all employees and for non-managerial employees, and average hourly earnings for non-managerial employees. The least useful of these data, when comparing employees on AWAs with employees on collective agreements, are those concerning average weekly earnings for all employees. This is for several reasons. First, AWA employees include a disproportionate number of managerial workers, especially in the public sector. Second, the average hours worked by workers on AWAs are longer than those on collective agreements. This is partly because there seem to be fewer part-time workers on AWAs, and partly because fulltime workers on AWAs have longer hours than fulltimers on collective agreements – they work about 2.3 hours longer per week but receive 13 per cent less in overtime pay (including managerial employees), due to the high rate of reduction, absorption or abolition of overtime pay. (In the private sector, AWA workers receive 26 per cent less overtime pay than workers on registered collective agreements.)¹⁰¹ Fortunately, these two data problems can be dealt with by using hourly earnings of non-managerial employees as our benchmark.

⁹⁷ Australian Bureau of Statistics, 6306.0.

⁹⁸ McIlwain, evidence to November Estimates hearing, 7.

⁹⁹ Australian Government, *More jobs, higher wages, a stronger economy*.

¹⁰⁰ Peetz, *Brave New Workplace*.

¹⁰¹ Australian Bureau of Statistics, 6306.0.

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That said, there are some other problems in the data that cannot be easily avoided. For one, the average earnings of employees on AWAs are exaggerated by their being disproportionately concentrated in four industries with the highest average earnings – especially mining, where coverage of registered individual contracts was 19 per cent in 2002, compared to the then national average of 2 per cent, but also electricity, gas and water (7 per cent), finance (4 per cent) and communications (13 per cent).¹⁰² It is not the high incidence of individual contracts that leads to earnings in these industries being high. For example, mining workers on individual arrangements have weekly earnings 6 per cent *lower* than mining workers on collective agreements. The higher incidence of AWAs in high wage industries, especially mining, makes AWA earnings appear relatively higher than a true like-with-like comparison would show.

In addition, the apparent average pay of workers on registered collective agreements is depressed because some of them are actually covered by non-union enterprise agreements which, as shown earlier and elsewhere, have inferior wage increases to union collective agreements (and are, in reality, much more like individual contracts than collective agreements).¹⁰³ Moreover, some two-fifths of workers on collective agreements are not union members but free riders on the gains achieved by unionists.¹⁰⁴ In a workplace with a large number of free riders, their existence reduces the bargaining power of the unionists (by comparison with fully unionised coverage) and in turn holds down the benefits achieved in collective agreements.

The published ABS data mostly concern registered individual contracts. About 97 per cent of these are AWAs (the remaining being state agreements registered in WA, Tasmania and Queensland). The analysis below consequently refers to all registered individual contracts as AWAs. As state individual contracts (reserved mostly for high income employees) paid, on average, 87 per cent more than AWAs, the AWA weekly earnings figures below exaggerate actual earnings under AWAs by an average of 3 per cent.

All these things have to be remembered when comparing pay under collective agreements and individual contracts. Taken together, they mean that, if AWAs normally had no effect on employee power and earnings, we should expect the statistics to show the average earnings of AWA employees as being above the average of workers on collective agreements. Alternatively, if there were a disadvantage facing AWA employees, the statistics would understate it.¹⁰⁵

¹⁰² Department of Employment and Workplace Relations and Office of the Employment Advocate, *Agreement Making under the WR Act*.

¹⁰³ Peetz, *Brave New Workplace*.

¹⁰⁴ Australian Bureau of Statistics, 6306.0; Australian Bureau of Statistics, 6310.0; J. Teicher, A. Pyman, P. Holland and B. Cooper, 'Employee voice in Australia', in *What Workers Say: Employee Voice in the Anglo-American World*, eds R. B. Freeman, P. Boxall and P. Haynes, ILR Press, Ithaca NY, 2007 (forthcoming).

¹⁰⁵ These points are made in Peetz, *Brave New Workplace*, pp 98–9.

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Table 8.1: Average weekly earnings, hours worked and hourly earnings of non-managerial employees, by state/territory, 2006

	Average Weekly Total Cash Earnings			Average Weekly Hours Paid For			Average Hourly Cash Earnings		
	Males	Females	Persons	Males	Females	Persons	Males	Females	Persons
	\$	\$	\$	Hours	hours	hours	\$	\$	\$
VICTORIA									
• Reg collective agts	1034.30	681.40	835.60	36.2	27	31	28.60	25.20	26.90
• Reg individual agts	867.40	643.70	745.50	35.1	28.2	31.3	24.70	22.80	23.80
• difference	-16.1%	-5.5%	-10.8%	-3.0%	4.4%	1.0%	-13.6%	-9.5%	-11.5%
NEW SOUTH WALES									
• Reg collective agts	1058.30	773.00	909.70	35.7	28.9	32.1	29.70	26.80	28.30
• Reg individual agts	1095.80	686.60	925.70	39.4	30.1	35.6	27.80	22.80	26.00
• difference	3.5%	-11.2%	1.8%	10.4%	4.2%	10.9%	-6.4%	-14.9%	-8.1%
QUEENSLAND									
• Reg collective agts	1058.60	745.60	893.40	37.5	29.5	33.3	28.20	25.30	26.80
• Reg individual agts	959.60	809.10	921.40	41.3	38.0	40.5	23.20	21.30	22.80
• difference	-9.4%	8.5%	3.1%	10.1%	28.8%	21.6%	-17.7%	-15.8%	-14.9%
SOUTH AUSTRALIA									
• Reg collective agts	937.00	702.20	810.60	35.2	28.6	31.6	26.60	24.50	25.60
• Reg individual agts	937.60	659.90	864.20	41.3	29.5	38.2	22.70	22.40	22.70
• difference	0.1%	-6.0%	6.6%	17.3%	3.1%	20.9%	-14.7%	-8.6%	-11.3%
WESTERN AUSTRALIA									
• Reg collective agts	1051.10	686.90	848.00	36.1	26.8	30.9	29.10	25.60	27.40
• Reg individual agts	1541.50	661.20	1255.80	42.0	28.5	37.6	36.70	23.20	33.40
• difference	46.7%	-3.7%	48.1%	16.3%	6.3%	21.7%	26.1%	-9.4%	+21.9%
TASMANIA									
• Reg collective agts	927.50	726.40	819.30	36.0	28.7	32.1	25.70	25.30	25.50
• Reg individual agts	775.30	463.80	634.90	37.8	26.5	32.7	20.50	17.50	19.40
• difference	-16.4%	-36.2%	-22.5%	5.0%	-7.7%	1.9%	-20.2%	-30.8%	-23.9%
NORTHERN TERRITORY									
• Reg collective agts	1055.30	815.00	914.30	37.2	32.0	34.2	28.40	25.40	26.70
• Reg individual agts	1234.90	837.10	1118.80	46.7	38.0	44.2	26.40	22.00	25.30
• difference	17.0%	2.7%	22.4%	25.5%	18.8%	29.2%	-7.0%	-13.4%	-5.2%
AUSTRALIAN CAPITAL TERRITORY									
• Reg collective agts	1051.00	876.70	952.80	33.8	31.3	32.4	31.10	28.00	29.40
• Reg individual agts	1125.10	1143.90	1136.60	35.5	35.5	35.5	31.70	32.30	32.00
• difference	7.1%	30.5%	19.3%	5.0%	13.4%	9.6%	1.9%	15.4%	+8.8%
AUSTRALIA									
• Reg collective agts	1038.00	729.80	871.20	36.2	28.3	31.9	28.70	25.70	27.30
• Reg individual agts	1119.30	689.10	949.60	39.8	30.2	36.0	28.10	22.80	26.40
• difference	7.8%	-5.6%	9.0%	9.9%	6.7%	12.9%	-2.1%	-11.3%	-3.3%

Source: ABS Cat No 6306.0, May 2006, data cube table 10.

Table 8.1 shows average weekly and hourly earnings of non-managerial employees under AWAs and registered individual contracts in Victoria, other states and across Australia. For ease of exposition, the key data are also shown in graphic form in Chart 8.1. We can see that, in Victoria, average weekly earnings of AWA employees were 11 per cent below average weekly earnings of

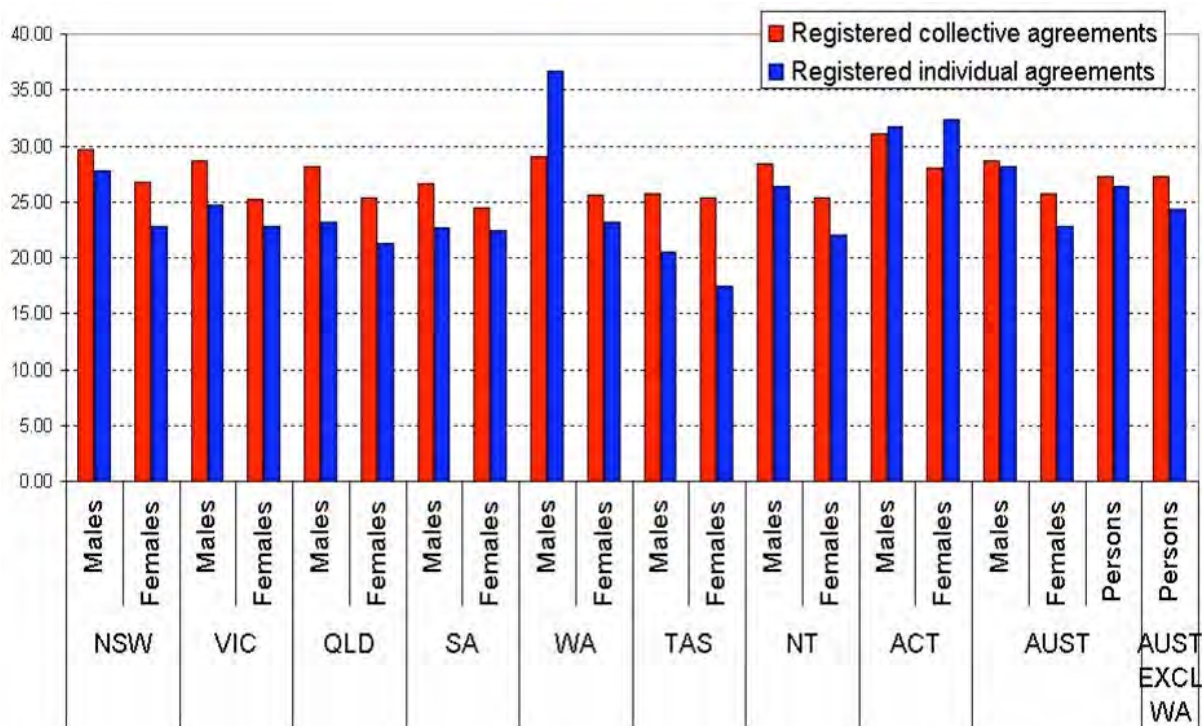
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registered collective agreement employees. AWA employees worked 1 per cent more hours than registered collective agreement employees. Consequently the average hourly earnings of non-managerial employees were 12 per cent lower under AWAs than under registered collective agreements.

Victorian women on AWAs earned 6 per cent less per week than women on registered collective agreements, but they worked for 4 per cent more hours. So their hourly earnings were 10 per cent less than the hourly earnings of their counterparts on collective agreements.

Chart 8.1 Average hourly earnings of non-managerial employees, by state/territory and gender, 2006



Source: ABS 6306.0

Across Australia as a whole, AWA employees received 9 per cent more per week than employees on registered collective agreements. But to earn this, they worked for 13 per cent more hours (an extra 4.1 hours per week). As a result, the average hourly earnings of non-managerial employees on AWAs were 3.3 per cent lower than the earnings of their counterparts on registered collective agreements. (This is before various factors are taken into account, as discussed on p29, that lead to an apparent overstatement of relative AWA earnings.)

For men, the shortfall¹⁰⁶ under AWAs is 2 per cent, but for women it is 11 per cent. It has been argued that the poor performance of women on AWAs is an illusion created by the high

¹⁰⁶ The term 'shortfall' refers to the gap between pay under AWAs (registered individual contracts) and pay under registered collective agreements.



employment of women on AWAs in the low-wage hospitality and retail industries.¹⁰⁷ This is an issue we will come to below. However, it is more likely that the industry distribution of employment distorts the data for men, rather than women, because of the impact that mining has on the figures for men.

The data published by the ABS do not identify hourly wages by industry and so do not enable us to directly estimate the effect of mining on the AWA figures. However, a stark pattern emerges in the state by state analysis. In Western Australia, one of the two states where the mining boom is most strongly experienced, and the state with the highest incidence of AWAs, average hourly earnings of workers on AWAs are 22 per cent higher than for those on collective agreements. Mining is a male-dominated industry (87 per cent of mining employees are male),¹⁰⁸ and this AWA advantage is an exclusively male phenomenon: for women in WA, AWA earnings are 9 per cent below collective agreement earnings. Across the other states, AWA employees have a shortfall in pay ranging from 8 per cent to 24 per cent. Even in Queensland, the other mining boom state, AWA hourly earnings are 15 per cent below collective agreement earnings.

The reason for the difference between the patterns in Western Australia and Queensland is simple: in Western Australia the mining sector is dominated by metalliferous mining, in which union density is a mere 13 per cent and collective agreements cover few employees; whereas in Queensland, the mining sector is dominated by coal, in which union density is 58 per cent and collective agreements cover many employees.¹⁰⁹ Thus in Western Australia the mining boom is raising the wages of workers on AWAs but not collective agreements, whereas in Queensland it is boosting the wages of both. As weekly earnings in mining are over double the average of other industries, this clearly has a distorting effect on the figures.

A clearer idea of the impact of AWAs on earnings is gained by considering earnings across the other five states (and the two territories) excluding Western Australia (Table 8.2). There, average hourly earnings of employees on AWAs are around 10 per cent less than average earnings of employees on registered collective agreements.

We cannot precisely estimate the average hourly earnings of men and women across the states excluding WA, as gender data on the incidence of AWAs by state are not published, but if the incidence was the same between men and women then our estimates suggest that the shortfall would be broadly similar (around 12 per cent) for both men and women. Certainly, WA is the only state where men do better under AWAs than under collective agreements; in all other states men on AWAs are disadvantaged by between 6 per cent and 20 per cent, compared to men on registered collective agreements. This suggests that the likely effect of mining on the figures would be to exaggerate the relative welfare of men on AWAs (rather than understate the welfare of women).

¹⁰⁷ J. Hockey, Gillard fails to grasp the bigger picture, media release, Department of Employment and Workplace Relations, Canberra, 28 February, 2007.

¹⁰⁸ Australian Bureau of Statistics, *6310.0*.

¹⁰⁹ *Ibid.*

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Table 8.2: Average hourly earnings of non-managerial employees, by method of pay fixing, impact of WA on Australian estimates, 2006

	Australia	Australia excluding WA (a)
Reg collective agreements	27.30	27.20
Reg individual agts	26.40	24.30
Difference	-3.3%	-10.7%

(a) Estimated using employment weights from May 2006 Labour Force Survey.

Source: Calculated from ABS Cat No 6306.0.

The other phenomenon reflected in the state/territory figures in Table 8.1 is the treatment of employees in the Commonwealth public service. A number of agencies, including DEWR, now refuse to recruit people who will not agree to sign an AWA, regardless of their merit.¹¹⁰ Promotion is also often dependent on signing an AWA. Hence it is inevitable that AWA employees in the Commonwealth Public Service will eventually have higher pay than all other employees, and this is reflected in the ACT figures where AWA employees have pay 9 per cent higher than employees on registered CAs. When managerial employees are included (virtually everyone in the Commonwealth senior executive service is on an AWA), the weekly earnings gap in the ACT rises to a huge 50 per cent.¹¹¹ This distortion created by Commonwealth public sector employees is one reason why the 'all employees' data, which include managerial employees, are of little use in analysing the general impact of AWAs, and why hourly earnings data for non-managerial employees provide a better indication of the experiences of ordinary employees.¹¹²

Table 8.3 shows weekly earnings, hours worked and hourly earnings for non-managerial employees who are permanent fulltime workers, permanent part-timers and casuals. Again, the key data are shown in graphic form in Chart 8.2. The only group in this table for whom average hourly earnings are as high under AWAs as under collective agreements are male permanent-fulltimers, the group most likely to be employed in the mining sector. In all other groups AWA workers are disadvantaged compared to workers on collective agreements. Female permanent fulltimers were disadvantaged by 8.5 per cent if they were on an AWA. They received 5 per cent less per week on an AWA than on a collective agreement, even though they worked an additional 1.3 hours per week. Permanent part-time workers were 17 per cent worse off on AWAs than registered collective agreements; and casual employees were also 17 per cent worse off.

¹¹⁰ Workplace Express, 'CPSU accuses DEWR of threatening merit selection through AWAs', *Workplace Express*, 15 April 2005, <<http://www.workplaceexpress.com.au/nav?id=24335&no=230063090>>; Workplace Express, 'DEWR management, CPSU, meet again this afternoon', *Workplace Express*, 8 July 2005.

¹¹¹ Australian Bureau of Statistics, *6306.0*.

¹¹² The ACT also therefore distorts the national non-managerial figures, but not by as much. Hence if Table 9.2 were recalculated to exclude both WA and the ACT, the AWA-collective agreement gap would rise to 11.9 per cent.



Table 8.3: Average weekly earnings, hours worked and hourly earnings of non-managerial employees, by employment status, 2006

	weekly earnings			hours worked			hourly earnings		
	males	females	all	males	females	all	males	females	all
Permanent fulltime employees									
• Registered collective	1183.9	1013.1	1112.7	40.4	37.5	39.2	29.30	27.00	28.40
• Registered individual	1252.4	957.6	1162.5	42.7	38.8	41.5	29.30	24.70	28.00
• Difference	5.8%	-5.5%	4.5%	5.7%	3.5%	5.9%	0.0%	-8.5%	-1.4%
Permanent part-time employees									
• Registered collective	555	552.3	552.8	22.2	22.9	22.7	25.00	24.20	24.30
• Registered individual	418.9	472.9	456.4	21.5	23	22.5	19.50	20.50	20.20
• Difference	-24.5%	-14.4%	-17.4%	-3.2%	0.4%	-0.9%	-22.0%	-15.3%	-16.9%
Casual employees									
• Registered collective	470.2	320.1	376.1	19.5	14.5	16.4	24.10	22.00	23.00
• Registered individual	606.3	324.8	445.2	29.2	18.7	23.2	20.70	17.30	19.20
• Difference	28.9%	1.5%	18.4%	49.7%	29.0%	41.5%	-14.1%	-21.4%	-16.5%
All non-managerial employees									
• Registered collective	1038	729.8	871.2	36.2	28.3	31.9	28.70	25.70	27.30
• Registered individual	1119.3	689.1	949.6	39.8	30.2	36	28.10	22.80	26.40
• Difference	7.8%	-5.6%	9.0%	9.9%	6.7%	12.9%	-2.1%	-11.3%	-3.3%

Source: ABS Cat No 6306.0, Table 20.

