

**“A STRONGER SAFETY NET FOR WORKING AUSTRALIANS”:
SOME EFFECTS OF WORKCHOICES**

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David Peetz

I hope you all read the advertisements¹ promoting changes to WorkChoices last week, as I will use that as the hook for this talk. The advertisements start off with some claims about the economic effects of WorkChoices – though they don’t actually use the word ‘WorkChoices’ – then explain what went wrong, and then tell us about the new fairness test and how the government is going to ask its bureaucrats to do something it had insisted, until last week, was impossible. I will talk, not in that order, about those things.² And as the advertisement is very much a political document, and what is going to happen in industrial relations is fundamentally driven by politics, I’ll also talk about some of the political effects of WorkChoices.

First, why has the government changed the law?

The advertisements say that

“It was never the intention that it should become the norm for penalty rates and other conditions to be traded off without proper compensation.

The Australian government therefore proposes to change the law to introduce a Fairness Test that will ensure that entitlements such as penalty rates are not traded off without fair compensation”.

They in effect concede that it has “become the norm for penalty rates and other conditions to be traded off without proper compensation”. They say it was “never the intention” that this would happen, and “therefore” the Government “proposes to change the law”. There is no other sensible way of interpreting these words. If this had not become the norm, the government need not have “therefore” changed the law.

Whether it was “never the intention” is debatable, given that it is exactly what academic critics of the law predicted. But clearly it happened. Official data released by the Government in a brief period of candour last year showed that there has been a strong focus in AWAs on reducing or removing protected award entitlements.

¹ Australian Government, A Stronger Safety Net for Working Australians, newspaper advertisement in all major newspapers, Canberra, 4 May, 2007.

² More detail on developments under WorkChoices to date is contained in D. Peetz, *Assessing the Impact of WorkChoices: One Year On*, Report to Department of Innovation, Industry and Regional Development, Victoria., Melbourne, 19 March 2007.

The rate at which conditions are being removed has been 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 doubled, from a quarter of AWAs in 2002-03 to over half of AWAs in April 2006, the only month for which data were officially released.³ 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. Many other 'protected' award conditions have been excluded from AWAs. A majority of AWAs abolished shift allowances. Many abolish public holiday payments. Some, perhaps many, AWAs are abolishing redundancy pay, but no data about them have been issued as they are not a 'protected' condition. An illuminating example is this one, from an AWA in manufacturing:

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,⁴

The government prevented release of further statistical information. The Employment Advocate said that, following a directive in June, 'no statistical analysis for protected award conditions has been undertaken'⁵ and went to some lengths to avoid answering questions about analysis of the data:

Senator MARSHALL—Can you confirm whether or not you have done the analysis?

Mr McIlwain—That is a question I have taken on notice.

Senator MARSHALL—You do not know?

Mr McIlwain—I have taken the question on notice.

Senator MARSHALL—It is a fairly simple question. You know whether you have analysed it or not, don't you?

Mr McIlwain—And I have taken it on notice.

Senator MARSHALL—For what reason?

Mr McIlwain—Because I took it on notice at the last hearing.⁶

It turned out that the Government continued to collect data until at least September 2006 – but without doing any "analysis". The Government now holds a dataset on conditions lost in around 4000 AWAs. We know this because it was leaked to Mark

³ P. McIlwain, evidence to May Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 29 May, 2006. Office of the Employment Advocate, Answer to Question W210-07, Senate Employment, Workplace Relations and Education Legislation Committee, Canberra, 2006. 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.

⁴ Australian Sweets, Australian Workplace Agreement ("AWA"), Sydney, 20 September, 2006.

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

⁶ P. McIlwain, evidence to February Additional Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 2 November, 2007 69.

Davis from the *Sydney Morning Herald* in April 2007. The leaked data showed that the rate of loss of most of the “protected” award conditions had slightly or significantly increased after April, including for penalty rates, allowances, and particularly shiftwork loading – three quarters of AWAs abolish the last of these.⁷

ABS data on average pay are broadly consistent with this. They reveal that, across Australia as a whole in May 2006, 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 percent lower than the earnings of their counterparts on registered collective agreements.⁸ The size of the shortfall is heavily influenced by 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.⁹

Minister Hockey’s justification for suppressing government-held data has been that you cannot gauge whether people who lose penalty rates and other conditions through AWAs are better or worse off, because it is impossible to “compare apples and apples” - that is, to assess conditions lost against the “flexibilities” under AWAs.¹⁰

But the new “fairness test” does exactly that.

In theory, if you are earning below \$75,000 and your AWA reduces any of your “protected” award conditions, the test judges whether you have in some way been offered “compensation”. The government has likened this to the no-disadvantage test that WorkChoices abolished. The abolition of the no-disadvantage test represented one of the fundamental planks of WorkChoices.

If the government had genuinely reinstated the test, this would not be a backflip, it would be a double backflip with triple overhead pike.

But it insists the new test “doesn't undermine in any way the fundamentals of the legislation of WorkChoices”,¹¹ and on this I have to agree.

The test does not apply to all award conditions, only the “protected” ones¹² – those the government said were “protected by law” in advertisements 18 months ago. Now it

⁷ M. Davis, 'Revealed: how AWAs strip work rights', *Sydney Morning Herald*, 17 April 2007.

⁸ Australian Bureau of Statistics, *Employee Earnings and Hours, Australia*, Canberra, 6306.0.

⁹ Peetz, *Assessing the Impact of WorkChoices: One Year On*.

¹⁰ J. Hockey in ABC Radio National, 'Figures point to less worker protection under AWAs', *The World Today*, 17 April 2007.

¹¹ J. Howard in M. Grattan, 'Battle for the battlers', *Age*, 5 May 2007.

¹² Australian Government, *A Stronger Safety Net for Working Australians*

turns out that they were not protected by *that* change in the law, but they will be protected by *this* change in the law.

Other award conditions are not covered by this test. An AWA can still remove redundancy payment entitlements without even the pretence of compensation. So provisions like the one I mentioned earlier will still be perfectly legal.

And even for the “protected” conditions, employees need not be fully compensated, because the bureaucrats are not going to add up the dollar values of what you’ve lost and gained. It is hard to tell from what we have been told, but so far it appears that just something not in the award will do – some “parking”, some “flexible” hours, or if the business is “struggling”, just the offer of a job will do.¹³ Although we still do not know the details, it is clear that the key to the “fairness test” will be how it is administered.

The “form” of the body given the task of administering this test, the Workplace Authority (the renamed Employment Advocate), suggests that the test will be administered very “flexibly” – and probably more “flexibly” over time.

The Authority administered the no-disadvantage test. Researchers who examined AWAs then questioned whether the benefits could have been of “sufficient value to the employee for the agreement to have passed” the test.¹⁴

Before WorkChoices there were growing indications the Authority was approving agreements which led to below-award wages. Even the CEO of the Western Australian Retailers Association complained about the “lax interpretation” of the test.¹⁵

For example, the Authority promoted the non-payment of overtime rates when employees “volunteer” to work overtime hours, a bit like approving wages below the minimum wage if employees volunteer to work on such wages.¹⁶

¹³ P. Coorey, 'PM retreats: safety net for battlers', *Sydney Morning Herald*, 4 May 2007.

¹⁴ R. Mitchell, R. Campbell, A. Barnes, E. Bicknell, Creighton, F. K, J and S. Korman, *Protecting the Workers Interest in Enterprise Bargaining: The "No Disadvantage" Test in the Federal Jurisdiction*, report to Workplace Innovation Unit, Industrial Relations Viocctoria, University of Melbourne, Melbourne, 2003, [http://www.irv.vic.gov.au/CA256EF9000EB8A3/WebObj/B9721C262D82BE8ECA256EF2001A8EF3/\\$File/NDT%20REPORT.pdf](http://www.irv.vic.gov.au/CA256EF9000EB8A3/WebObj/B9721C262D82BE8ECA256EF2001A8EF3/$File/NDT%20REPORT.pdf), acc 6/3/05. p. 62.

¹⁵ T. Todd and J. Eveline, *Report on the Review of the Gender Pay Gap in Western Australia*, University of Western Australia, Perth, November 2004, http://www.docep.wa.gov.au/lr/LabourRelations/Media/Gender_Pay_Final_Rep.pdf.