Unfortunately the ABS does not publish separate data on the incidence of AWAs in hospitality (accommodation, cafes and restaurants) and retail trade. However, a hint of the impact that female employment in hospitality and retail has on female earnings under AWAs is to consider the position of female casual employees. Workers in retail and hospitality account for 45 per cent of all female casuals (compared to just 15 per cent of female permanent employees and 18 per cent of all male employees).¹¹³ So trends amongst female casuals will be heavily influenced by trends in these industries.

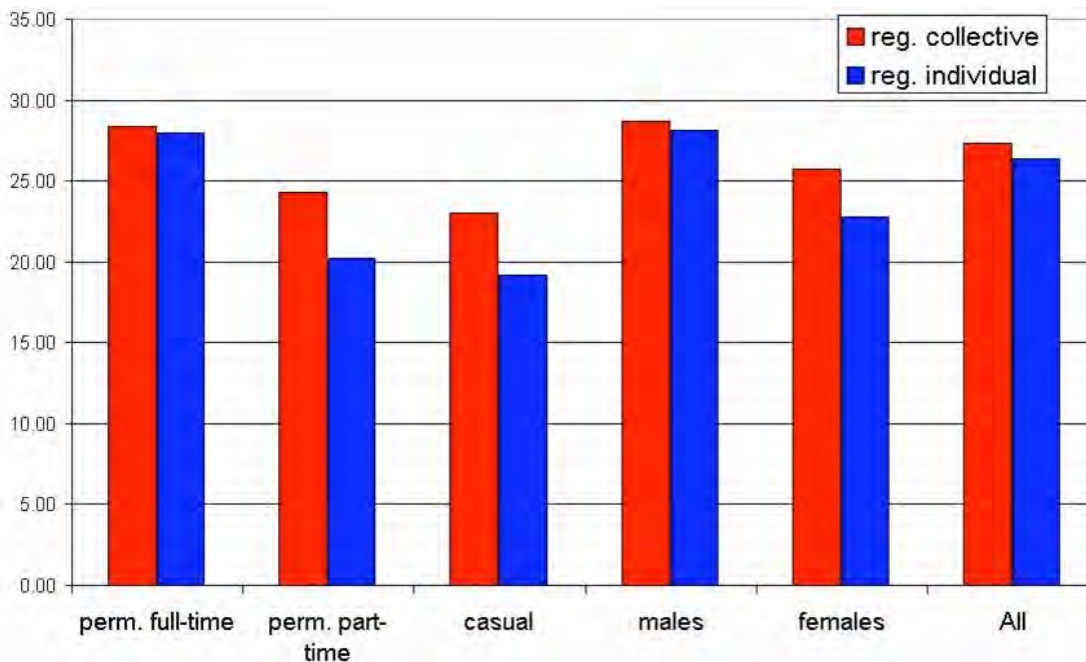
Casual employees are also the group with the heaviest award reliance – some 47 per cent of award-reliant employees are casuals – and so patterns amongst casuals provide a hint as to what happens to some employees moving onto AWAs off other forms of employment contract.

¹¹³ Australian Bureau of Statistics, 6310.0.

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Chart 8.2 Average hourly earnings of non-managerial employees, by employment status and gender, 2006



Source: ABS 6306.0

Table 8.4 compares hourly earnings for casual employees under awards and those under AWAs. We would expect that earnings under AWAs would be above those under awards, because, at least in terms of base hourly rates, no AWAs can pay below the award wage but some AWAs would pay above the award wage, meaning that the average AWA wage must be above the relevant award minimum. (Under the no-disadvantage test that operated before WorkChoices, this principle in effect applied in a global sense to the total pay package, creating a stronger protection than under WorkChoices.) This is certainly the case for permanent fulltime workers, and to a lesser extent for permanent part-time workers. Yet as can be seen from Table 9.4, average hourly earnings for casual women are 7 per cent below the average award minimum. This presumably reflects the loss of penalty rates, as documented in section X, which would lower average hourly wages, especially if not compensated by an increase in base hourly rates. As table 3 shows, casual women on AWAs are also 21 per cent worse off than casual women on collective agreements. (Casual men on AWAs are only 14 per cent worse off than under a collective agreement, and are 9 per cent better off than the average award minimum.)

Table 8.4: Average hourly earnings, casual employees, by sex

	Men	Women
Award employees	19.00	18.70
Reg individual agts	20.70	17.30
Difference	8.9%	-7.5%

These data indicate that casual employees, particularly female casual employees, do especially poorly under AWAs. In combination with data elsewhere in this report, it suggests that the poor relative performance of women under AWAs is a function not so much of their being employed in a low-wage industry but rather is a result of the loss of pay or conditions under AWAs. This

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conclusion is reinforced by the fact that women are worse off under AWAs no matter what their employment status – women’s hourly pay on AWAs is 9 per cent lower for permanent fulltimers, and 15 per cent lower on AWAs for permanent part-timers; yet men actually make up the majority of permanent employees in retailing and hospitality. And it is reinforced by the fact that women on AWAs earn less than women on collective agreements in every state, by margins ranging from 8 per cent to 30 per cent.

Overall, the data from the EEH survey indicate that AWAs are paying well below collective agreements for comparable workers, and the extent of this disadvantage is disguised by the high wages payable in the mining industry, where individual contracts are common (even though individual contracts pay less than collective agreements in mining). Women are particularly disadvantaged under AWAs, and this is especially the case for women in casual jobs. However, even women in permanent fulltime jobs do relatively poorly under AWAs compared to collective agreements. Moreover, although men do not appear to do as badly under AWAs as women, this is in no small part a result of the male domination of mining. In Victoria, where the mining industry is not significant, men are 14 per cent worse off under AWAs than under collective agreements – a shortfall that appears to more closely approximate the underlying relationship between individual contracting and employee bargaining power. These shortfalls for AWA employees under WorkChoices are almost certainly understated because a majority of the AWA employees covered by these data were protected by the no-disadvantage test, which under WorkChoices no longer applies.

9 WAGE INCREASES UNDER DIFFERENT AGREEMENT TYPES AND THE AUSTRALIAN FAIR PAY COMMISSION

This section looks at wage increases payable to employees under the AFPCS system (the former award wage structure, now administered by the Australian Fair Pay Commission [AFPC]), and under agreements made under WorkChoices.

Minimum wage increases

In November 2006 the Australian Fair Pay Commission AFPC decided to grant a \$27.36 per week increase in award wages for workers on wages of up to \$700 per week, and \$22.04 per week above that. This was seen by many as unexpectedly generous to those reliant on awards.

The AFPC, however, had little room to manoeuvre. State tribunals had already granted their award workers increases of around \$20 over 12 months. To grant less than the 18-month equivalent of this (something between \$27 and \$30) would have raised questions about the legitimacy of the AFPC by reference to the tribunals it was meant to replace.

The 18-month gap between the final decision of the AIRC and the first decision of the AFPC created a lacuna in which, for award-reliant low wage earners, continuing price rises and frozen wage rates meant that the real value of their wages fell. For some, but not the majority, the value of their pay packets was eventually restored, but this did not make up for the loss in income during that extended delay period.

When annualised, the AFPC's increase was actually slightly less generous than what most state tribunals had provided. It was the second lowest minimum wage increase in real terms since the Coalition came to office – representing a real wage fall of 0.9 per cent on average for award-reliant employees, according to data from the AFPC chair.¹¹⁴

The AFPC will move its decisions to mid year, enabling it to pre-empt state tribunals and exert more authority over minimum wages. Whether it will be able to overcome the confusion caused by its failure to publish the minimum wage rates that arise from its decisions, and apparent errors in the rates posted by the federal Department,¹¹⁵ is another matter. The chair of the AFPC has flagged that the 2007 case will likely tie the minimum wage increase to inflation, which would again mean that real wages would fall for the majority of award-reliant workers.

Wage increases under agreements

According to data from DEWR, annualised wage increases under new union CAs have averaged about 3.9 per cent in the three quarters since WorkChoices took effect. This is above the rate under non-union employee CAs of 3.6 per cent.¹¹⁶ This pattern, whereby union CAs have higher increases than non-union CAs, has been consistent since non-union CAs were effectively introduced under

¹¹⁴ Workplace Express, 'Harper downplays impact of minimum wage rise, looks for jobs growth', *Workplace Express*, 23 November 2006.

¹¹⁵ AAP, 'WorkChoices a high for PM this year', *Australian*, 8 December 2006; Workplace Express, 'Confusion emerges at AIRC hearing to flow on AFPC minimum wage ruling', *Workplace Express*, 4 December 2006.

¹¹⁶ Department of Employment and Workplace Relations, *Wage Trends in Enterprise Bargaining*.



the *Workplace Relations Act 1996* (Cth).¹¹⁷ (Before then, non-union Enterprise Flexibility Agreements had been possible, but rare.)

The Workplace Research Centre also analyses wage increase in agreements. It estimated wage increases during June and September quarters 2006 at 3.9 per cent in new union CAs compared to 3.1 per cent in new non-union CAs.¹¹⁸ This was based on a smaller sample than DEWR's (which is, in principle, a population count) and so is a less reliable indicator, but it is noteworthy that it confirms the DEWR pattern.

Looking at changes over time, the first quarter of WorkChoices saw wage annualised increases in union CAs rise to 4.4 per cent, before falling to 3.6 and 3.7 per cent in September and December quarters, below the average of the pre-WorkChoices period from 2005 of 4.1 per cent. This is shown in panel 1 of Chart 9.1. It was the first time there had been two successive quarters with annualised increases below 4 per cent since early 2002, and occurred despite the relative tightness of the labour market compared to the preceding years. This might signal a reduction in employee bargaining power in the unionised sector, as intended by WorkChoices, but as the union wage agreement figures are somewhat erratic, it is a little early to tell. Wage increases in non-union employee collective agreements did not seem as affected by WorkChoices, though they remain below wage increases in union CAs.

While wage increases in new union CAs may have fallen over the past two quarters, despite the relatively tight labour market, wage increases in *current* union agreements, that is agreements that are still in place at the end of the quarter, are relatively stable. As can be seen in panel 2, annualised wage increases in union CAs current as of December 2006, at 4.0 per cent, were only 0.1 per cent below the pre-WorkChoices average.¹¹⁹ This shows the large amount of inertia in wages, and illustrates how changes in outcomes for employees affected by WorkChoices feed only slowly into wages aggregates.

¹¹⁷ Peetz, *Brave New Workplace*.

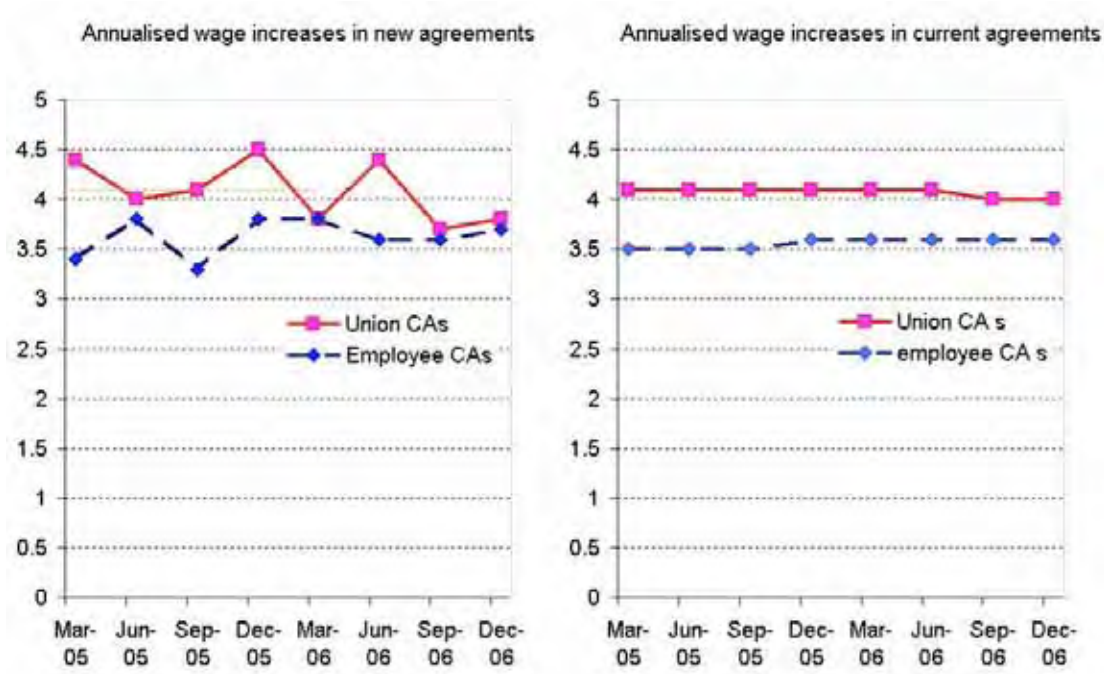
¹¹⁸ Workplace Research Centre, 'Wage Trends', *ADAM Report*, vol 50, September 2006; Workplace Research Centre, 'Wage Trends', *ADAM Report*, vol 51, December 2006.

¹¹⁹ Department of Employment and Workplace Relations, *Wage Trends in Enterprise Bargaining*.

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Chart 9.1 Annualised wage increases in union and employee collective agreements, 2005–07




What about AWAs? Prior to WorkChoices, average wage increases under AWAs had been in the range of 2–2.5 per cent per annum,¹²⁰ well below the rate in union CAs and even non-union CAs. No administrative data have been published, or possibly even collected, on average wage increases under WorkChoices AWAs, so it is not possible to assert that ‘no matter what your agreement, wages are up’.¹²¹ All that is known is that 22 per cent of AWAs contain no provision for a wage increase during the life of the agreement. This is well down on the rate prior to WorkChoices (when 73 per cent contained no mention of a wage increase),¹²² though this is probably due to the greater length of AWAs under WorkChoices. They can now last for five years, compared to three years pre-WorkChoices, and it is difficult to imagine many people willingly signing an agreement that provided for no increase for the next five years. There are anecdotes indicating a pattern of AWAs to containing a reasonable wage increase up front but little or nothing afterwards.

That said, there is no reason to believe that wage increases under AWAs will be higher than the earlier average of up to 2.5 per cent, and certainly no reason to believe that they would be matching wage increases under collective agreements, especially bearing in mind that the rate at which conditions have been excluded from AWAs has increased while the need for compensation for the loss of such conditions has been removed. As stated in the previous section, in 2006 there was a 3.3 per cent overall shortfall in AWA hourly earnings, compared to those in collective agreements (including union and non-union agreements together). This 2006 shortfall was greater than the 2.1 per cent shortfall for AWA employees in 2004. This, too, indicates that earnings growth for AWA employees has fallen behind earnings growth for collective agreement employees.

¹²⁰ ACIRRT, ‘Wage trends in AWAs and certified agreements’, *ADAM Report*, vol 31, December 2001; ACIRRT, ‘AWAs in Focus’, *ADAM Report*, vol 47, December 2005.

¹²¹ Hockey, *Australian Workplace Relations*.

¹²² ACIRRT, ‘Wage trends in AWAs and certified agreements’.

The image at the top of the page is a collage. On the left, there are several overlapping job advertisements with various text fragments like 'must have min. 5 yrs. prev.', 'along w/3 yrs. service exp.', and 'Executive ASST needed'. On the right, there is a line of black silhouettes of people of different heights, arranged in a perspective that recedes into the distance. The background is a light blue color.

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In sum, the data imply a likely loss of conditions in mainly non-union collective agreements under WorkChoices, and a reduction in wages growth in the formal sector as a result of the increased share of instruments that are encouraged by WorkChoices and that provide for relatively low rates of wage increase. However, in common with other areas, more data are required. The minimum wage fixing arrangements established under WorkChoices have led to a real wage decline for most award-reliant (low-wage) workers, but the full effect is yet to be seen.



10 WAGES GROWTH AND PROFITS

When surveyed in June 2006, 56 per cent of Victorian and Tasmanian business owners, members of the Australian Institute of Management (AIM), stated that the impact of WorkChoices on employee wages will be negative, with only 20 per cent stating the impact would be positive.¹²³ Commenting on the results, the AIM (Victoria and Tasmania) observed the results were 'suggesting that employers may be looking at the recent changes as an opportunity to reduce or contain employee wages.'¹²⁴

Views were also sought from middle level and junior managers belonging to AIM. Comments by two respondents gave slightly different perspectives on the issue:

Good employers will continue to pay the same wages and provide the same conditions in the future despite any WorkChoices. Bad employers will take advantage of the WorkChoices changes to the disadvantage of employees.¹²⁵

Even the good employer will be forced to drive down wages to match a close competitor.¹²⁶

The latter process was foreshadowed in a radio interview by the president of the Business Council of Australia:

Is there not a danger that some companies will lower their costs by cutting wages and conditions and other companies will be forced to follow suit if they want to keep selling their goods and services at a competitive price?

Well I imagine that that's what happens in any competitive economy. If consumers, for example, are benefiting from price falls, then the companies involved in selling the goods have to make ends meet, and make sure they remain competitive...If you have flexible arrangements, then you can adjust things to be competitive, and that's to the benefit of the employees and the employer in the long-run.¹²⁷

As mentioned in section 4, this process can take a considerable time to occur. Still, a survey of 300 middle and senior managers undertaken later, in February 2007, reinforced the negative expectations for wages. Only 11 per cent thought WorkChoices would make things better for them personally, and 26 per cent expected it would make things worse for them. They were evenly divided on the impact on 'well educated and skilled workers', with 24 per cent believing it would make things better for them and 26 per cent believing it would make things worse. But in relation to less 'skilled' workers there was no such ambivalence: 52 per cent expected things would be worse for them as a result of WorkChoices, only 12 per cent thought things would be better for them.¹²⁸

¹²³ Australian Institute of Management, *The New Workplace Relations System: June 2006 Survey Results*, p 19.

¹²⁴ Ibid. p. 20.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ M. Chaney on ABC Radio National, 'Business Council issues "call to arms" over IR', *PM*, 7 December 2005.

¹²⁸ UMR Pty Ltd, *Gold Coast Tourism Globalisation Labour Impact Barometer*, Burson Marsteller / Gold Coast Tourism, Gold Coast, February 2007, pp 35-6.



Amongst the Victorian managers, the results were even more negative. They believed: WorkChoices would make them personally worse off, by a margin of 27 to 10 per cent; WorkChoices would make 'well educated and skilled workers' worse off, by a margin of 27 per cent to 19 per cent; and WorkChoices would make 'less skilled workers' worse off, by a margin of 55 to 9 per cent.¹²⁹

Interestingly, managers also supported a range of minimum conditions that went well beyond the AFPCS. Thus while 88 per cent agreed that four weeks holiday each year (part of the AFPCS) should be guaranteed by law, there were also majorities supporting guarantees under law for 'penalty rates for working overtime' (73 per cent), 'penalty rates for working on weekends or public holidays' (74 per cent), 'protection against unfair dismissal' (88 per cent), and 'the right to belong to a trade union' (62 per cent), with closer divisions on whether 'the right to strike' should be guaranteed (47 per cent for, 42 per cent against). Support for these minimums was even higher among Victorian managers.¹³⁰ In another employer survey, 40 per cent of small business respondents considered that the legislation is 'unfair to many employees', compared to just 24 per cent who disagreed.¹³¹

The negative perceptions amongst managers about the impact of WorkChoices on employees are reflected even more strongly in the views of employees themselves. A December 2006 poll showed only 14 per cent of employed people believed they would be better off as a result of WorkChoices, with 33 per cent saying they would be worse off.¹³² A survey in six New South Wales electorates found 30 per cent of respondents said they knew someone who had been affected by the new laws or had, themselves, been affected.¹³³ Although this poll was commissioned by Unions NSW, another poll found an even larger impact: 41 per cent of NSW residents said in a Galaxy opinion poll that they knew a friend or family member adversely affected by the reforms.¹³⁴ The figure may be slightly lower if collected nationally – earnings growth in NSW is 0.2 percentage points below the national average¹³⁵ – but it is clear that negative perceptions of WorkChoices are common.