¹⁶ OEA, No Disadvantage Test and Voluntary Non Standard Hours, mimeo distributed by OEA to WA employers, Perth, 2003.

In 2005 workers from a Penrith donut outlet calculated that their AWAs paid at least 8 per cent below the award.¹⁷ An Adelaide bakery worker had an AWA that paid 25 per cent below the award. The court awarded her \$1400 in back pay, because the employer had messed up the paperwork. He said he had 50 other staff working on the same AWAs which the Authority had approved.¹⁸ All this under the no-disadvantage test.

The problem was, then as now, the Authority is given the task of both policing and promoting AWAs. No matter how well intentioned and professional the bureaucrats are, this cannot work. A cricketer could no more expect a bowler to independently assess whether he had got a batsman out than a worker could expect an agency, whose aim is promoting AWAs, to independently assess whether AWAs met the standards of any test.

We should not expect much out of this “fairness test”. But one good thing has come from it. The excuse for refusing to release the AWA dataset has been blown out of the water. Surely, the government will now allow independent researchers and the public to see what has actually been happening under AWAs.

Until then, the only rough indicator of how the test is being administered will be the number of AWAs approved. With the no-disadvantage test abolished, the monthly number of AWAs has almost doubled, from 50,000 per quarter for the two years immediately before WorkChoices, to around 95,000 per quarter over the past six months. The fairness test, if administered properly, would bring this number crashing down.

In the medium term, we would expect the quarterly number of AWAs to fall back to 50,000 a quarter, once employers’ capacity to use AWAs to cut the total pay and conditions of employees has been reduced, if the test were administered in a manner similar to the no-disadvantage test (which, as I mentioned, was administered laxly anyway). But in the short term, the drop would have to be much greater than that, because a huge backlog will be created as the Authority tries to put in place systems to deal with the new test. Unless there is a large, sharp drop in the number of AWAs approved, we will know that the test has had little impact on the content of AWAs.

It is difficult to understate just how much chaos has been created by the hurried nature of the introduction of the “fairness test”. The test was announced on Friday 4 May to take effect from first thing on Monday 7 May. The wording of the test was not clarified in time for its commencement and indeed it still has not been clarified. We will not know it until the legislation is introduced some time before the end of this month. At the moment the Workplace Authority has no legal basis or power to reject

¹⁷ T. B. Fitch, Submission to Inquiry into Workplace Agreements, Senate Employment, Workplace Relations and Education References Committee, Canberra, 2005; J. Smith, Submission to Inquiry into Workplace Agreements, Senate Employment, Workplace Relations and Education References Committee, Canberra, 2005.

¹⁸ *Yurong v Renella* [2005] SAIRC 50.

agreements which do not satisfy the test, whatever the test is. Yet employers are bound, by a law which has not been passed or even drafted, to abide by that test.

The Prime Minister has said that "it's very easy for employers to err on the side of caution in relation to something like this, and one way they can do that is to simply ensure that penalty rates and loadings are paid",¹⁹ but if employers followed this advice then AWAs would come to a grinding halt. The official data revealed that all AWAs removed at least one "protected" award condition, so if employers assured that all loadings and protected award conditions were retained then, on the form to date, not a single WorkChoices AWA would be lodged.

The Minister has described the test as a "work in progress". When asked to provide details on the obligations employers now face, he has refused to "speculate" on them.²⁰ A Minister using the term "speculation", to describe explaining the legal obligations currently facing employers, is certainly novel in industrial relations. Normally, when changes to the regulation affecting workplaces occurs, there is a lag between when the law is passed and when it takes effect, to allow time for bureaucratic procedures to develop and participants to become aware of the changes. The explanation that "we had no alternative but to say it would apply from the time of announcement to prevent people doing perhaps not the appropriate thing in relation to their arrangements"²¹ only makes sense if there was substantial exploitation under WorkChoices AWAs, but is also inconsistent with how all other changes to the law regarding agreement-making have been handled.

The only plausible explanation for all this is that it is a measure driven by government awareness that WorkChoices is creating serious political damage to it. While some have interpreted the timing of it as an attempt to capitalise over media controversy over the ALP industrial relations policy, this does not explain the almost immediate date of effect.

The political damage arises from several aspects of WorkChoices. It's not just the loss of conditions through AWAs. At the moment, despite government claims to the contrary using heavily double-counted estimates, there are less than 400,000 workers on AWAs, that is under 1 in 20 employees. Many workers who have not signed AWAs are still fearful that they will be worse off under WorkChoices, or have already been made worse off through other mechanisms. 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.²² Although this poll was commissioned by Unions NSW, another poll found an even larger impact: 41 per cent

¹⁹ J. Howard in ABC TV, 'John Howard on the challenges ahead', *Insiders*, Australian Broadcasting Corporation, 13 May 2007.

²⁰ AAP, 'Labor claims IR policy has flexibility', *Brisbane Times*, 13 May 2007.

²¹ J. Howard in ABC TV, 'John Howard on the challenges ahead'.

²² M. Farr, 'IR the real election issue', *Daily Telegraph*, 27 February 2007.

of NSW residents said in a Galaxy opinion poll that they knew a friend or family member adversely affected by the reforms.²³

Nationally, a Newspoll reveals that while just 14 per cent of workers believed they were better off as a result of WorkChoices, some 33 per cent believed they were worse off, a margin of 2.4:1.²⁴ Notably, only 4 per cent felt a lot better off, while 18 per cent felt a lot worse off, a margin of 4.5:1. These numbers have not changed substantially in the four Newspolls taken since December 2005. For those aged 50 and over the ratio of 'a lot worse': 'a lot better' was 1.9:1, but for 30-49 year olds it was 3.4:1 and for under 30 year olds it was 7.8:1. Nor was any net improvement evident between two Morgan polls taken in October 2005 and April 2006 – only 13 per cent in the latter poll thought they or their families would be better off. The most recent AC Nielsen survey, in March 2007, found that while 21 per cent of voters thought they were worse off under WorkChoices, only 5 per cent thought they were better off, a margin on 4.2:1.²⁵

Managers and employees have anticipated a decline in employee job security.²⁶ 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, in the media²⁷ and in documentation from bodies like the Victorian Workplace Rights Information Line²⁸ and the Centre for Work and Life low paid project.²⁹ The "operational reasons" provision has 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 he worked in to make way for another one. In another

²³ L. Silmalis, 'IR reforms backlash', *Sunday Telegraph*, 31 December 2006.

²⁴ Newspoll, 'National telephone survey of 1205 adults, 30 March-1 April 2007', April 2007, p. 2.

²⁵ M. Bachelard and M. Grattan, 'Workplace law still loathed: poll', *Age*, 26 March 2007.

²⁶ Australian Institute of Management, *The New Workplace Relations System: June 2006 Survey Results*, Australian Institute of Management - Victoria and Tasmania (A.I.M VT), Melbourne, 2006; Talent2, Industrial relations reform - raw, Data tables from survey of 1595 employees, August, Sydney, 15 August, 2006.

²⁷ 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*, YWAS, Brisbane, 2006, <http://www.ywas.org/filestore/WC%20Inquiry%20FINAL%2021.pdf>.

²⁸ Workplace Rights Advocate, WRIL Case Study Summaries: 27/10/06 to 01/11/06 unpublished data, Melbourne, November, 2006. cited in Peetz, *Assessing the Impact of WorkChoices: One Year On*.

²⁹ 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.

involving Priceline, it became clear that employers could sack someone for “operational reasons” and then readvertise his job at a lower salary. The AIRC said:³⁰

The concept of an operational “reason” is much broader than the idea of an operational “requirement” (the ground which existed in previous unfair dismissal provisions). A “requirement” has previously been interpreted as being “necessary to advance the undertaking”... The question of a “valid reason” need not be considered, when an argument is advanced regarding the termination being for operational reasons, or for reasons that include operational reasons

“Operational reasons” under WorkChoices is very broad, and does not rely on the dismissal being for a “valid reason”. The employer does not have to prove that the dismissal was for a good or logical or defensible operational decision, merely that an operational factor was an element in the decision to dismiss. These decisions indicates that the Government was wrong when it claimed, at the time of the Parliamentary debate over WorkChoices (in relation to “operational reasons”), that “WorkChoices will retain the current law on this issue” (emphasis in original).³¹