Real earnings

Over time, as technological improvements are introduced and educational and skill levels rise, productivity rises, real wages improve and living standards rise. So in assessing a policy like WorkChoices, it is not enough simply to identify if real earnings have risen. It is also necessary to assess whether this is above the long-term trend increase in real wages that could be expected anyway.

¹²⁹ Ibid. pp 37–9.

¹³⁰ Victorian managers gave strong support for four weeks holiday (94 per cent), overtime rates (79 per cent), weekend and public holiday penalties (79 per cent), unfair dismissal protection (96 per cent), and the right to belong to a union (64 per cent), and a plurality supported the right to strike (47 per cent v 42 per cent). Ibid.

¹³¹ AMR Interactive, *MYOB Australian Small Business Survey*, p 19.

¹³² Newspoll, 'National telephone survey of 1200 adults, 15–17 December 2006'. These numbers were similar to three previous Newspolls in October and December 2005 and April 2006, and consistent with a Morgan poll in April 2006: Roy Morgan Research, *Majorities of People Disagree With IR Reforms, Think They Will Be Bad for Australia*, Morgan Poll, Sydney, 7 April 2006.

¹³³ Farr, 'IR the real election issue'.

¹³⁴ Silmalis, 'IR reforms backlash'.

¹³⁵ Australian Bureau of Statistics, *Labour Price Index, Australia*, Canberra, 6345.0.



A reasonable reference point is the long run increase in real wages recorded over the post-war period. This was 1.8 per cent from 1949–50 to 1995–96.¹³⁶ The same rate was achieved over the period since the Workplace Relations Act came into force¹³⁷ (though it should be noted that the latter figure disguised a widening of wages inequality for most of this period, characterised by very high wage increases for the top decile of salary earners but lower than 'average' growth for the majority of low and middle wage earners).¹³⁸ Across the OECD countries, real earnings growth is also expected to average 1.8 per cent in 2006.¹³⁹ This should be an achievable rate of real wages growth in Australia, as the average rate of growth of productivity in the period since the ABS began publishing its current productivity statistics, that is since 1964–65, is 2.3 per cent per annum.¹⁴⁰

Some might argue that longer term reference points such as this are unreasonably tough. But in what is by recent standards a relatively tight labour market, it could be more strongly argued that they are quite generous – especially because the external context within which the Australian economy is operating is uncharacteristically favourable. As Burrell argues, the global economy

is enjoying its most prosperous period since the late 1960s. Underpinned by strong growth in China, the global economy is expected to grow by 4.9 per cent in 2007 – the fifth year of above-average growth and the strongest period of growth in 40 years. Global unemployment is heading towards 30-year lows... World inflation, which has derailed past expansions, is near 40-year lows. In the past five years, it has averaged 3.5 per cent – the best result since the mid 1960s – thanks to rapid technological change, which has seen digital products improve in quality while falling in price, and international price competition spurred by China and other Asian producers.¹⁴¹

As mentioned, we should not expect much of a WorkChoices effect on aggregate real wages at this stage. As we saw with the data on wage increases in agreements (section 9), there is a lot of inertia in wages growth and changes in wage outcomes under WorkChoices agreements take a long time to significantly affect the wages aggregates. With less than 10 per cent of employees on agreements registered since WorkChoices took effect, and probably 30 per cent or so on pre-WorkChoices agreements, much of what has happened will reflect the momentum of pre-WorkChoices system. For the over 30 per cent on unregistered individual contracts, some will have been through a new round of annual wage negotiations since WorkChoices took effect, and in principle the new environment could influence outcomes. However, most of these workers are in a relatively good market position, as evidenced by the fact that they are paid above the award, and the labour shortages in many areas will insulate them from WorkChoices effects. Still, it is possible we may see some impacts on specific groups that may be more susceptible to WorkChoices effects.

¹³⁶ R. A. Foster, *Australian Economic Statistics 1949–50 to 1996–97*, Occasional Paper No 8, Reserve Bank of Australia, Sydney, October 1997.

¹³⁷ Australian Bureau of Statistics, *Average Weekly Earnings, Australia*, Canberra, 6302.0; Australian Bureau of Statistics, *Consumer Price Index*, Canberra, 6401.0.

¹³⁸ ACIRRT, *Increases in full-time weekly total earnings of non-managerial by distribution of earnings, 1998–2004*, September, 2005.

¹³⁹ Average nominal compensation per employee across OECD in 2006 is forecast to grow at 4.1 per cent in 2006: Organisation for Economic Cooperation and Development, Annex Table 11, OECD Economic Outlook 80 database, Paris, 2007.. OECD CPI growth in 2006 was 2.2 per cent: Organisation for Economic Cooperation and Development, OECD Consumer Prices – Updated, media release, Paris, 7 March 2007.

¹⁴⁰ Australian Bureau of Statistics, *Australian System of National Accounts*, Canberra, 5204.0.

¹⁴¹ S. Burrell, 'PM's good luck covers average management', *Sydney Morning Herald*, 6 March 2007.



The two main quarterly sources of data on earnings are the average weekly earnings (AWE) survey,¹⁴² and the labour price index (LPI).¹⁴³ The AWE survey has been used for many decades (though until the 1970s it focused on male earnings). Its usefulness is limited by the fact that it is subject to compositional change. Measures such as average weekly earnings of 'all employees' can be heavily distorted by the changing mix of fulltime and part-time workers, or changing hours worked by part-time or fulltime workers, or changes in the industry composition of employment. Average weekly total earnings of fulltime workers (AWTE) is a better measure, controlling for the effects of shifting composition between part-time and fulltime work, but affected by changes in both overtime hours and overtime rates of pay. Average weekly ordinary-time earnings of fulltime adult employees (AWOTE) are the most commonly used measure of earnings from the AWE survey, because they avoid problems from the shifting compositions of fulltime and part-time workers and hours worked. However, they are still affected by shifting industry and occupational patterns of employment. To address this, the ABS introduced the LPI in 1997. It is a fixed-weight index (that is, it compares hourly wages in the same job in two successive quarters), and hence not subject to compositional changes. Both the LPI and AWOTE, however, include employees ranging from the lowest-paid cleaners to the highest-paid chief executives. WorkChoices is likely to have quite different effects on employees according to where they are in the labour market, and so both AWOTE and the LPI are inadequate for properly assessing the impact of WorkChoices because they do not distinguish between these classes of employee. These problems are only addressed in the EEH survey,¹⁴⁴ which unfortunately is only conducted once every two years.

A couple of other quarterly measures of employee compensation are available from the national accounts,¹⁴⁵ but these are even less adequate. Average compensation per employee is distorted by all forms of compositional change, and has the added disadvantage, for assessing WorkChoices, that it also encompasses such measures as directors' fees, termination payments and fringe benefits. It is thus artificially boosted even more by the rising benefits going to senior managerial employees and directors. It is also subject to frequent revision,¹⁴⁶ and over the last year it has been considerably more erratic than AWOTE or the LPI.¹⁴⁷ Although some have used this measure to claim high increases in real wages under WorkChoices,¹⁴⁸ this indicator is of no value for assessing the experience of ordinary employees when other measures are available. When assessed against AWOTE and the LPI (discussed below), it clearly overstates earnings growth. The other national accounts indicator is the index of real unit labour cost, which compares changes in the rewards to labour with changes in labour productivity. It is useful for that 'equity' purpose but does not explicitly reveal hourly earnings as such. So the preferred indicators for wages are the LPI and AWOTE.

¹⁴² Australian Bureau of Statistics, 6302.0.

¹⁴³ Australian Bureau of Statistics, 6345.0.

¹⁴⁴ Australian Bureau of Statistics, 6306.0.

¹⁴⁵ Australian Bureau of Statistics, *National Income, Expenditure and Product*, Canberra, 5206.0.

¹⁴⁶ For example, each of the last three quarterly national accounts publications have produced revised estimates for as far back as the December 2004 seasonally adjusted estimates for average compensation per employee.

¹⁴⁷ The standard deviation of movements in average compensation per employee in 2006 was approximately four times the standard deviations of movements in the LPI or AWOTE.

¹⁴⁸ eg J. Hockey in AAP, 'New figures show wages growth under WorkChoices: Hockey', 7 March 2007. argues the national accounts showed real wages had risen by 1.5 per cent under WorkChoices.

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'Real wages' (that is, the purchasing power of wages after allowing for price rises) are calculated by deflating the nominal estimates of earnings growth from AWOTE or the LPI by movements in the consumer price index (CPI).¹⁴⁹

Movements in real earnings as measured by AWOTE and the LPI since the creation of the LPI are shown in Chart 10.1. Over the 8.5 years from September quarter 1997 to March quarter 2006, the real value of hourly earnings in the labour price index grew by a total of 5.4 per cent. It then initially fell under WorkChoices but then recovered as petrol and banana prices fell, and by December 2006 had risen to be 0.6 per cent higher in real terms than in February 2006. This figure, however, was boosted by stronger earnings growth in the resource-boom-affected states of Queensland (1.0 per cent) and Western Australia (1.3 per cent). In Victoria, real earnings as measured by the LPI in December quarter 2006 were only 0.2 per cent higher than in February 2006.¹⁵⁰

The 'trend'¹⁵¹ measure of AWOTE, which grew by 15.7 per cent between August 1997 and February 2006, showed an even less positive pattern than the LPI after WorkChoices came into force. It, too, fell in real terms after the introduction of WorkChoices, but by November 2006 was still 0.1 per cent below the level immediately before WorkChoices took effect. Real AWOTE, which includes overtime earnings, fell by a greater amount (0.4 per cent) under WorkChoices.¹⁵² In Victoria, real trend AWOTE was noticeably lower, by 1.1 per cent, in December 2006 than in February 2006. Chart 10.2 shows real wages developments in Victoria under WorkChoices.

¹⁴⁹ Although some suggest that a different index, that excludes 'volatile items' should instead be used (P. Henty, Peetz and ACTU wrong on WorkChoices, ACCI Media release MR 013/07, Australian Chamber of Commerce and Industry, Melbourne, 2007.), workers as consumers still have to pay for these 'volatile' items (such as petrol) and in recent years the index excluding volatile items has consistently understated the main CPI – over the last four years by an average of 0.5 percentage points per year (Australian Bureau of Statistics, 6401.0.). Since December 2002, the main 'all groups' index has exceeded the 'excluding volatile items' index on 11 occasions; the latter index has been larger on only four occasions.

¹⁵⁰ Australian Bureau of Statistics, 6345.0; Australian Bureau of Statistics, 6401.0.

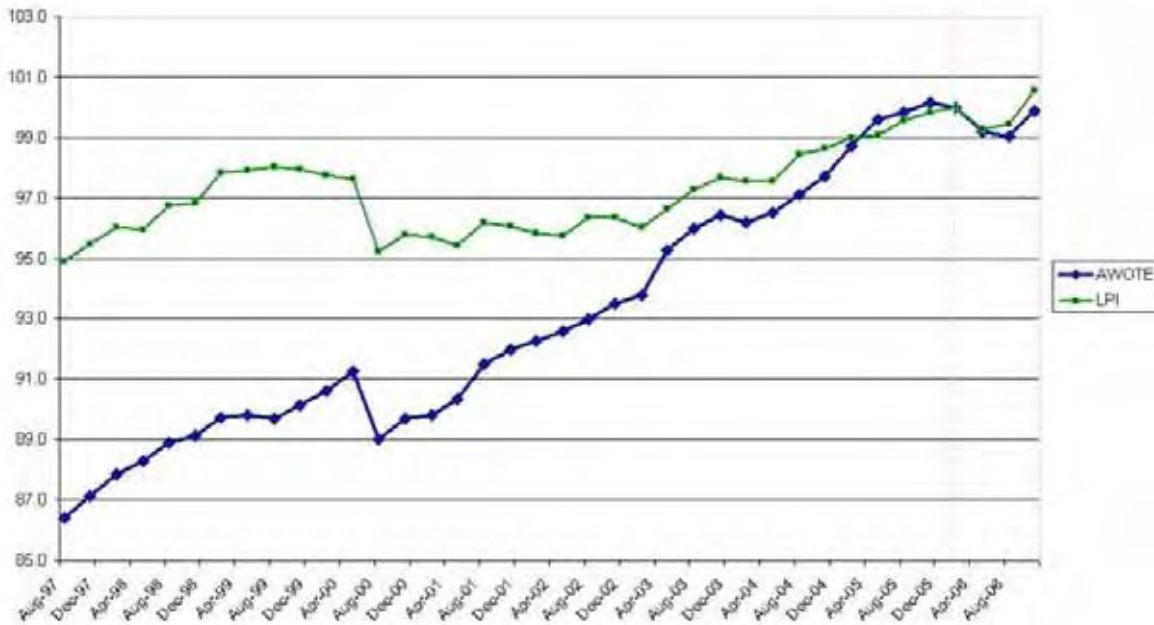
¹⁵¹ Where available, we use 'trend' estimates which are calculated by the ABS to identify underlying movements and are based on a formulaic smoothing of seasonally adjusted estimates. Recent trend estimates of the LPI series are not currently available.

¹⁵² Australian Bureau of Statistics, 6302.0; Australian Bureau of Statistics, 6401.0.

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Chart 10.1 Real wage indexes (AWOTE and Labour Price Index), Australia, 1997–2006



With still only a minority of employees under WorkChoices agreements, we would expect both AWOTE and AWTE to grow in real terms over coming months so that, through 2007, they should be at levels above those applying before WorkChoices took effect, at least at the national level.¹⁵³ Still, it is noteworthy that any reduction in aggregate real wages could have occurred in the tightest labour market in three decades. Normally, relatively tight labour markets are associated with strong growth in real wages. Even stagnation of real wages is unusual in such circumstances.

Historically, AWOTE has tended to grow faster than the LPI. The LPI gives us a better indication of what happens to the wages of people in the same jobs, while AWOTE tells us about all jobs, including those that are newly created and filled. Since 1999, compositional change in AWOTE has resulted from faster employment growth in higher wage industries and occupations, leading AWOTE to slightly exaggerate wages growth for individual employees.¹⁵⁴ We would generally give greater credence to the results from the LPI, because it controls for compositional change, but that does not explain the discrepancy between the LPI and AWOTE under WorkChoices, as AWOTE growth is now lower than that in the LPI. Since February 2006, employment growth has continued to favour industries with higher relative earnings, meaning that, other things being equal, AWOTE should have risen faster than the LPI under WorkChoices.

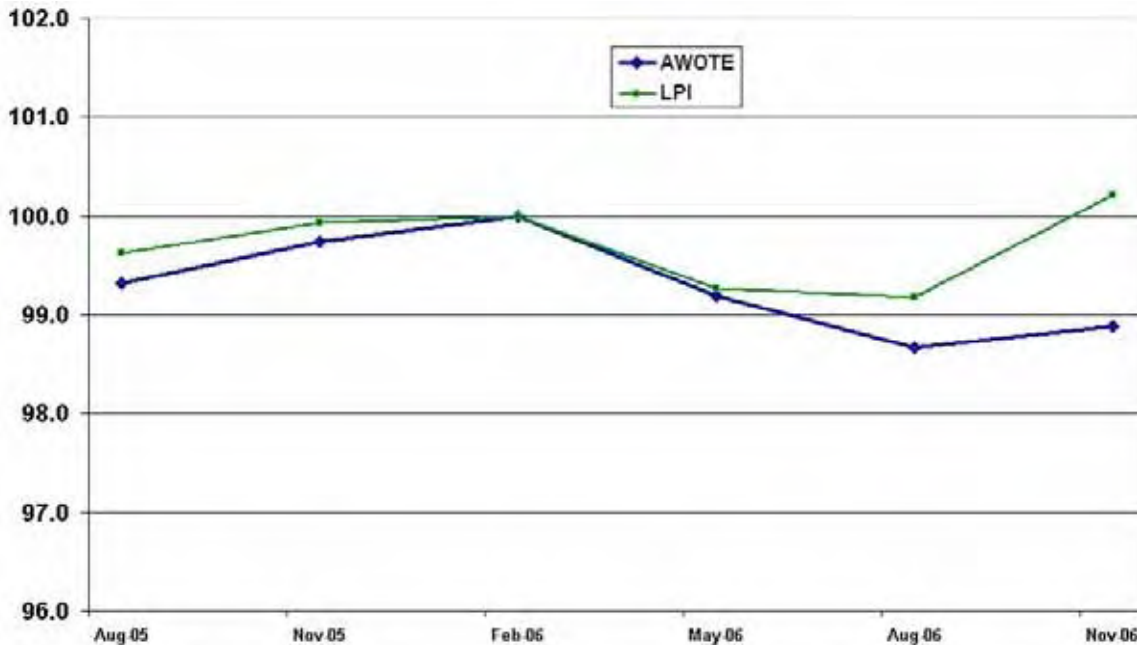
¹⁵³ The initial decline in real wages was seen as temporary and a resumption of real wages growth was anticipated by the author in previous comments, eg interviews on L. Burns, 'Drive', 774 ABC Melbourne, 13 February 2007; K. O'Toole, 'Hack', JJJ, 13 February 2007; Peetz, 'Brave new WorkChoices: What do we know so far?'

¹⁵⁴ The ABS does not publish the employment weights in the AWE survey. It is, however, possible to use employment weights from the labour force survey to get an idea of the direction of compositional change. Shift-share analysis indicates that, if earnings in each industry were held constant from February 1999 to February 2006, AWOTE would have grown by 0.6 per cent due to changing employment patterns revealed in the labour force survey. Calculated from Australian Bureau of Statistics, *Labour Force, Australia, Detailed, Quarterly* Canberra, 6291.0.55.003; Australian Bureau of Statistics, 6302.0.