The decision also appears to suggest that we need more explanation concerning comments made by the Minister last month in relation to the Tristar case, when he essentially indicated that it would be illegal for a company to retrench employees and re-employ them on AWAs doing the same work.³² If it is acceptable to sack a worker and rehire someone else doing the same work for lower pay (which happened not only in the Priceline case but also at Cowra abattoir and a nursing home in Parkes), then I am unsure why it would be illegal to sack a worker and rehire them on an AWA on lower conditions.

While the government is clearly spooked by the electoral impact of WorkChoices, there is also an interesting agenda at present of trying to spook the Australian Labor Party on its industrial relations policy. Various interests, particularly in the mining sector, are putting pressure on the ALP at the moment to overturn its opposition to AWAs, under threat of a corporate advertising campaign, while the media report this as if it were a major electoral threat to the ALP. This has been supplemented by the recent reporting of assertions by a former ALP pollster that: most Australians support a deregulated workplace, Labor has to find a “transition to accepting AWAs” and “the majority of voters are anti-union and they don't want the unions back in their lives”.³³

³⁰ *Cruickshank v Priceline* [2007] AIRC 292.

³¹ K. Andrews, Dismissal for Operational Reasons, Media release KA335/05, Department of Employment and Workplace Relations, Canberra, 3 November, 2005.

³² J. Hockey, Tristar accusations are false, Media release Department of Employment and Workplace Relations, Canberra, 23 March, 2007.

³³ P. Kelly, 'Rudd must beat unions: Labor guru', *Australian*, 12 May 2007, p. 1.

No numerical evidence, however, is presented to support these claims. It rehearses claims made by the same author after the 2004 election that Labor's then industrial relations policy "was backward looking and totally out of step with community and workforce trends",³⁴ again made without reference to any supporting data. The data from Newspoll show the reverse: since 2002 the ALP has consistently been perceived as the party that would "best handle" industrial relations. (Indeed, in 28 polls since 1997, Labor was the preferred party on industrial relations in 27, while in just one poll the parties were tied.) What is notable is how Labor's lead has increased under WorkChoices. Over the three years before WorkChoices was announced, Labor's lead on this issue was 7 percentage points. Since WorkChoices was introduced, Labor's lead has averaged 20 percentage points – most recently a margin of 49 to 28 per cent in October 2006.³⁵ Even after the release of its industrial relations policy and the accompanying media controversy, a Galaxy Poll estimated that 52 per cent of voters prefer "Kevin Rudd's industrial relations policies", while only 35 per cent prefer "John Howard's",³⁶ a margin of 17 percentage points.

Consistent with this pattern, Morgan shows the proportion of voters disagreeing with the "industrial relations reforms" consolidating from 47 per cent nationwide in July 2005 to 49 per cent in October 2005 and 57 per cent nationwide in April 2006 and to 59 per cent in the seat of Bennelong in February 2007. The margin of net opposition (disagrees minus agrees) has never fallen below 30 percentage points. Even amongst non-unionists, opponents outnumbered supporters in 2006 by 2.3:1. Amongst union members, 39 per cent of whom gave their preference to the Coalition in the 2004 election, the ratio of opposition was 14:1. According to the Roy Morgan 'Qualitative Research' for April 2007 'The most prevalent reason Labor supporters gave for their support of the party was the negative effect of the industrial relations laws'. Notably several of his informants said "I've always voted Liberal" but were now going to vote Labor for this reason.³⁷

There is little evidence that voters have bought the line that WorkChoices is good for the economy. In October 2005, 31 per cent of voters thought WorkChoices would be good for the economy, but 40 per cent thought it would be bad for it. Since then, scepticism about the economic benefits has increased, though this might change if Labor reverses its position on AWAs. In March-April 2007, the proportion who think it good for the economy is almost unchanged at 32 per cent, while a majority of 51 per cent now think it will be bad for the economy.³⁸

³⁴ R. Cameron, 'The ALP and industrial relations policy - a key to its future', *New Matilda*, 17 November 2004.

³⁵ Newspoll, 'National telephone survey of 1140 adults, 13-15 October (Issues poll)', October 2006, p. 2, www.newspoll.com.au. and earlier surveys.

³⁶ C. Porteous, 'Can't buy a vote', *Courier Mail*, 14 May 2007.

³⁷ Roy Morgan Research, *Industrial Relations Remains Key Issue In Lead Up To Federal Election*, Morgan Poll, Sydney, 30 April 2007.

³⁸ Newspoll, 'National telephone survey of 1205 adults, 30 March-1 April 2007'. and earlier surveys.

Voters, of course, have good reason to be sceptical. The WorkChoices economic miracle has yet to materialise. A reference point for productivity is the 2.5 per cent annual growth achieved under the traditional award system of the 1960s and 1970s.³⁹ However, trend labour productivity in the market sector grew by a mere 0.1 per cent over the period from March to December quarters 2006.⁴⁰ The current growth cycle is currently showing the second poorest rate of productivity growth of the past eight cycles.⁴¹ The OECD ranked Australian labour productivity growth as ninth weakest out of 32 countries for whom estimates were available in 2006.⁴² As the growth in the use of registered individual contracts has accelerated, then the growth rate of productivity has declined.⁴³ The only completed productivity cycle under the Workplace Relations Act, throughout which AWAs were available and growing, also failed to achieve the productivity growth rates of the traditional award system.⁴⁴ This was consistent with the experience in New Zealand under the Employment Contracts Act, which with a system based on individual contracting failed, by any measure, to exceed the productivity growth performance in Australia.⁴⁵ 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. 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;⁴⁶ the complexity of the legislation; and the high degree of state intervention it involves and permits in workplace employment relations.

WorkChoices was to deliver substantial employment growth through the partial abolition of the 'job destroying' unfair dismissal laws. Yet employment growth of 2.8 per cent in the first year of WorkChoices was noticeably weaker than the 4.4 per cent

³⁹ Australian Bureau of Statistics, *Australian System of National Accounts*, Canberra, 5204.0; D. Peetz, 'Hollow shells: The alleged link between individual contracting and productivity', *Journal of Australian Political Economy*, vol. 56, 2005.

⁴⁰ Australian Bureau of Statistics, *National Income, Expenditure and Product*, Canberra, 5206.0.

⁴¹ Peetz, *Assessing the Impact of WorkChoices: One Year On*. using data from Australian Bureau of Statistics, 5204.0.

⁴² Organisation for Economic Cooperation and Development, Annex Table 12, OECD Economic Outlook 80 database, Paris, 2007.

⁴³ Peetz, *Assessing the Impact of WorkChoices: One Year On*.

⁴⁴ Australian Bureau of Statistics, 5204.0.

⁴⁵ P. Dalziel, 'New Zealand's economic reforms: An assessment', *Review of Political Economy*, vol. 14, no. 1, January 2002.

⁴⁶ AMR Interactive, *MYOB Australian Small Business Survey*, MYOB, Melbourne July 2006; D&B, *D&B National Business Expectations*, Melbourne, March 2006; UMR Pty Ltd, *Gold Coast Tourism Globalisation Labour Impact Barometer*, Burson Marsteller / Gold Coast Tourism, Gold Coast, February 2007, pp. 35-36.

growth after the unfair dismissal laws were introduced in 1994.⁴⁷ It thus seems unlikely that the change to the unfair dismissal laws explain employment growth over the past year. While there have been claims that WorkChoices has enabled jobs to be converted from casual to permanent status,⁴⁸ ABS data suggest that AWAs may be promoting, rather than overturning, the casualisation of employment. The *number* of AWA employees in casual jobs doubled between 2004 and 2006. The number of AWA employees in permanent part-time jobs fell by around a third.⁴⁹