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Chart 10.2 Real wage indexes (AWOTE and Labour Price Index), Victoria, 1997–2006



One possible explanation for this discrepancy is that the new job starters under WorkChoices are being offered lower wages than previously.¹⁵⁵ Unfortunately, the government does not publish data on wages for new and existing workers under WorkChoices AWAs to enable this to be properly tested. However, it is an explanation that is consistent with stories that have emerged about new employees under WorkChoices. For example, 22-year-old David Arancio lodged a complaint against a Victorian car rental company after he started work there while ‘being paid \$225 per week less and working 14 hours more than in his previous, similar job’.¹⁵⁶ National retailer Spotlight offered new employees AWAs that abolished the penalty rates, overtime rates, rest breaks, incentive-based payments and bonuses, annual leave loading and public holidays paid to existing employees in return for a 2 cent per hour wage increase – a drop in wages of an estimated \$90 per week.¹⁵⁷ It is technically illegal to apply duress to existing employees to sign an AWA that cuts pay and conditions, but there is no prohibition on requiring potential new employees to sign a similar AWA as a condition of employment – this is explicitly defined as not being ‘duress’.¹⁵⁸ As mentioned earlier, a number of employer greenfields ‘agreements’ appear to be based on relatively low pay or conditions. The offering of lower wages to new employees was also common in New Zealand after the *Employment Contracts Act 1991* (NZ) came into force. In the supermarket sector, for example, ‘the strongest fall in wages was for new workers.’¹⁵⁹

¹⁵⁵ This does not appear to be simply because more low-wage jobs are offered to low-wage workers when employment is growing strongly – on average, periods of higher employment growth are associated if anything with a slightly stronger upward compositional bias to AWOTE. For the period from August 1997 (start of the LPI), the correlation between quarterly employment growth and the quarterly bias in AWOTE as estimated in the preceding footnote, is a small 0.08.

¹⁵⁶ ‘Young people “losing fight” against IR laws’, *Australian*, 26 September 2006.

¹⁵⁷ Schubert, ‘Penalties, overtime, holiday pay worth 2¢ an hour’.

¹⁵⁸ *Workplace Relations Act 1996* (Cth) s 400.

¹⁵⁹ P. Conway, ‘An “unlucky generation”? The wages of supermarket workers post-ECA’, *Labour Market Bulletin* 1999.

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These aggregate figures disguise the impact that WorkChoices might have on different groups. Particularly in these early days, it is only through drilling down into the experiences of different groups that we can begin to get an indication of the effects of WorkChoices. As indicated, AWAs appear to have quite different effects on different groups of workers.¹⁶⁰

The first distinction to make is between the public and private sectors. Both the AWOTE and the LPI show the private sector to be generating earnings growth noticeably points less than the public sector. Thus in the public sector, where 93 per cent of employees are on collective agreements, real hourly earnings growth over the 9 months to December quarter was 0.9 per cent in the LPI and real AWOTE grew by 0.4 per cent. On the other hand, in the private sector, where only 24 per cent are on collective agreements and 39 per cent are on unregistered individual arrangements, real hourly earnings growth in the LPI was only 0.4 per cent and real AWOTE fell by 0.3 per cent. (Real private sector AWTE fell by 0.7 per cent in trend terms, which might reflect declining overtime rates, but might also reflect compositional factors.)¹⁶¹

Who is most disadvantaged?

Retailing and hospitality (accommodation, cafes and restaurants) are two industries where workers are likely to be especially vulnerable to the effects of WorkChoices. The industries are highly casual, reducing workers' bargaining power. They are the two lowest paying industries in terms of the levels of hourly or ordinary-time earnings. Chart 10.3 shows the difference between earnings growth in these two industries, and average earnings growth, in the labour price index. On average, according to the labour price index, since 1997 hourly earnings growth in these two industries has been 0.6 percentage points lower per year than earnings growth across all industries. Workers in both industries are reliant on penalty rates for night and weekend work, and these are susceptible to change under WorkChoices. The chart shows how relative earnings in these two industries have fallen, such that by December 2006, annual earnings growth in retail trade was 1.5 per cent below the national average, and in hospitality earnings growth was 2.0 per cent below the national average.¹⁶² This probably reflects the loss of penalty rates and other conditions of employment, though unfortunately the data to verify this are not published, and the long delay experienced by award-reliant workers in obtaining a minimum wage increase through the AFPC.

¹⁶⁰ Peetz, 'How well off?'; Peetz, *Brave New Workplace*.

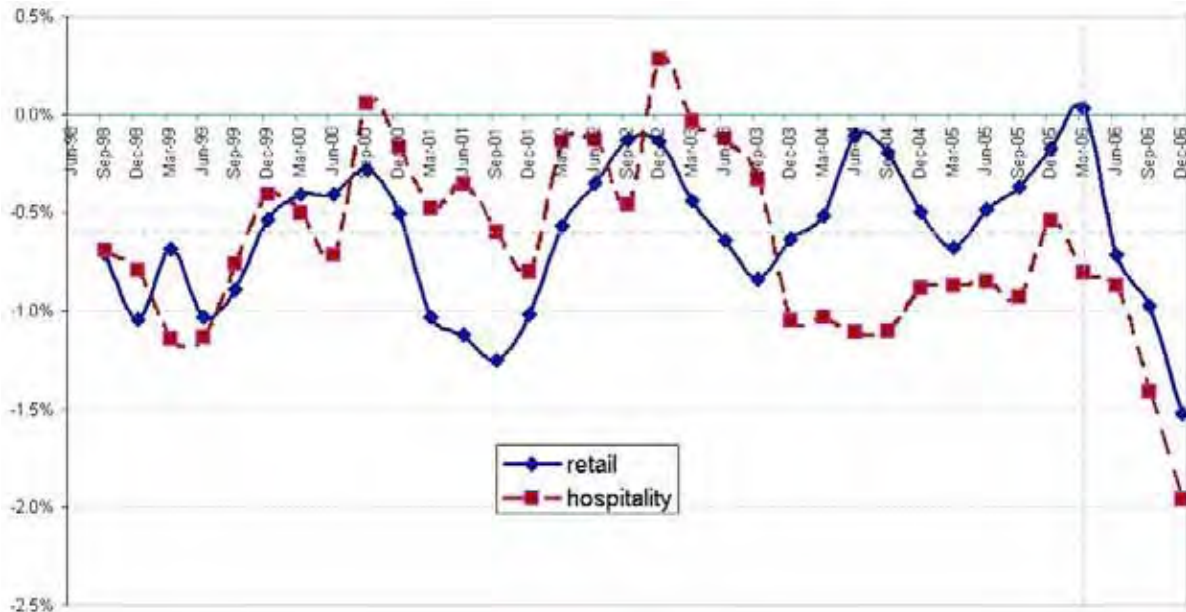
¹⁶¹ Australian Bureau of Statistics, 6302.0; Australian Bureau of Statistics, 6306.0; Australian Bureau of Statistics, 6345.0; Australian Bureau of Statistics, 6401.0.

¹⁶² Australian Bureau of Statistics, 6345.0.

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Chart 10.3: Relative wages growth (preceding 12 months), retail trade and hospitality, 1999–2006



Source: ABS Cat 6345.0.

Chart 10.4 shows how earnings patterns of industries have changed under WorkChoices, comparing earnings growth over the nine months February–November 2006 with the same period in 2005. Industries are ranked in order of the average level of AWOTE prevailing in that industry. Some industries with high rates of real earnings growth in 2005 experienced higher rates of growth in 2006 (probably also reflecting the faster employment growth of 2006), but industries with medium or low rates of real earnings growth in 2005, particularly those employing low-wage earners, experienced declines in real earnings growth in 2006. In the case of hospitality and retail trade, these translated into real declines in earnings. Over the nine months of WorkChoices, those industries experienced real wage declines of 0.7 per cent (retail) and 0.9 per cent (hospitality). This is consistent with the New Zealand experience, where the loss of penalty rates, and also changes in real hourly rates, meant that there were ‘significant falls in wages for supermarket checkout operators in the period after the introduction of ECA’.¹⁶³ We would hope that the delayed minimum wage decision of the AFPC, when it works its way into the figures for March and June quarters, would help offset some of this decline, though its impact will probably be bigger in hospitality (where award reliance is 57 per cent) than in retail (where it is 29 per cent).

¹⁶³ Conway, ‘An “unlucky generation”?’

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Chart 10.4: Change in real earnings by industry, 9 months to Nov 2005/2006, Australia



Source: ABS Cat 6345.0.

What have been the patterns for different occupations? The problems are most noticeable in the private sector. Chart 10.5 shows a similar analysis for different occupational groups in the private sector. The two lowest paying occupational groups, elementary clerical, sales and service workers, and labourers and related workers, experienced the worst outcomes, the latter experiencing virtual stagnation in real wages while the former experienced a real drop of 0.5 per cent.

This reinforces the impression from the industry data that it is lower paid employees who have, in relative and perhaps absolute terms, lost the most in the period since WorkChoices took effect.

The *Workplace Relations Act 1996* (Cth) as amended by WorkChoices defines several groups as being in disadvantaged bargaining positions. These are: women, people from a non-English speaking background, young people, apprentices, trainees and outworkers,¹⁶⁴ while another section of the Act implicitly adds mature-age persons to the list.¹⁶⁵ The next section discusses the experience of women, but unfortunately, there are no quantitative data available on the experiences of the other groups potentially disadvantaged in the labour market. There are numerous stories of young people being exploited under the new legislation.¹⁶⁶ As one respondent to the survey of members of the Australian Institute of Management (Victoria) put it:

Young people without qualifications will be the most affected. I have children working casual jobs as they study and they have already been adversely affected.¹⁶⁷

A sample of calls to the Victorian Government's WRIL illustrates the point with regard to young people and people with disabilities:

¹⁶⁴ *Workplace Relations Act 1996* (Cth) s 151.

¹⁶⁵ *Workplace Relations Act 1996* (Cth) s 844.

¹⁶⁶ eg Burke, 'Same work, \$40 less: take it or leave it'.

¹⁶⁷ Australian Institute of Management, *The New Workplace Relations System: June 2006 Survey Results*, p 12.

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Katie's 17 year son Matthew has started part time work as a casual kitchen hand. Matthew has been offered an AWA; the AWA just provides [VR2]for \$8 an hour and no penalty rates. Katie is concerned about the AWA and is not sure whether to sign off on it.

Danni – who is disabled – has been working for 3 years on a casual part time basis as a bar tender. The business has been taken over by new owners. The new employer had a meeting with staff and told them they were all sacked; and then told them they would all be re-employed provided they signed an AWA. [VR3]The AWAs were given out the next day – Danni received hers a few days later when she did her next shift. Danni had a meeting with 2 of the directors and she informed them that she wanted 2 changes made – in reference to penalty rates and breaks – they verbally agreed to make the changes. However, the next day she was given her back-pay and they informed her that this was her final pay-out. Danni believes she has been terminated. She only worked for the new employer for 3 weeks.¹⁶⁸

Chart 10.5: Change in real earnings by occupation, 9 months to Nov 2005/2006, private sector, Australia



¹⁶⁸ Workplace Rights Advocate, WRIL Case Study Summaries: 27/10/06 to 01/11/06.

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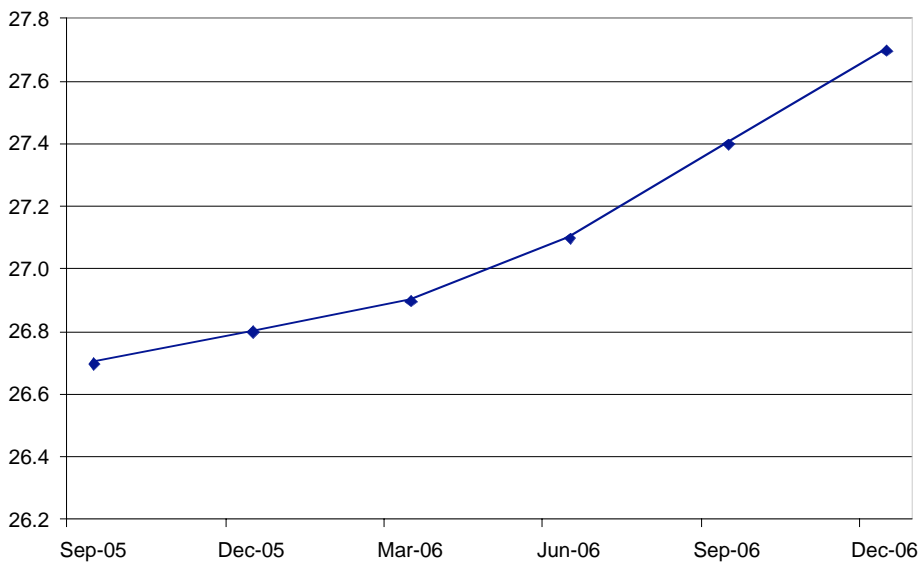


Wages and profit shares

The wages share of national income was, in trend terms, 53.7 per cent in December quarter 2006, a mere 0.1 percentage points above the 35-year low recorded in March quarter.

The profit share, by contrast, has never been stronger. The 27.7 per cent recorded in December quarter 2006 (chart 10.6) was an all-time high, 0.8 points above the pre-WorkChoices record achieved in March quarter 2006 and over 6 points (that is, nearly 30 per cent) higher than its average over the past 35 years.

Chart 10.6 Profit share of total factor income (trend)



Source: ABS 5206.0.

In seasonally adjusted terms, the wages share of 53.8 per cent was up marginally from 53.5 per cent in March quarter, which had in turn been just 0.1 points above a 35-year low. The profit share, at 27.7 per cent in December quarter 2006 (seasonally adjusted), was 0.7 points above the pre-WorkChoices all-time high of 27 per cent recorded in March quarter.¹⁶⁹

In the non-farm sector, trend real unit labour costs (RULC) fell by 1.0 per cent between March and December 2006.¹⁷⁰ This indicates that the value of real wages fell relative to the level of productivity (despite the poor productivity performance over the period, as discussed in section 13). The gap created is available to be redistributed to profits. Taking account of the profits generated by employees, according to one business economist, 'the relative price of an extra person is cheaper than we've ever recorded'.¹⁷¹

¹⁶⁹ Australian Bureau of Statistics, 5206.0.

¹⁷⁰ Ibid.

¹⁷¹ C. Richardson quoted in J. Garnaut, N. O'Malley and S. Peatling, 'Up for grabs: One workforce, bargain price', *Sydney Morning Herald*, 23 October 2006.

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As with profits, executive remuneration is growing substantially, and not always transparently. In November 2006 a business journalist reported that

‘there are effectively two sets of books when it comes to CEOs’ pay: what the annual report pay total says and what CEOs actually receive. And research from proxy voting group Institutional Shareholder Services has found the annual report estimates of options payments regularly understates the actual gain received by CEOs by 23 per cent on average.’¹⁷²

In February 2007 he noted

‘*The Australian Financial Review*’s annual executive salaries survey released in November shows the average salary for chief executives in the top Australian companies has risen to \$2.1 million, reflecting increases of 12 per cent, 16 per cent and 29 per cent over the past three years. At the same time average annual earnings have risen to \$57,000, on latest available figures, up 3 per cent, 6 per cent and 4 per cent over the three years.’¹⁷³

Yet analysis of the performance of large companies found that ‘chief executive officers with pay toward the low end of the scale were the best performers, while some of the biggest earners had lack-lustre^[VR4] or even negative returns.’¹⁷⁴ This is consistent with academic research showing no positive link between CEO pay and performance.¹⁷⁵ That is, there is no economic rationale for the widening gap between worker pay and CEO pay.

There appears, then, to be a growing inequality between the owners of capital and labour.


To summarise, managers and employers, as well as employees, believed that wages would be negatively affected by WorkChoices. The limited coverage of WorkChoices agreements to date suggests that any impact of WorkChoices on aggregate real wages will be limited so far. The direction of aggregate real wages under WorkChoices is unclear, with contradictory signals from the two main series, though neither suggests that real wages have achieved their long term growth rate, let alone the higher growth rate that would be expected in a relatively tight labour market. As inflation falls in the context of petrol and fruit prices, the outlook for real wages should improve in aggregate, but it appears that there are some groups who, even at this early stage, are being disadvantaged under the new arrangements. Low paid workers in labouring or elementary service occupations, and particularly those working in retail trade and hospitality, experienced declining relative wages, and stagnant or declining real wages in the first nine months of WorkChoices. This was most likely due to the loss of penalty rates in those industries and the delays in obtaining minimum wage increases under WorkChoices. As time passes, we can expect the effects on aggregate wages to become more noticeable as an increasing number of people in weak labour market positions are put onto WorkChoices agreements, particularly AWAs and non-union

¹⁷² S. Washington, ‘Tell the truth about CEO pay’, *Sydney Morning Herald*, 13 November 2006.

¹⁷³ S. Washington, ‘Corporate fat-cats keep getting richer’, *Sydney Morning Herald*, 26 February 2007.

¹⁷⁴ A. Trounson, ‘Big pay doesn’t buy best CEO’, *Australian*, 6 January 2007.

¹⁷⁵ A. Capezio, J. Shields and M. O’Donnell, ‘CEO pay-performance sensitivity in Australian listed companies, 1999 to 2005’, *Diverging employment relations patterns in Australia and New Zealand? 21st AIRAANZ conference*, Association of Industrial Relations Academics of Australia and New Zealand, Auckland, February 2007; J. Shields, M. O’Donnell and J. O’Brien, ‘The bucks stop here: Executive pay and company performance’, *New Economies: New Industrial Relations, Proceedings of the 18th AIRAANZ conference*, Association of Industrial Relations Academics of Australia and New Zealand, 1 (refereed), Noosa, Qld, February 2004, pp 490–9.

The image at the top of the page is a collage. On the left, there are several overlapping newspaper job advertisements with various text fragments like 'Executive', 'ASST', 'local real estate', and '\$13+/hr.'. On the right, there is a line of black silhouettes representing people of different heights, arranged in a perspective that recedes into the distance.

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agreements. At the same time, executive salaries have ballooned and the profit share of national income has reached a new record high, extending a trend established under the earlier *Workplace Relations Act 1996* (Cth).

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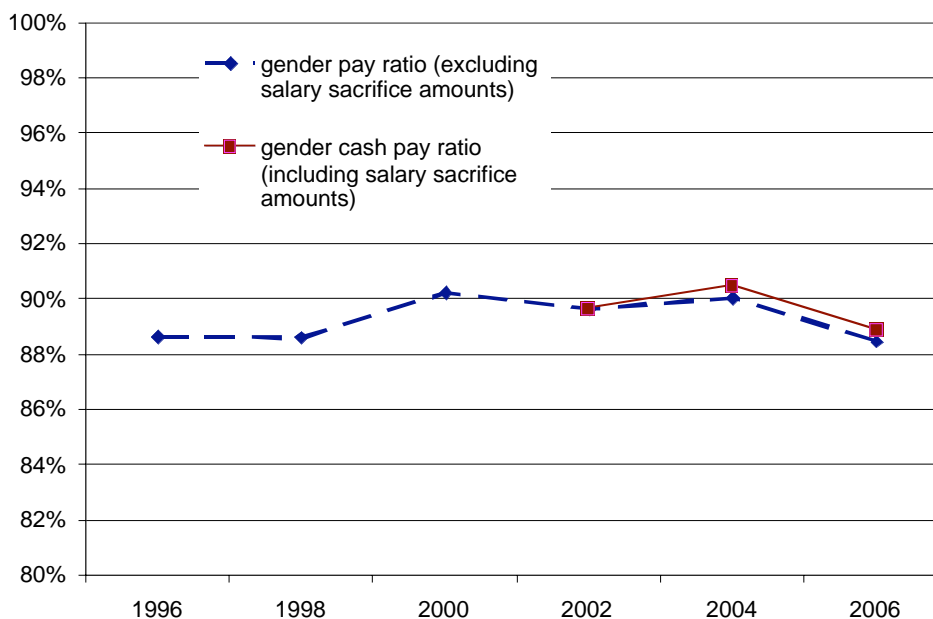


11 WOMEN AND THE GENDER PAY GAP

There are two main sources of information on gender earnings ratios.¹⁷⁶ The first source of data on gender earnings patterns is the Employee Earnings and Hours (EEH) survey. This is the most thorough measure of earnings, enabling us to look specifically at non-managerial employees, but is conducted only once every two years. In May 2004, average hourly earnings for female non-managerial employees (including amounts salary sacrificed) were 90.5 per cent of their male equivalents. By May 2006, this fell to 88.9 per cent.¹⁷⁷

Prior to 2002, the ABS only published EEH data that excluded amounts salary sacrificed. On this measure, in May 1996, the gender pay ratio for non-managerial employees was 88.7 per cent. It rose to 90.0 per cent by 2004, but fell back to 88.5 per cent by 2006. Thus, according to the EEH survey, all of the gains in reducing the gender pay gap between 1996 and 2004 were wiped out by 2006 (Chart 11.1).¹⁷⁸

Chart 11.1 Gender pay ratios 1996–2006



Source: ABS 6306.0.

The EEH survey also shows the gap between female and male earnings for different methods of setting pay. As discussed in section 8, the hourly earnings gender pay ratio is the most adverse for women on registered individual agreements, at just 81 per cent (that is, the gap between male and

¹⁷⁶ The Labour Price index, being based on jobs, has no gender data.

¹⁷⁷ Australian Bureau of Statistics, 6306.0. In terms of weekly earnings, the gender pay ratio fell by 2.0 percentage points (from 70.9 per cent to 68.9 per cent), but as this figure is affected by compositional change between fulltime and part-time work, it is a less reliable indicator than the hourly figure.

¹⁷⁸ Ibid. In terms of weekly earnings, the gender pay ratio fell by 2.0 percentage points (from 70.9 per cent to 68.9 per cent), but as this figure is affected by compositional change between fulltime and part-time work, it is a less reliable indicator than the hourly figure.



female pay is 19 per cent). By comparison the hourly gender pay ratio for registered collective agreements is 90 per cent, and for awards 103 per cent.¹⁷⁹

The second source is the average weekly earnings (AWE) series. It has the advantage of being conducted quarterly, but lacks the depth of the EEH survey. The AWE survey shows women doing as well as men, at least in terms of increases in average weekly ordinary time earnings for fulltime adult employees (AWOTE), in the public sector. In trend terms, the gender pay ratio (the female/male wages ratio for AWOTE) in the public sector has been relatively stable for over a decade. It was 87.1 per cent in trend terms in February 1996, reached a peak of 88.5 per cent in May 1999, then fell gradually back to 87.1 per cent by February 2006.¹⁸⁰ After nine months of WorkChoices it had almost maintained that level, at 87.0 per cent. Overall, real AWOTE in the public sector grew by 0.4 per cent for females between February and December 2006 – the same growth rate as achieved by men.

It is a different story in the private sector. There, the gender pay ratio, which in trend terms had slowly risen from 79.6 per cent in February 1996 to 81.3 per cent by February 2006, fell sharply to 80.1 per cent by November 2006.¹⁸¹ That is, 70 per cent of the gains achieved over ten years had been wiped off in nine months.

Overall, nominal female AWOTE rose by just 1.5 per cent real in trend terms over the nine months to November 2006, compared to 2.6 per cent growth for men.

After accounting for inflation, real female AWOTE in the private sector fell by 1.0 per cent in the nine months to November 2006, whereas real male AWOTE there fell by just 0.2 per cent (and could be expected to improve in the near future).

A 0.6 percentage point fall in the gender ratio in trend AWOTE between May 2004 and May 2006 was smaller than, though in the same direction as, the 1.6 point fall in the ratio shown in the EEH survey, between the same two months.¹⁸²

Why have the outcomes for women been so poor in the private sector? One reason relates to the relationship between sector and methods of pay setting. The vast majority (89.8 per cent) of women in the public sector are covered by collective agreements,¹⁸³ which help maintain parity between men and women. In the private sector, however, only 22 per cent of women are covered by collective agreements. One in three private sector women (compared to one in six private sector men) are wholly reliant on awards,¹⁸⁴ and it is people on awards who are most vulnerable to cuts in pay and conditions. Most people who are on collective agreements will have the collective bargaining power to resist reductions in pay and conditions. Many of those who are on over-award payments ('unregistered individual arrangements' to the ABS), will already be in a market or negotiating position to avoid such cuts; that they are receiving above the minimum is an indication of this, at least for the present. However, people who are entirely award-reliant tend to be people without individual market bargaining power (otherwise they would be receiving over-award

¹⁷⁹ Ibid.

¹⁸⁰ Australian Bureau of Statistics, 6302.0.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Australian Bureau of Statistics, 6306.0.

¹⁸⁴ Ibid.



payments), and the effective removal of the floor of protection provided by the totality of award conditions, as a result of the abolition of the no-disadvantage test, makes these people vulnerable to cuts in pay and conditions through AWAs or other non-union agreements. Those who remain on awards have been affected by the delays in the AFPC minimum wage decision and the fact that, for the majority of award-dependent employees, the decision represents an average real wage cut of nearly 1 per cent.¹⁸⁵ These people are predominantly women.

One significant factor is probably that women are disproportionately employed in retailing and hospitality – 54 per cent of employees in retail trade, and 58 per cent of employees in accommodation, cafes and restaurants, are female. Overall 25 per cent of female employees, including 45 per cent of female casual employees, work in these two industries.¹⁸⁶ These are industries where, as already discussed, real wages have fallen, probably as a result of the delays in obtaining minimum wage increases and of the loss of penalty rates. The Victorian Workplace Industrial Relations survey, undertaken in mid 2006, provides some hints in support of the latter, showing that female dominated workplaces were less likely than other workplaces to pay for overtime and weekend penalties.¹⁸⁷

Retail trade is also an industry where the gender pay ratio appears to have fallen, probably for the same reason. Although industry level data in the AWE survey need to be treated cautiously, they show that in retail, the average gender pay ratio over the three quarters of WorkChoices (May to November 2006), at 87.4 per cent, was 3.0 per cent below the figure for the corresponding three quarters in 2005 (90.4 per cent).¹⁸⁸ The largest single industry employing women, health and community services (which accounts for 18.5 per cent of female jobs),¹⁸⁹ experienced an even larger drop in the gender pay ratio: from 74.8 per cent in May to November 2005, to 68.9 per cent in May to November 2006, a drop of 6 percentage points.

Combining the public and private sectors, for women as a whole the gender pay ratio had risen from 82.9 per cent to 84.6 per cent in trend terms between February 1996 and February 2006, but in the nine months to November 2006 some 55 per cent of these gains were lost, with the ratio falling back to 83.6 per cent.¹⁹⁰ The drop would have been more severe were it not for women being over 50 per cent more likely to work in the public sector than men – some 23 per cent of women, compared to 15 per cent of men, work in the public sector.¹⁹¹ On average, real AWOTE fell by 0.8 per cent for women between February and November 2006, but rose by 0.3 per cent for men.

The pattern was even sharper in Victoria. In trend terms, the gender pay ratio gradually rose from 84.3 per cent in February 1996 to 85.8 per cent in February 2006. Nine months later it had fallen back to 84.4 per cent, losing in nine months 94 per cent of the gains that had been made over the preceding decade.¹⁹² The real ordinary-time earnings of Victorian women fell

¹⁸⁵ Workplace Express, 'Harper downplays impact of minimum wage rise, looks for jobs growth'.

¹⁸⁶ Australian Bureau of Statistics, 6310.0.

¹⁸⁷ Industrial Relations Victoria, *Women in the Victorian Workplace: Findings from Victorian Workplace Industrial Relations Survey 2006*, Department of Innovation, Industry and Regional Development, Melbourne, 2007.

¹⁸⁸ Australian Bureau of Statistics, 6302.0. The ratio also fell by 2 percentage points in hospitality but the fall there was not large enough to be statistically significant. Data are averaged over three quarters to reduce sampling error.

¹⁸⁹ Australian Bureau of Statistics, 6310.0.

¹⁹⁰ Australian Bureau of Statistics, 6302.0.

¹⁹¹ Australian Bureau of Statistics, 6310.0.

¹⁹² Australian Bureau of Statistics, 6302.0.

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by 1.8 per cent between February and November 2006, compared to a fall of just 0.1 per cent for men.

Table 11.1 Gender pay ratios, trend ordinary time earnings for fulltime adult employees, states and Australia, 1996–2006

	February 1996	February 2006	November 2006	Change February–November 2006
Victoria	84.3	85.8	84.4	- 1.4
New South Wales	82.0	84.7	84.0	- 0.7
Queensland	84.7	85.4	84.5	- 0.9
Western Australia	76.8	74.7	74.1	- 0.6
South Australia	84.0	89.9	87.8	- 2.1
Tasmania	85.8	86.6	87.2	+ 0.6
Australia – total	82.9	84.6	83.6	- 0.9
Australia – public sector	87.1	87.1	87.0	- 0.1
Australia – private sector	79.6	81.3	80.1	- 1.2

Source: ABS Cat No 6302.0.

It has been argued that the World Economic Forum's global gender gap report for 2006 refers to Australia as a leader in closing the gap between men's and women's earnings.¹⁹³ It is important to note that the report said that Australia had been a leader in closing the overall gender gap, a much wider concept in which, it noted, Australia's good performance was driven by its record in educating women. More significantly, almost all the data sources on which the Forum relied were from 2005, before WorkChoices came into law. Only one economic index had data from 2006 – 'wage equality between women and men for similar work' (based on the results of a survey of executives). On this measure Australia ranked 45th.¹⁹⁴

Over the longer term, the institutional arrangements in WorkChoices appear unlikely to sustainably reverse these setbacks for equal pay. The main state institutions that historically have promoted the move towards equal pay in Australia have been the independent industrial tribunals, through hearing of equal pay cases, pay equity cases and other test cases. These tribunals have had their powers to make test case decisions effectively removed.

¹⁹³ J Hockey in Australian Broadcasting Corporation, 'Hockey rejects research claiming decrease in women's wages', *PM*, ABC Radio, 14 February 2007.

¹⁹⁴ R. Hausmann, L. D. Tyson and S. Zahidi, *The Global Gender Gap Report 2006*, World Economic Forum, Geneva, 2006.



12 EMPLOYMENT

WorkChoices was to deliver substantial employment growth through the partial abolition of the 'job destroying' unfair dismissal laws. A useful reference point to assess the job creation effect of WorkChoices, then, is to compare employment growth in the period since WorkChoices was introduced with employment growth in the equivalent period after the unfair dismissal laws were introduced at the end of March 1994. The comparison is shown in Chart 12.1. In trend terms (panel 1), over the eleven months from March 2006 to February 2007, employment grew by 264,300 or 2.6 per cent. But over the same eight months after the unfair dismissal laws were introduced in 1994, employment grew by 305,700 or 3.9 per cent. In seasonally adjusted terms (not shown), employment growth of 2.6 per cent under WorkChoices was noticeably weaker than the 4.1 per cent growth after the unfair dismissal laws were introduced.¹⁹⁵ The implication is not that the unfair dismissal laws were more effective job creators than the law that abolished them; rather, the implication is that the strong growth of employment in 2006, in aggregate at least, is unrelated to the abolition of the unfair dismissal laws, and instead reflects other factors.

Certainly, trend employment growth of 2.6 per cent over the 11 months to February 2007 was above the average over similar periods since 1993–94 (2.0 per cent), but there were several comparable periods that achieved higher growth rates, including the 11 months to February 2005 (3.0 per cent), 2003 (2.8 per cent) and 1995 (3.9 per cent), and broadly comparable rates achieved in the 11 months to February 1994 (2.4 per cent) and 2000 (2.2 per cent). Employment in February 2007 was at a record level, with 'more Australians...now in work than ever before',¹⁹⁶ but this is not unusual in a growing population; it was the 260th occasion in the last 348 labour force surveys over 29 years that employment has broken the previous record.

How did male and female employment growth fare in the initial WorkChoices and unfair dismissal periods? Panel 2 of Chart 12.1 shows this, using trend data (as do the other charts here). For both males and females, employment growth was considerably stronger in the initial unfair dismissal laws (UDL) period than in the initial WorkChoices period. Male employment grew by 2.8 per cent in the initial 11 months of WorkChoices, but 3.6 per cent in the initial 11 months of the unfair dismissal laws. Female employment grew by 2.4 per cent in the initial 11 months of WorkChoices, but a considerably greater 4.3 per cent in the initial 11 months of the unfair dismissal laws.

For Victoria (Chart 12.2) the picture is broadly similar. Total employment grew by 2.2 per cent under the first 11 months of WorkChoices, but by 3.8 per cent in the initial 11 months of the unfair dismissal laws. Male employment grew by 2.4 per cent in the initial WorkChoices period, less than 4.0 per cent in the initial unfair dismissal period. Female employment grew by 1.9 per cent in the initial WorkChoices period, little more than half of the growth of 3.6 per cent in the initial unfair dismissal period.

In short, the recent employment growth, while strong, appears to owe more to underlying demand in the economy – driven in no small part by the strength of the global economy and the associated resources boom – than to the introduction of WorkChoices.

¹⁹⁵ Australian Bureau of Statistics, 6202.0.

¹⁹⁶ J. Hockey, Employment numbers at record high, media release, Department of Employment and Workplace Relations, Canberra, 15 March, 2007.

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An argument has been made that it is illegitimate to compare employment growth in the two periods immediately after the introduction, and partial repeal, of the unfair dismissal laws – even though this forms what might be called a ‘natural experiment’ – because the economy was at different stages of the business cycle at the two points in time: ‘jobs growth in 1994 came when the economy was coming out of recession’ whereas in 2006 ‘labour is short’.¹⁹⁷ The implication of the comparison is that there was a large and willing supply of labour, eager for jobs, in 1994; whereas in 2006, with the labour market so tight and labour supply not able to match demand, it is much more difficult for employers to obtain labour than in 1994. Thus the number of jobs created is less than the number that could be created if labour supply was sufficient to enable employers to fill all their vacancies.

Yet nationally, labour supply – the labour force – grew by quite similar amounts in the two periods – 2.1 per cent in the first 11 months of WorkChoices, compared to 2.2 per cent in the first 11 months of the unfair dismissal laws.¹⁹⁸ The similarity in growth rates is principally because of faster growth in the working age population in the later period.¹⁹⁹ True, there are likely to be differences in the quality of labour available in 1994 and in 2006; it may be the case that there has been a greater growth in unfilled vacancies in the WorkChoices period. We can gain some idea of how much labour supply problems are understating the magnitude of the gains under WorkChoices by comparing growth in unfilled vacancies in the period, and adding growth in unfilled vacancies to employment growth, to gain a measure of ‘potential employment’ growth.

Between February and November 2006 (the latest quarter for which data are available), the number of unfilled vacancies grew by 18,600. By contrast, between February and November 2004, the number of unfilled vacancies grew by 23,100.²⁰⁰ Thus over the first three quarters of the WorkChoices period, ‘potential employment’ grew by 256,600 or 2.5 per cent whereas in the first three quarters of the unfair dismissal laws, ‘potential employment’ grew by 250,400 or 3.2 per cent. In short, the different labour market contexts of 1994 and 2006 are not enough to explain the lower employment growth rate in the initial WorkChoices period than in the initial unfair dismissal laws period.

¹⁹⁷ ACCI, Peetz and ACTU wrong on WorkChoices, media release MR 013/07, Australian Chamber of Commerce and Industry, Melbourne, 13 February, 2007; Editorial, ‘A good place, badly painted’, *Australian Financial Review*, 15 February 2007.

¹⁹⁸ Australian Bureau of Statistics, *Labour Force, Australia, Spreadsheets*, Canberra, 6202.0.55.001.

¹⁹⁹ In both periods, the labour participation rate grew as well, and by a faster amount in the UDL period than in the WC period. But this faster growth in the participation rate in the UDL period was almost offset by the faster growth in the civilian working-age population in the WC period. *Ibid.*

²⁰⁰ Australian Bureau of Statistics, *Job Vacancies, Australia*, Canberra, 6354.0.

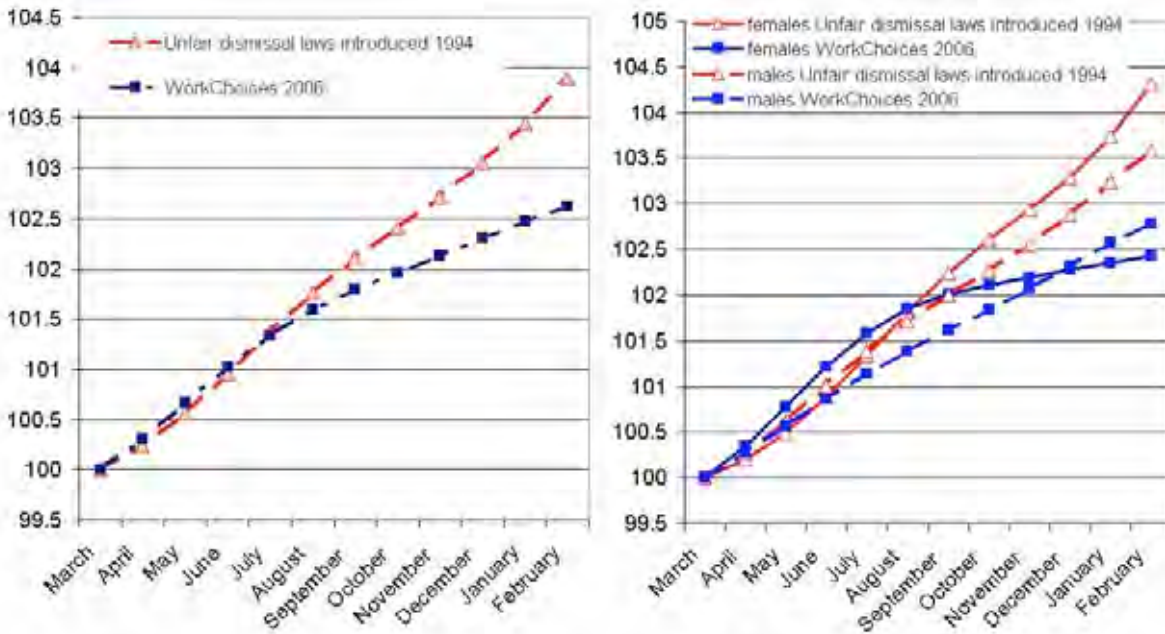
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Chart 12.1: Employment growth over 11 months from March 1994 (introduction of unfair dismissal laws) and from March 2006 (partial abolition of unfair dismissal laws), Australia

Panel 1 – overall

Panel 2 – gender

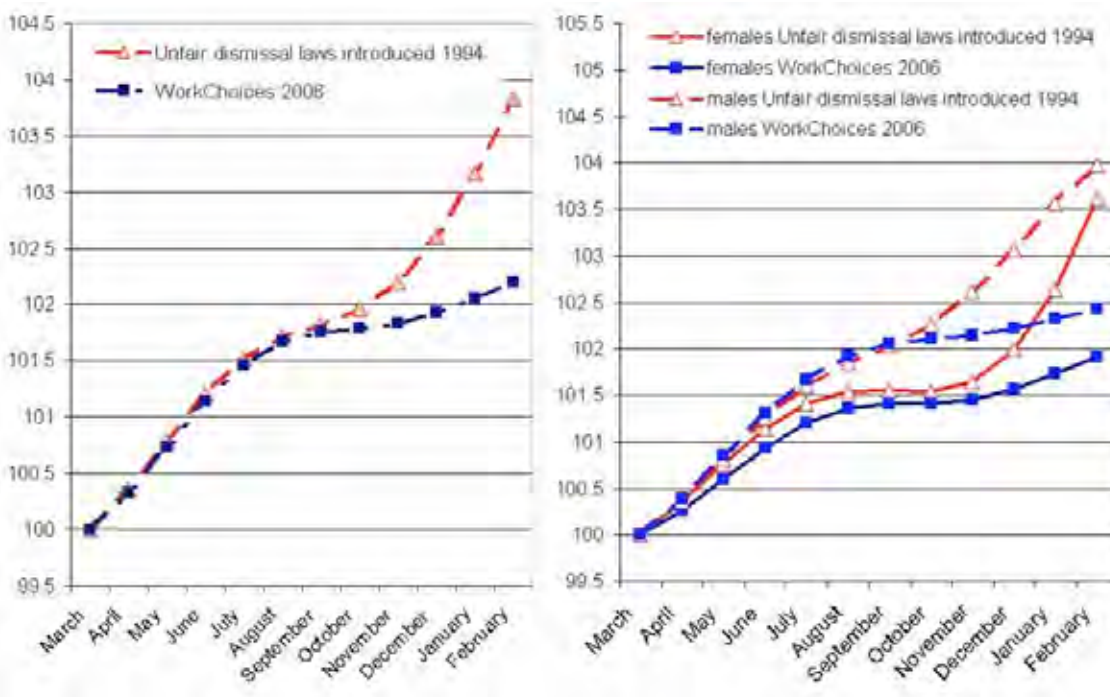


Note: Index, March = 100. Source: ABS Cat No 6202.0.55.001.

Chart 12.2: Employment growth over 11 months from March 1994 (introduction of unfair dismissal laws) and from March 2006 (partial abolition of unfair dismissal laws), Victoria

Panel 1 – overall

Panel 2 – gender



Note: Index, March = 100. Source: ABS Cat No 6202.0.55.001.

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Another issue of interest is the extent to which employment growth has been in fulltime and part-time jobs. Chart 12.3 compares, for men (panel 1) and women (panel 2), fulltime and part-time employment growth in the initial WorkChoices period and the initial unfair dismissal period at the national level. Amongst men, fulltime employment grew by less in the initial WorkChoices period (2.3 per cent) than in the initial unfair dismissal period (3.0 per cent), and the same pattern also arose for part-time jobs (5.4 per cent compared to 8.5 per cent).

For females, the situation was different, however. While part-time employment grew by much less under WorkChoices (0.9 per cent) than in the unfair dismissal period (6.2 per cent), fulltime female employment actually grew by more in the first 11 months of WorkChoices (3.7 per cent) than in the first 11 months of the unfair dismissal period (3.0 per cent).

Combining men and women, the growth rates for fulltime employment in the two periods were nearly the same – 2.8 per cent in the initial WorkChoices period, 3.0 per cent in the initial unfair dismissal laws period. But a much higher rate of growth in part-time employment was achieved in the initial unfair dismissal laws (UDL) period (6.8 per cent) than in the initial WorkChoices period (2.2 per cent). Given that growth in fulltime employment is similar between the periods, then the growth of 'fulltime equivalent jobs', however calculated, must have been greater in the initial unfair dismissal period than in the initial WorkChoices period.

This raises an interesting question as to why the WorkChoices period should have performed credibly well on fulltime employment (more so for women than for men), but relatively poorly on part-time employment. We can test possible demand and supply side explanations. A possible demand-side explanation is that WorkChoices has in some way made it more attractive to hire fulltime workers than part-time workers. A possible supply side explanation is that, compared to the earlier period, fewer workers (particularly women) are offering themselves for part-time work, and more are offering themselves for fulltime work.

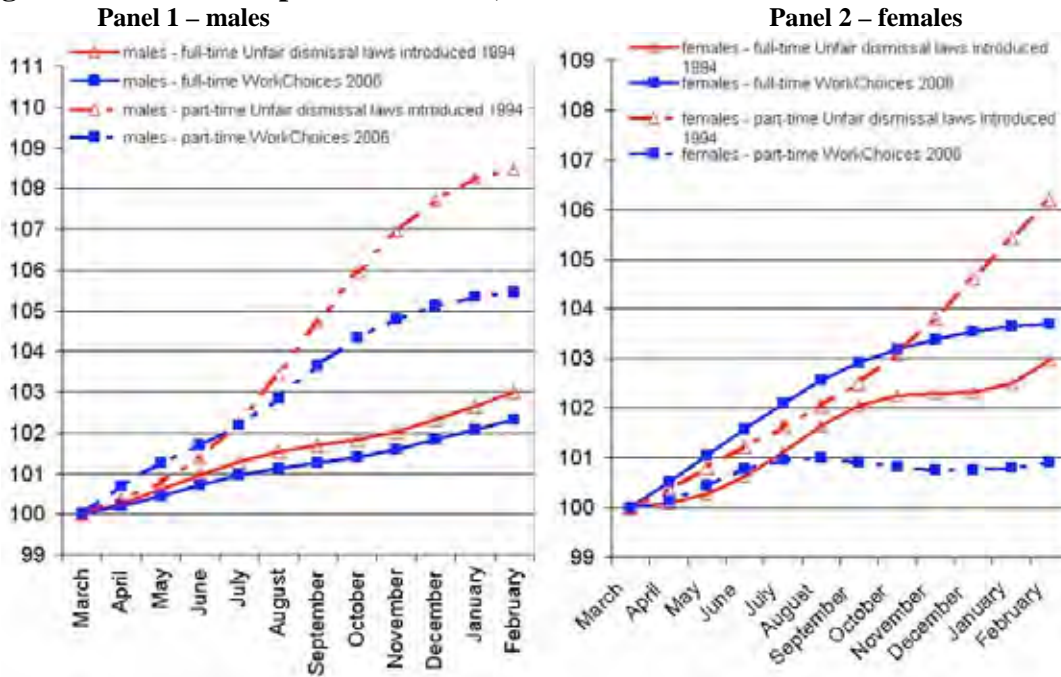
These explanations can be tested by looking at the unemployment rates for people looking for fulltime and part-time work. If the demand side explanation holds, then the unemployment rate amongst people looking for fulltime work will fall by more in the WorkChoices period than in the UDL period, while the unemployment rate for people looking for part-time work will have fallen by more in the UDL period than in the WorkChoices period. If the supply side explanation holds, then the reverse will be the case: the unemployment rate for people looking for fulltime work will have fallen by less in the WorkChoices period than in the UDL period, while the unemployment rate for people looking for part-time work will have fallen by more in the WorkChoices period than in the UDL period.

Panel 2 of Chart 12.4 shows the data. They support the supply-side explanation. Despite similarly strong growth in employment, unemployment amongst people looking for fulltime work fell by only 7.6 per cent in the initial WorkChoices period, only half the fall of 15.6 per cent in fulltime unemployment achieved in the initial UDL period. On the other hand, unemployment amongst people looking for part-time work fell by 10.3 per cent in the initial WorkChoices period, whereas it actually rose by 5.8 per cent in the initial UDL period. In other words, the concentration of employment growth in fulltime work during the initial WorkChoices period is a result of supply-side factors – the vast majority of employees who are offering themselves for work are wanting fulltime work and are not available for part-time work, so employers are having to offer fulltime jobs in order to fill positions.

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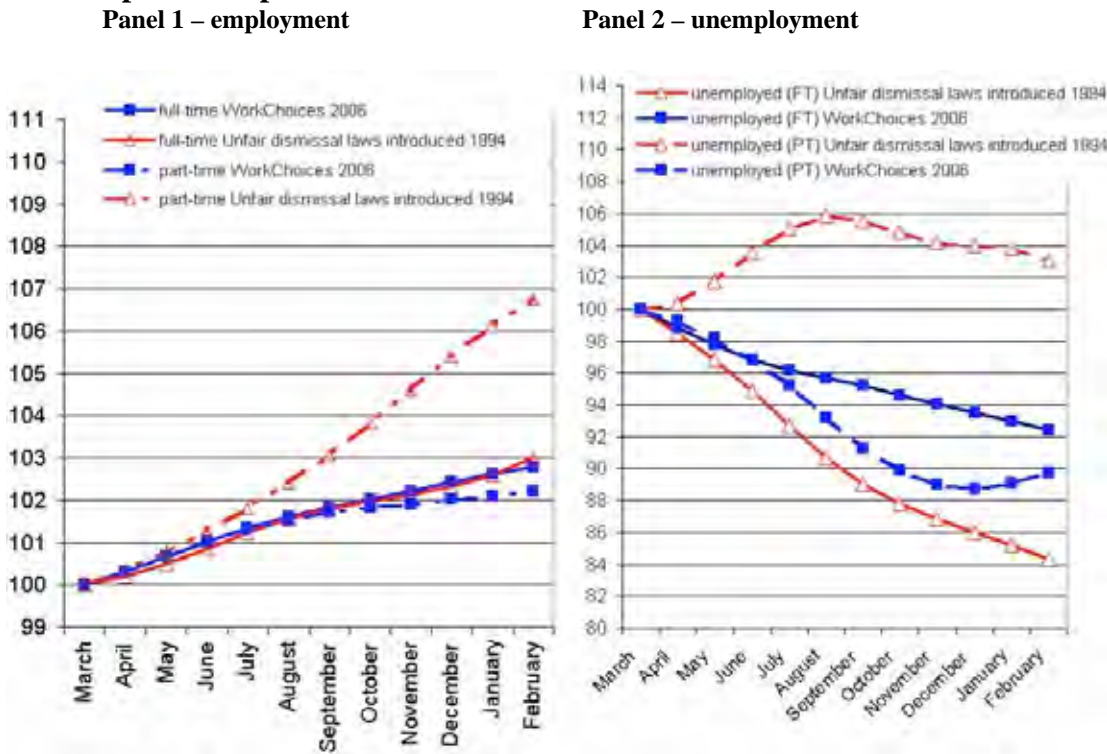


Chart 12.3: Employment growth over 11 months from March 1994 and March 2006, by gender and fulltime/part-time hours, Australia



Note: Index, March = 100. Source: ABS Cat No 6202.0.55.001.

Chart 12.4: Employment growth by fulltime/part-time hours and unemployment by fulltime/part-time preferences over 11 months from March 1994 and March 2006, Australia



Note: Index, March = 100. Source: ABS Cat No 6202.0.55.001.



This can also be seen in the patterns of labour supply growth. The fulltime labour supply (labour force) grew by 0.9 per cent in the initial UDL period, but 2.3 per cent in the initial WorkChoices period. The part-time labour supply grew by 6.5 per cent in the initial UDL period, but by just 1.5 per cent in the initial WorkChoices period. Amongst women, the growth in the supply of part-time labour dropped from 5.9 per cent (UDL) to just 0.7 per cent (WorkChoices), whereas the growth in the supply of fulltime labour grew from 1.0 per cent (UDL) to 3.4 per cent (WorkChoices).²⁰¹ The directions of change were comparable for men and women.²⁰² This shift in the composition of labour supply for both men and women probably reflects increasing financial pressures on households, and the growing need for families to have two fulltime wage earners. It does not appear likely to be directly related to WorkChoices.

Another dimension to this issue is the relationship between WorkChoices and casual employment. It has been argued that

under the old system employers were constrained and workers were uncertain. More often than not employers would engage labour as casuals – with no job security – or employers would seek out independent contractors to avoid union demands. In Townsville recently, I met mechanics at a heavy equipment manufacturer who under the old system were employed as casuals but under our system could be given permanent jobs, facilitated by flexible Australian Workplace Agreements. They were relieved that for the first time they could have a contract that provided some job certainty.²⁰³

To what extent do the data bear out anecdotes²⁰⁴ that AWAs promote permanent employment rather than casual employment? Here we have some hard data directly related to WorkChoices. Chart 12.5 shows the changing shares of casual and permanent employment by agreement type in 2004 and 2006.²⁰⁵ It indicates that, nationally, 22 per cent of AWA employees were employed as casuals in 2006, more than the 15 per cent of collective agreement employees who were casuals. Moreover, the share of AWA employment taken up by casuals grew by 6 percentage points over the period, far greater than the 1 percentage point growth in the casual share amongst collective agreement employees. Overall, the *number* of AWAs employees in casual jobs doubled between 2004 and 2006. In contrast, the number of AWA employees in permanent part-time jobs fell by 36 per cent (from 30,000 to 19,000) over the same period. It is feasible that the growth of casual AWAs partly reflects increasing AWA penetration in retailing and hospitality, but this does not explain the declining number of AWA employees in permanent part-time jobs. The latter suggests that AWAs may be promoting, rather than overturning, the casualisation of employment.

²⁰¹ Fulltime labour supply = fulltime employees plus unemployed persons looking for fulltime work. Part-time labour supply = part-time employees plus unemployed persons looking for part-time work. Calculations based on Australian Bureau of Statistics, 6202.0.55.001

²⁰² Male fulltime labour supply growth increased from 0.9 per cent (UDL) to 1.7 per cent (WorkChoices), while male part-time labour supply growth slipped from 8.2 per cent (UDL) to 3.6 per cent (WorkChoices).

²⁰³ J. Hockey, Jobs, speech to National Press Club, Canberra, 28 February 2007.

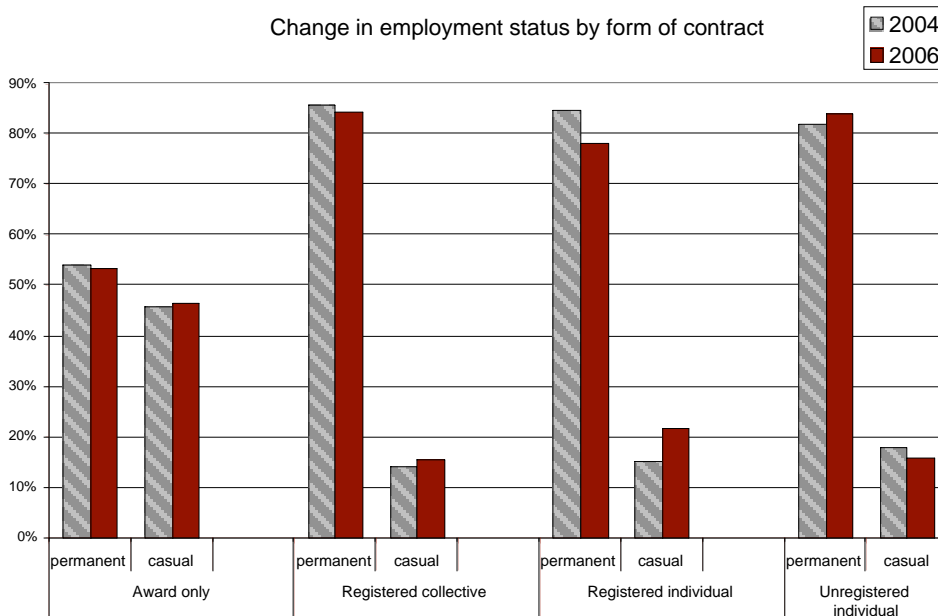
²⁰⁴ eg E. Gosch, 'AWAs a win-win for seafood processor', *Australian*, 6 January 2007.

²⁰⁵ Australian Bureau of Statistics, 6306.0.

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Chart 12.5 Change in employment status by form of contract



An alternative take on the rate of employment growth might be that, rather than relating to the abolition of the unfair dismissal laws, jobs may have been created through WorkChoices as a result of the fall in real wages in certain sectors under the new laws. This path to employment growth under WorkChoices has been consistently denied by the Commonwealth Government,²⁰⁶ though it was hinted at by the Prime Minister when he defended the Spotlight offer of new jobs at lower wages.²⁰⁷


Has employment growth been driven by the drop in real wages in certain parts of the labour market? If that were the case, then it should be most obvious in the retailing and hospitality sector, where real wages have fallen in the nine months of WorkChoices, and employment growth there should be well above the national average. In fact, trend employment growth in the first nine months of WorkChoices in retailing was only 0.6 per cent and in hospitality 2.3 per cent, or a total of 1.6 per cent across the two industries. This was below national trend employment growth of 2.0 per cent during the same period. Over the decade before WorkChoices, employment growth across the retailing and hospitality sector averaged 2.3 per cent a year, just above the national average of 2.0 per cent a year, so the slower employment growth in the retailing and hospitality sector does not reflect a structural decline in the sector. These figures suggest that real wage falls in retailing and hospitality are not promoting stronger employment growth in those industries, let alone in national employment growth.²⁰⁸

Another way of addressing this question is to consider the occupational groups with low wages growth. As noted, the occupations with the lowest wages growth were elementary clerical, sales and service workers (who experienced a real wage decline) and labourers and related workers (a small real wage increase, but only in the public sector). Over the nine months to November 2006, during

²⁰⁶ eg Andrews, Answer to Question 2611.

²⁰⁷ B. Norington, 'Pay cuts 'good for economy'', *Australian*, 26 May 2006.

²⁰⁸ Australian Bureau of Statistics, 6291.0.55.003.



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which time original employment rose by 2.4 per cent,²⁰⁹ employment of labourers and related workers grew by only 1.1 per cent, while employment of elementary clerical, sales and service workers fell by 1.5 per cent.²¹⁰ Again, the results suggest that the greater wage flexibility under WorkChoices, which is leading to relative falls in wages in low-paid occupations and industries, is not doing anything to promote rapid employment growth.

To summarise, the recent employment growth, while strong, appears to owe more to underlying demand in the economy – driven in no small part by the resources boom and the strength of the global economy, in which Australia is a laggard – than to the introduction of WorkChoices. Employment growth cannot be explained either by the introduction of the unfair dismissal laws or declining real wages under some WorkChoices arrangements. The period of WorkChoices has seen a rise in the relative importance of fulltime employment compared to part-time employment, but AWAs have been associated with the casualisation of jobs at the expense of permanent part-time work.

²⁰⁹ The ABS does not publish trend or seasonally adjusted estimates for this series.

²¹⁰ Australian Bureau of Statistics, *6291.0.55.003*. The original data may be affected seasonal factors and sampling variability, but this seems unlikely to change the overall pattern. Over the 12 months to November 2006, a period which removes seasonal factors, during which total original employment grew by 2.5 per cent, employment of labourers and related workers grew by only 0.6 per cent and employment of elementary clerical, sales and service workers fell by 6.3 per cent – the largest 12 month fall in employment for this occupational group since the data were first collected by the ABS in 1997.



13 ECONOMY AND PRODUCTIVITY

The WorkChoices economic miracle has yet to materialise. The annual rate of inflation rose from 3.0 per cent in the year to March quarter 2006 to 3.9 per cent in September quarter 2006, before easing to 3.3 per cent in December quarter.²¹¹ This was well above the OECD average of 2.2 per cent.²¹² Interest rates were increased by 0.25 percentage points in each of May, August and November 2006.²¹³ In the last quarter of 2006, Australia had the sixth highest long term interest rates (out of 29 countries) in the OECD.²¹⁴ WorkChoices did not create these increases, but nor did it ensure that workers would 'enjoy the benefits of...low interest rates'.²¹⁵ Despite the resources boom, Australia's economic growth over the year to December quarter 2006, at 2.8 per cent, was below the OECD average and the ninth weakest out of 29 countries for which estimates were available.²¹⁶

A more credible target for WorkChoices would be labour productivity. A useful reference point is the 2.5 per cent annual growth in productivity achieved under the traditional award system of the 1960s and 1970s,²¹⁷ as the alleged inefficiencies of the award system are often derided as the rationale for WorkChoices. A weaker reference point is average labour productivity growth across the OECD, which was a forecast 1.9 per cent in 2006 and has averaged 1.8 per cent a year since 2002.²¹⁸

But here the story is no better. Australian labour productivity (GDP per hour worked) fell by 0.3 per cent nationally, in trend terms, between the March and December quarters of 2006. In the market sector, trend labour productivity grew by a mere 0.1 per cent over the same nine-month period.²¹⁹ The seasonally adjusted figures, while volatile (they show a sizeable drop in September, offset by a rise in December), are in the end no better: a decline of 0.4 per cent over the three quarters across the economy as a whole, and a mere 0.2 per cent growth in the market sector. (These are figures over the three quarters since WorkChoices took effect – the average benchmark rate of growth mentioned above during the traditional award system, against which these could be compared, would be 1.9 per cent over three quarters.) The OECD ranked Australian labour productivity growth as ninth weakest out of 32 countries for whom estimates were available in 2006.²²⁰

Labour productivity is best assessed over the course of a complete growth cycle. That said, into the third year of this growth cycle, the cumulative productivity growth of just 1.8 per cent to 2005–06

²¹¹ Australian Bureau of Statistics, 6345.0.

²¹² Organisation for Economic Cooperation and Development, OECD Consumer Prices – Updated.

²¹³ Reserve Bank of Australia, Monetary Policy Media Releases, Sydney, 2006, <<http://www.rba.gov.au/MonetaryPolicy/MonetaryPolicyMediaReleases/index.html>>.

²¹⁴ Organisation for Economic Cooperation and Development, Annex Table 35: Long term interest rates, OECD Economic Outlook 80 database, Paris, 2007.

²¹⁵ Australian Government, *More jobs, higher wages, a stronger economy*.

²¹⁶ Organisation for Economic Cooperation and Development, Annex Table 1, OECD Economic Outlook 80 database, Paris, 2007.

²¹⁷ Australian Bureau of Statistics, 5204.0; D. Peetz, 'Hollow shells: the alleged link between individual contracting and productivity', *Journal of Australian Political Economy*, vol. 56, 2005.

²¹⁸ Organisation for Economic Cooperation and Development, Annex Table 12, OECD Economic Outlook 80 database, Paris, 2007.

²¹⁹ Australian Bureau of Statistics, 5206.0.

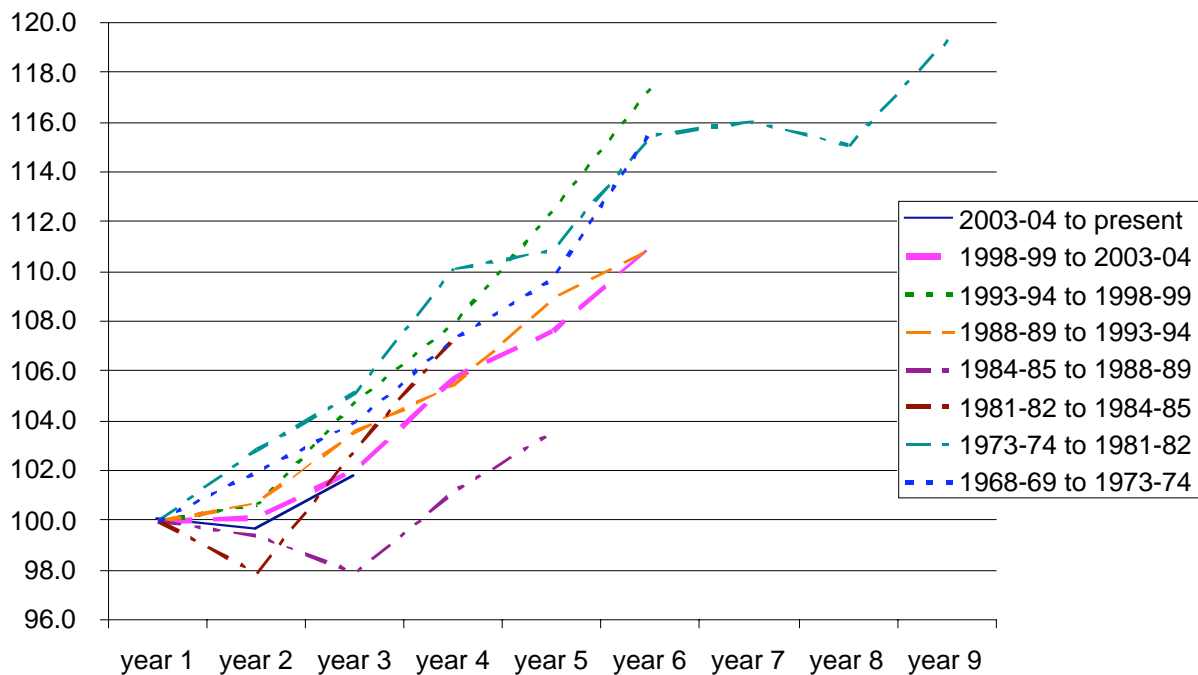
²²⁰ Organisation for Economic Cooperation and Development, Annex Table 12, OECD Economic Outlook 80 database.

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is the second lowest of any comparable period at this stage of the last eight growth cycles (before account is taken of the last two quarters). This can be seen in chart 12.1, which compares, on an annual basis, national labour productivity over the current growth cycle with that in the five previous growth cycles on a financial year basis. The vertical axis is an index of productivity, set to 100 at the commencement of the cycle. The higher a line is at any given stage of the cycle, the stronger growth has been to that point in that cycle. The lines are of different lengths because the cycles lasted for differing periods of time, so the stronger cycles will have the steepest overall slopes. Chart 13.1 shows that the only cycle with a poorer performance than the current cycle to date was the 1984–85 to 1988–89 cycle. This was a period in which real wages were significantly lowered as a result of the centralised Accord, reducing the incentive on employers to invest in productivity-enhancing technology.

Chart 13.1 Productivity during last eight growth cycles, 1968–69 to 2005–06



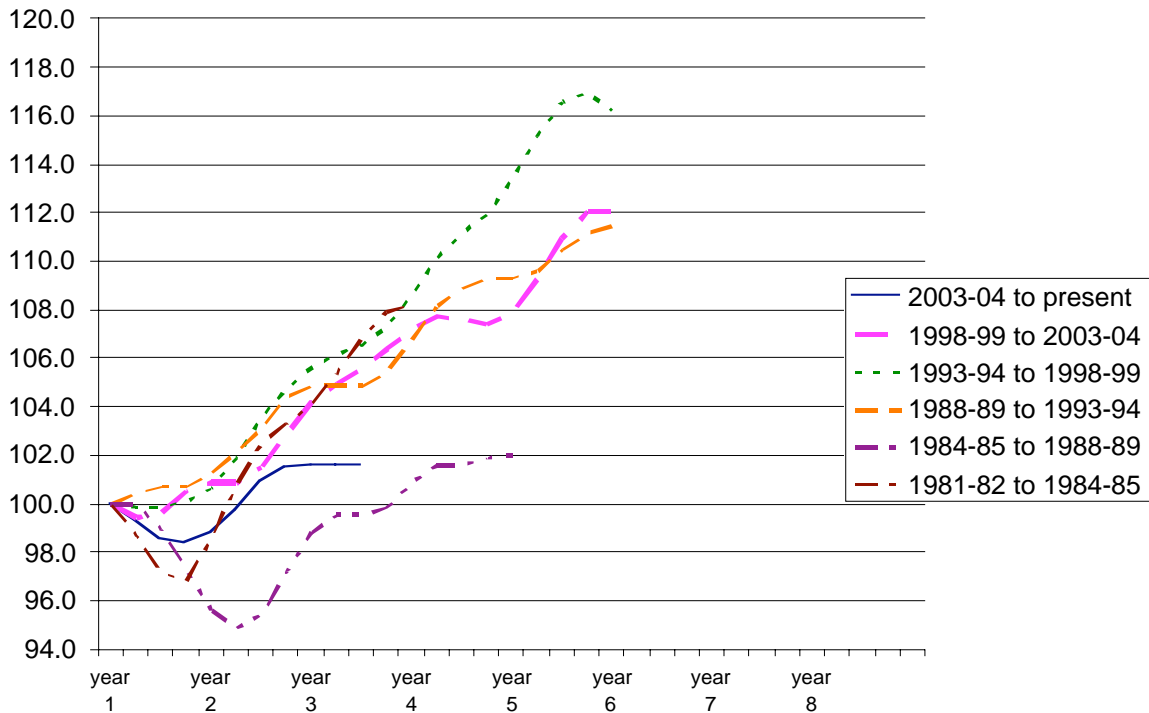
Source: ABS Cat No 5204.0.

The weakness with Chart 13.1, however, is that it only includes the influence of one quarter of WorkChoices in the data, as it finishes in 2005–06, and of course the post-WorkChoices period accounts for just one quarter of that year. To address this, Chart 13.2 uses quarterly rather than annual data, and uses market sector data, but covers most of the same growth cycles (starting with the 1981–82 cycle to the 1984–85 cycle as quarterly market sector data for earlier cycles are not published by ABS).

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Chart 13.2 Trend productivity in the market sector during growth cycles, by quarter (from June quarter at end of previous cycle), 1981 to 2006



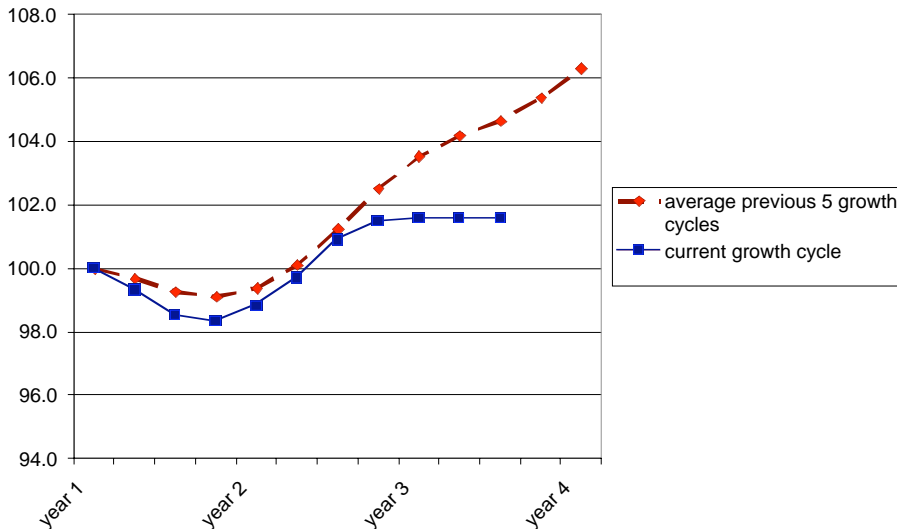
[VR5]

Chart 13.2 shows that including the most recent two quarters of productivity data highlights the widening gap in productivity between the current growth cycle and most other cycles. Chart 13.3 simplifies the depiction by averaging the patterns of the first few years of the preceding five growth cycles (including the very poor 1984–85 to 1988–89 cycle) and comparing this to the current cycle. It shows that, while the current cycle has been consistently weaker than the average of the previous cycles, the gap was quite small until recently, with the divergence increasing markedly during the WorkChoices period. This does not show that WorkChoices caused the drop in productivity growth; but it demonstrates no support for the contention that WorkChoices will lead to substantially higher productivity growth.

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Chart 13.3 Comparison of trend productivity growth, current cycle and average previous five cycles



[VR6]

Some have suggested that this poor productivity performance is simply the arithmetical result of the entry into the workforce of semi-skilled and unskilled workers, who themselves have low productivity, as a result of WorkChoices.²²¹ This explanation does not hold: at less than 18 per cent, the share of 'unskilled' workers (labourers and elementary clerical sales and service workers) in the workforce has been, during the past three quarters, the lowest average on record. In the year to November 2006, employment of elementary clerical sales and service workers fell, and employment of labourers and related workers grew by only 0.6 per cent, while other occupations averaged employment growth of 2.9 per cent.²²²

WorkChoices has only been in place for less than a year but AWAs have been around for a decade. The main changes in the treatment of AWAs under WorkChoices have been designed to increase their usage, for example by removing the no-disadvantage test, enabling AWAs to override awards at any time, and discouraging alternative modes of employment including collective bargaining and awards. Therefore if there are any productivity gains from AWAs then they should already be apparent from old AWAs. (It does not follow, however, that if productivity gains can be seen in old AWAs, then there will also be productivity gains in WorkChoices AWAs. This is because the abolition of the no-disadvantage test may itself lead to lower pay and conditions, which in turn may damage morale or lead employees to leave and find work elsewhere, either of which might lead to negative impacts on productivity.)

If encouraging AWAs is necessary to promote national productivity, then the growth in the spread of registered individual contracts should be associated with increases in the rate of productivity growth. In fact, as Chart 13.4 shows, the reverse is the case. As the growth in the use of registered individual contracts has accelerated, then the growth in productivity has declined.²²³ It does not

²²¹ C. Pearson, 'Pie-in-the-sky productivity', *Weekend Australian*, 27 January 2007.

²²² Australian Bureau of Statistics, 6291.0.55.001.

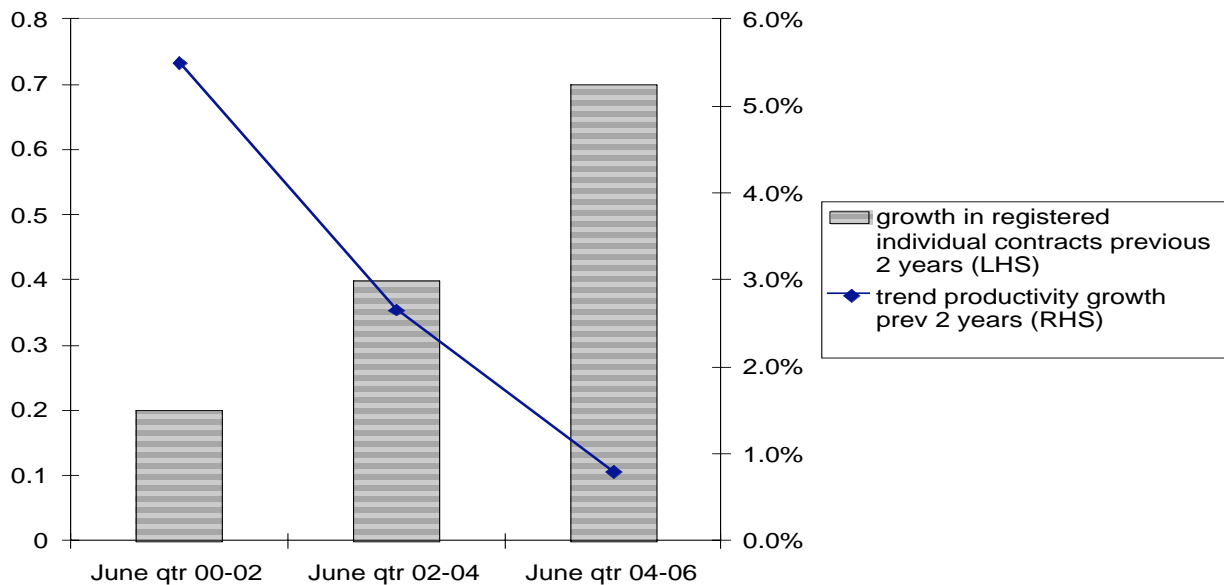
²²³ Registered individual contracts are used here, rather than AWAs, because in 2000 and 2002 a significant proportion of registered individual contracts were in the state systems. As new laws in the state systems (particularly Western

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mean that the growth of registered individual contracts has caused the decline in productivity growth, but it does suggest that there is little reason to believe that a further expansion of them under WorkChoices will boost productivity growth.

Chart 13.4 Changes in use of registered individual contracts and trend growth in market sector productivity, Australia, 2000–06



Source: ABS Cat Nos 5206.0 and 6306.0.

Of course, as discussed, it is best to look at labour productivity growth over productivity cycles. There has only been one completed growth cycle in which AWAs have operated for the whole time, that covering the period from 1998–99 to 2003–04. In Chart 13.1, we can see the poor performance of productivity growth during that cycle. Productivity growth during that cycle, averaging 2.1 per cent a year, was below the average productivity growth during the traditional award system of the 1960s and 1970s, which averaged 2.5 per cent. Again, this does nothing to support the idea that productivity will grow as a result of the expansion of AWAs under WorkChoices. This macro-level evidence is consistent with several micro-level (workplace) studies, which have failed to show that individual contracts generate higher productivity gains than union collective bargaining in either Australia²²⁴ or New Zealand.²²⁵ In New Zealand, the introduction of the Employment Contracts Act, preceded by a period in which labour productivity growth had tracked Australia's, was followed by a significant drop in the rate of labour productivity growth across the economy as a

Australia) excluded such contracts, the relevant employees were shifted between jurisdictions and hence onto AWAs, artificially inflating the growth in AWAs between 2002 and 2004.

²²⁴ T. R. L. Fry, K. Jarvis and J. Loundes, *Are IR Reformers better performers?*, Melbourne Institute Working Paper No 18/02, Melbourne Institute of Applied Economic and Social Research, Melbourne, September, 2002; D. Hull and V. Reid, *Simply the best: workplaces in Australia*, Working Paper 88, ACIRRT, University of Sydney, Sydney, December 2003, p 8; Y.-P. Tseng and M. Wooden, *Enterprise bargaining and productivity: evidence from the Business Longitudinal Survey*, Melbourne Institute Working Paper No 8/01, Melbourne Institute of Applied Economic and Social Research, University of Melbourne, Melbourne, July 2001; M. Wooden, *The Transformation of Australian Industrial Relations*, Federation Press, Sydney, 2000, p 173.

²²⁵ C. Gilson and T. Wagar, 'The impact of the New Zealand Employment Contracts Act on individual contracting: Measuring organisational performance', *California Western International Law Review*, vol. 28, 1997.



whole relative to Australia's growth.²²⁶ Labour productivity growth in the market sector continued to track Australia's, but importantly showed no sign of surpassing Australia's, even though Australia was relying on collective enterprise bargaining while New Zealand was seeing a rapid growth in individual contracting.²²⁷ Although L. J. Perry has sought to critique the data on which previous analyses have been undertaken,²²⁸ the new data he sourced do not alter the above conclusions, and reinforce the view that individual contracting did nothing to boost productivity growth in New Zealand relative to Australia.²²⁹

Does this mean that WorkChoices is responsible for the fall in productivity growth? Not necessarily. But if there were productivity gains to result from the greater use of AWAs, which are avidly encouraged by WorkChoices and which have been in place for over a decade, we would expect to have seen some sign of them by now. Part of the reason for the poor productivity performance in this cycle is the productivity slump in the mining industry, the industry which has by far the highest use of AWAs and which has been touted by the advocates of WorkChoices as 'an outstanding example of workplace flexibility' in which greater flexibility has delivered 'sustained, strong productivity growth' that has been 'outpacing all other sectors in the economy'.²³⁰ Since the start of this growth cycle, productivity in mining has fallen by over 11 per cent a year,²³¹ dragging down national productivity growth. In turn, the slump in mining productivity, which must be expected to reverse shortly, is not directly due to the high use of AWAs – for one thing, currently high commodity prices make it attractive to extract ores that were previously uneconomic – but it puts into perspective the boasts that the industry's productivity growth was due to its use of AWAs, for which a 'conservative' estimate of their 'productivity improvement' is allegedly '20 to 30 per cent'.²³² It is also possible that part of the poor national productivity figures is due to discrepancies between the national account indicators of production, which have looked 'anaemic', and the labour

²²⁶ P. Dalziel, 'New Zealand's economic reforms: an assessment', *Review of Political Economy*, vol. 14, no. 1, January 2002.

²²⁷ Statistics New Zealand, *Productivity statistics: 1988-2005*, Wellington, 2006.

²²⁸ L. J. Perry, 'Do workplace contracts harm labour productivity growth? A reconsideration of the macroeconomic evidence from New Zealand', *Australian Economic Review*, vol. 39, no 4, 2006; L. J. Perry, 'New figures work against myth', *Australian Financial Review*, 23 January 2007, p 47.

²²⁹ Perry argues: (1) critics of WorkChoices looked mainly to the NZ experience under the *Employment Contracts Act 1991* (NZ) (which introduced a radical system of individual contracting); (2) new estimates show NZ's labour productivity growth in the market sector under the ECA was almost identical to Australia's; (3) before the ECA, NZ's national labour productivity growth was significantly below Australia's; (4) therefore, as Australia's market sector productivity growth was unusually high in the 1990s, NZ's market sector growth must have been 'even more unusually high than in Australia'. Given that Perry has no data for NZ market sector productivity before 1988, the last point shows poor logic. In fact, the only data on pre-ECA market sector productivity in NZ, covering the short period from 1988 to 1991, indicate it was 4.0 per cent a year before the ECA, then fell to 2.8 per cent under the ECA. Perry's assertion about the long-term relative under-performance of NZ productivity growth relies on data concerning economy-wide productivity. But from 1967 to 1974, labour productivity growth averaged 2.7 per cent a year in NZ, compared to 2.6 per cent in Australia. There was a two-year period when NZ's dropped by 0.9 per cent a year, while Australia grew by 3.2 per cent. Then over the next 15 years from 1976, labour productivity growth averaged 1.3 per cent a year in both countries. So the idea that labour productivity growth in NZ was chronically below Australia's before the ECA is not supported. All that is left is the observation that market-sector productivity growth in NZ, at 2.8 per cent a year during the ECA period, was no higher than that in Australia's 2.8 per cent at the time.

²³⁰ Business Council of Australia, *Workplace relations action plan: For future prosperity*, BCA, Melbourne, November 2005.

²³¹ Australian Bureau of Statistics, 5204.0.

²³² S. Knott, *Individual engagement and workplace flexibility*, speech to IFPC conference, Australian Mines and Metals Association, November, 2006.



force surveys of employment.²³³ However, the most recent national accounts, which showed stronger GDP growth than expected, have helped resolve this discrepancy.²³⁴ They still show no sign of a trend productivity surge from WorkChoices.

Across the economy, we would expect trend productivity growth to resume in the near future. But from these data, and the evidence elsewhere,²³⁵ there is no reason to believe that WorkChoices will be able to generate a significantly higher productivity growth rate than occurred under the traditional award system, or would have occurred anyway.

Business surveys provide some insight into the problem. The D&B National Business Expectations Survey in February 2006 found only 11 per cent expected WorkChoices to assist them to grow their business (down from 16 per cent two months earlier).²³⁶ More recently and relevantly, the Australian Small Business survey, undertaken by MYOB mid-year, found that only 12 per cent of small business respondents expected the new WorkChoices legislation will lead to an increase in business productivity. By contrast, 34 per cent disagreed, including 14 per cent who strongly disagreed.²³⁷

A survey of 300 middle and senior managers undertaken in February 2007 helped expand on this view. Only 17 per cent expected that WorkChoices would make things better for their organisation, while 26 per cent expected it would make things worse.²³⁸ Victorian managers were even more negative, believing WorkChoices would make their organisations worse off by a margin of 29 per cent to 15 per cent.

Presumably part of the reason is the negative views many managers have of the impact of WorkChoices on employees and fairness, as discussed in section 10.²³⁹ But it probably also relates to the complexity of the legislation, and to the high degree of state intervention it involves and permits in workplace employment relations, through such matters as 'prohibited content' in agreements.²⁴⁰ One corporate lobbyist likened WorkChoices to the 'old Soviet system of command and control, where every economic decision has to go back to some central authority and get ticked off'.²⁴¹

In sum, it is doubtful on the evidence to date that there is any positive impact on labour productivity arising from WorkChoices, and there is a possibility, yet to be confirmed, that its effect may in the end be negative.

²³³ R. Gittins, 'Riddle of missing GDP, productivity solved', *Sydney Morning Herald*, 10 March 2007.

²³⁴ Ibid.

²³⁵ Dalziel, 'New Zealand's economic reforms: An assessment'; Peetz, 'Hollow shells: The alleged link between individual contracting and productivity'.

²³⁶ D&B, *D&B National Business Expectations*, Melbourne, March 2006, p 15.

²³⁷ AMR Interactive, *MYOB Australian Small Business Survey*, p 19.

²³⁸ UMR Pty Ltd, *Gold Coast Tourism Globalisation Labour Impact Barometer*, pp 35–6.

²³⁹ AMR Interactive, *MYOB Australian Small Business Survey*, p. 19; Australian Institute of Management, *The New Workplace Relations System: June 2006 Survey Results*; UMR Pty Ltd, *Gold Coast Tourism Globalisation Labour Impact Barometer*.

²⁴⁰ eg E. Wynhausen, 'Managing to do not very much', *Australian*, 11 November 2006.

²⁴¹ Age, 'IR laws like "Soviet-style command"', *The Age*, 26 March 2006.



14 INDUSTRIAL DISPUTES

The number of working days lost due to industrial disputes in the June to December quarters 2006 was 44 per cent lower than the equivalent period a year earlier and a record low.²⁴² In Victoria the fall was 26 per cent. This decline reflects in part a medium term trend in Australia (and a number of other countries) of declining overt industrial conflict. Industrial conflict has fallen consistently since the early 1980s and the beginning of the prices and incomes Accord. Australian working days lost fell by 75 per cent between 1982 and 1995 and by 58 per cent between 1995 and 2005.²⁴³ However, the recent data also reflects WorkChoices having introduced a large number of restrictions on industrial action that make most forms of industrial action illegal. It could be argued that the decline in industrial conflict is simply one manifestation of the lower level of power that employees have under WorkChoices.

One possibility, yet to be confirmed, is that the restrictions on industrial action are now so severe that unions will decide to ignore the law, as it is almost impossible to adhere to it. Data on causes of disputes are available for only two quarters, and these indicate that in June and September quarters 2006, working days lost due to potentially 'legal' industrial action (ie action associated with enterprise bargaining) were 65 per cent lower than the average over the two years to March quarter 2006 (note that the ABS data do not identify whether the disputes were actually legal, only whether they were associated with enterprise bargaining). By comparison for non-enterprise bargaining related disputes (almost certainly all technically illegal) the decline was only 47 per cent. Over the preceding three years, these (illegal) non-bargaining-related disputes accounted for about 48 per cent of working days lost, but in the first quarter of WorkChoices this jumped to 73 per cent. These quarterly figures on cause of dispute are highly volatile, however, and importantly may be influenced by the finalisation of negotiations for most union CAs before WorkChoices took effect, and so it is too early to clearly identify any trends on that front.

However, one notable aspect of the non-enterprise bargaining disputes is the rise in disputes over job security. In the first two quarters of WorkChoices, compared to the preceding four quarters, there was a 186 per cent increase in working days lost per quarter over job security (compared to a 58 per cent drop for all other causes),²⁴⁴ due in no small part to an increase in the duration of industrial action over that issue. Again, with such volatile figures it is too early to draw a trend, but this is an issue to monitor.

It should be noted in this context that the process of undertaking legal industrial action is very difficult, and the Government has shown a willingness to prosecute individual employees even when the employer does not wish them to do so. For example, one of the earliest prosecutions, launched in March 2006 by the Office of Workplace Services (OWS), was against a group of workers. In early 2005 they had been placed by their employer in demountable accommodation that was infested with fleas and feral animals and reeked of raw sewage. The employees struck for several days for decent conditions, which they successfully obtained. Over a year later, the OWS, without the support of the employer, began proceedings against the workers under pre-

²⁴² Australian Bureau of Statistics, *Industrial Disputes, Australia*, Canberra, 6321.0.55.001.

²⁴³ Ibid.

²⁴⁴ That is, comparing the two quarters of data under WorkChoices that are available with the preceding 12-month period.

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WorkChoices provisions, who faced fines of \$20,000 each. Following adverse publicity, the Minister ordered that the prosecutions be halted. The WorkChoices provisions on industrial action are much harsher, limiting much further the scope of legal industrial action and increasing the range of actions for which penalties or damages apply.

WorkChoices introduced new, complex requirements for secret ballots of union members before industrial action could legally be undertaken. An analysis of the first 102 ballots conducted since WorkChoices took effect showed that 101 of the 102 were passed by a valid majority, and the average vote in support of taking industrial action was 88 per cent in favour versus 12 per cent against. The average turnout in the ballots was 84 per cent, and in 85 per cent of ballots there were no informal votes.²⁴⁵ These results suggest that, when industrial action is undertaken, it has the overwhelming support of the membership engaged in such action.

A number of instances have been reported of workers being docked four hours' pay as a result of being as little as two minutes late back from a union lunchtime meeting²⁴⁶ – in some cases, workers were docked four hours pay after holding short meetings to raise funds for the widows of workers killed in industrial accidents.²⁴⁷ One group of workers at Heinemann placed a ban on overtime work as part of legally protected action in an enterprise bargaining negotiation, only to discover at the end of the week that they had not been paid at all for any of the 40 hours they worked, on the basis that WorkChoices required the company to not pay employees for any work they did during ordinary hours while the overtime ban was in place.²⁴⁸ Not surprisingly, they then went on full strike. The Minister initially supported the company, saying the union had 'caused the problem',²⁴⁹ but several months later the government prosecuted the employer for withholding the pay.²⁵⁰ Events like this create considerable uncertainty for employees, unions and employers. The Workplace Rights Advocate commented: 'months after the events which precipitated this dispute, the position remains that no-one is certain as to what the correct legal position actually is'.²⁵¹

In sum, the first six months of WorkChoices have seen a continuation of the long term trend reduction in industrial disputes, but it is possible (but not yet clear) that WorkChoices has had an effect in separately reducing the level of legal industrial action, mainly by making many previous industrial actions illegal. Workers have strongly supported industrial action where secret ballots have been held, but also have had pay withheld even when they have been working, if their meetings have strayed even slightly into company time.

²⁴⁵ '88% vote yes in secret ballots for industrial action: survey', *Workplace Express*, 30 January 2007.

²⁴⁶ AAP, 'Postal workers docked for safety meeting', *Courier-Mail*, 25 January 2007; J. Koutsoukis, 'Wages docked over two minutes', *Age*, 26 November 2006.

²⁴⁷ In one case the decision to dock pay was overturned. 'Pay row erupts – wages docked after miners deliver donation', *Bendigo Advertiser*, 12 May 2006; ABC, 'Workers lose pay for helping widow', *ABC News Online*, 11 April 2006, <<http://www.abc.net.au/news/newsitems/200604/s1613278.htm>>; J. Masanauskas, 'Pay docking overturned', *Herald Sun*, 12 May 2006.

²⁴⁸ A. Lawrence, Report on the investigation into complaints received in relation to Heinemann Electric Pty Ltd, Workplace Rights Advocate, Melbourne, 21 February, 2007.

²⁴⁹ 'Andrews calls for "illegal" resolution of overtime dispute', *WorkplaceInfo*, 11 September 2006.

²⁵⁰ 'OWS also lines up against Heinemann', *Workplace Express*, 27 February 2007.

²⁵¹ Workplace Rights Advocate, Report on the investigation into complaints received in relation to Heinemann Electric Pty Ltd Melbourne, 21 February, 2007.



15 CONCLUSIONS

Under WorkChoices, AWAs and, it appears, other non-union agreements have led to the loss of conditions of employment, particularly in areas like penalty rates, overtime rates and shift allowances. This has very likely led to lower rates of pay than workers would otherwise have enjoyed, particularly by comparison with if they were employed under collective agreements. The hourly rates of pay for workers on AWAs are, on average, lower than those for workers on collective agreements, but the impact on particular employees depends on their position in the labour market, in particular whether the particular skills they have are in short supply and the alternative employment opportunities available to them locally. Vulnerable groups, including women and workers in low wage industries, appear to have been particularly disadvantaged. It is possible that WorkChoices has also had a downward impact on the wage bargaining power of workers in the unionised sector, though it is too early to be sure and wages growth in that sector is still stronger than in the non-union agreement sector. However, the impact of WorkChoices on aggregate wages is limited by several things.

Only a small minority of employees are covered by WorkChoices agreements to date. Importantly, many organisations have decided against taking advantage of the 'opportunities' WorkChoices presents. In the end, more employers may be forced to change strategy as a result of WorkChoices, but it may take some time for this to happen and may affect employers who had not originally intended to change strategy. Moreover, the WorkChoices legislation is designed in such a way that many of its effects cannot take effect for some time. The effects of some provisions will probably not be felt until 2009 or 2010. The full effects of WorkChoices will probably only be seen when the boom slows and economic conditions deteriorate, leading a larger number of employers to make use of WorkChoices provisions while the alternative available to employees narrow. In that sense, any evaluation of WorkChoices at the moment is, if anything, likely to provide a rosier picture than will become apparent in the fullness of time.

So, despite the willingness of its advocates to claim success, it being barely a year since the laws took effect, any assessment of the impact of WorkChoices can, at this stage, only be preliminary. Assessment is also hampered by the fact that some critical information (in particular, on the content of agreements) has been withheld.

What else can we say? As a result of WorkChoices, more employees are moving onto AWAs than before, and fewer onto union CAs. Award coverage is declining. However, the coverage of AWAs has been greatly exaggerated, with well below 400,000 employees on AWAs at the end of 2006.

There has clearly been a substantial loss of conditions of employment, for many workers signing AWAs, as a direct result of WorkChoices, though we would not expect this to be the case in all sectors. The same has probably occurred for many workers signing non-union employee collective agreements or covered by EGAs, though here the data are sketchier. We can expect there will be different types of such agreements: in some areas, where labour demand is high, they will need to match the market and offer good wages and conditions, but in others where labour supply is less a problem, they will be able to undercut existing standards, particularly for new employees. Wage increases are lower under non-union agreements than under union agreements, and historically they have been lower again under AWAs. The minimum wage fixing arrangements established under

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WorkChoices have led to a real wage decline for most award-reliant (low-wage) workers, but the full effect is yet to be seen.


Probably in no small part because of the loss of conditions, AWAs are paying well below collective agreements for comparable workers, and the extent of this disadvantage is disguised by the high wages payable in the mining industry, where individual contracts are common (even though individual contracts pay less than collective agreements in mining).

Women are particularly disadvantaged under AWAs, and this is especially the case for women in casual jobs. However, even women in permanent fulltime jobs do relatively poorly under AWAs compared to collective agreements. Moreover, although men do not appear to do as badly under AWAs as women, this is in no small part a result of the male domination of mining. In Victoria, where the mining industry is not significant, men are 14 per cent worse off under AWAs than under collective agreements, a shortfall that appears to more closely approximate the underlying relationship between individual contracting and employee bargaining power. These shortfalls for AWA employees under WorkChoices are almost certainly understated, because a majority of the AWA employees covered by these data were protected by the no-disadvantage test, which under WorkChoices no longer applies.

Women have also received lower wage increases than men under WorkChoices, at least in the private sector, and on both measures the gap between male and female pay has widened. One significant actor is probably that women are disproportionately employed in retailing and hospitality, and are more reliant on awards than men. The saving grace for women is that they are more likely than men to be employed in the public sector, where most employees are on collective agreements, and this has helped mute the widening gender pay gap and the decline in real female wages.

Managers and employers, as well as employees, believed that wages would be negatively affected by WorkChoices. The limited coverage of WorkChoices agreements to date suggests that any impact of WorkChoices on aggregate real wages will be limited so far. The direction of aggregate real wages under WorkChoices is unclear, with contradictory signals from the two main series, though neither suggests that real wages have achieved their long term growth rate or the current OECD average. As inflation falls in the context of petrol and fruit prices, the outlook for real wages should improve in aggregate, but it appears that there are some groups who, even at this early stage, are being disadvantaged under the new arrangements. Low-paid workers in labouring or elementary service occupations, and particularly those working in retail trade and hospitality, experienced declining relative wages, and stagnant or declining real wages in the first nine months of WorkChoices. This was most likely due to the loss of penalty rates in those industries. As time passes, we can expect the effects on aggregate wages to become more noticeable as an increasing number of people in weak labour market positions are put onto WorkChoices agreements, particularly AWAs and non-union agreements. At the same time, the profit share of national income has reached a new record high, extending a trend established under the earlier *Workplace Relations Act 1996* (Cth).

The recent employment growth, while strong, appears to owe more to underlying demand in the economy – driven in no small part by the resources boom and the strength of the global economy, in which Australia is a laggard – than to the introduction of WorkChoices. Employment growth cannot be explained either by the introduction of the unfair dismissal laws or declining real wages

The header image features a collage of various job advertisements in different fonts and sizes, overlaid on a light blue background. On the right side of the collage, there is a line of black silhouettes representing a diverse group of people, including men and women of various heights, walking in a line towards the right.

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under some WorkChoices arrangements. The period of WorkChoices has seen a rise in the relative importance of fulltime employment compared to part-time employment, but AWAs have been associated with the casualisation of jobs at the expense of permanent part-time work. It is doubtful on the evidence to date that there is any positive impact on labour productivity arising from WorkChoices, and there is a possibility, yet to be confirmed, that its effect may end up negative. Claims of the economic benefits of WorkChoices do not appear to be supported to date.

The first six months of WorkChoices have seen a continuation of the long term trend reduction in industrial disputes, but it is possible (but not yet clear) that WorkChoices has had an effect in separately reducing the level of legal industrial action, mainly by making many previous industrial actions illegal. Workers have strongly supported industrial action where secret ballots have been held, but also have had pay withheld even when they have been working, if their meetings have strayed even slightly into company time.

In several areas, more data are urgently required, in some cases as a result of the withholding of official information. Nonetheless, these are, in general, the patterns we would expect to see from a transfer of power from employees to corporations.



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