Returning to the politics of WorkChoices – do workers really want a deregulated workplace, despite their opposition to WorkChoices? It was true that in 1996, before people had experience with the introduction of AWAs, 34 per cent of Australians agreed that individual contracts were better than enterprise agreements, while 30 per cent disagreed.⁵⁰ But seven years later attitudes were not so rosy. Although a majority in 2003 said that 'employees and employers should be able to negotiate pay and conditions directly', this did not translate into support for individual contracts, as 46 per cent agreed that 'individual contracts favour the employer over the employee' while only 18 per cent disagreed. (Only managers on incomes of over \$104,000 per annum, whose own individual contracts were probably quite favourable, disagreed with this.) Some 43 per cent of respondents agreed that 'employees will never protect their working conditions and wages without strong unions', while just 32 per cent disagreed, and 66 per cent agreed that 'award wages are the best way of paying workers and setting conditions', with only 13 per cent disagreeing.⁵¹ In February-March 2006, 70 per cent of 1001 respondents to a survey in 24 Coalition-held marginal electorates agreed that 'Individual contracts give too much power to the employer', just 20 per cent agreed.⁵² Twelve months later, in a national survey, 69 per cent still agreed with this statement.⁵³

Remarkably in the context of the current debate, since the 1980s, attitudes have become steadily more *pro*-union, when measured by responses to such questions as whether unions: have too much power; have been a good thing for the country; should

⁴⁷ Australian Bureau of Statistics, *Labour Force, Australia*, Canberra, 6202.0.

⁴⁸ eg E. Gosch, 'AWAs a win-win for seafood processor', *Australian*, 6 January 2007.

⁴⁹ Australian Bureau of Statistics, 6306.0.

⁵⁰ Australian Election Study, Australian election study computer file, (ASSDA No. DO 943), Australian National University, Canberra, 1996. These findings and others in the next three paragraphs are contained in D. Peetz, *Brave New Workplace: How Individual Contracts are Changing our Jobs*, Allen & Unwin, Sydney, 2006.

⁵¹ Australian Survey of Social Attitudes [AuSSA], Australian survey of social attitudes, on-line computer file, ACSPRI Centre for Social Research, Australian National University, Canberra, 2003.

⁵² J. Armitage, *Quantitative research: summary of key findings for ACTU*, Auspoll Pty Ltd, March 2006. Although this poll was commissioned for the ACTU, there is no reason to believe the sample is biased: the margin of opposition to the industrial relations reforms, 37 percentage points, was the same as in a contemporaneous Morgan survey.

⁵³ Essential Media Communications, *Memo: ACTU Research Findings*, Melbourne, 26 March 2007.

be subject to tighter controls; are doing a good job; or have trustworthy leaders.⁵⁴ For example, the proportion of Australians saying unions were doing a 'fairly good', 'very good' or 'excellent' job rose gradually from around 35 per cent in the mid 1980s to 50 per cent in the mid 1990s.⁵⁵ Newspoll data then show attitudes to unions becoming more favourable between 1996 and 2002, with half of workers now preferring to belong to a union rather than not belong.⁵⁶ Despite the fall in union density, Australian *values* on work related matters are becoming more collectivist and pro-union, not less. More workers want unions in their working lives than actually have them there. Perhaps this is because of increasing disquiet about the power of large corporations – the numbers of people in surveys saying that 'big business' has too much power has risen from 52 per cent in 1967, to 63 per cent in 1979, about 65 per cent in 1990 and 72 per cent in 2004.⁵⁷

The pressure on the ALP to reverse its position on AWAs has several objectives, including: continuing to make it possible for some large corporations to circumvent freedom of association principles; reducing product differentiation between the ALP and the government; and legitimising one of the most unpopular aspects of WorkChoices. But there are alternatives easily available, and I'm not referring to common law contracts and award facilitative provisions. The ALP policy retains non-union collective agreements, presently known as employee collective agreements. These offer exactly as much flexibility in conditions for the employer as AWAs. Indeed before WorkChoices came in, there were about as many people on these as there were on AWAs, and they are at least as popular now as they were before WorkChoices. But they do not offer the same opportunities for denying freedom of association, and cutting pay and conditions through attrition and coercion at the point of recruitment, as AWAs. Employees have to genuinely have the opportunity to vote on their conditions, it's not a take-it-or-leave-it instrument. But if employers, including those in the mining industry, find themselves in an environment without AWAs, they will quickly settle down into using employee collective agreements to obtain the flexibility they seek, provided their employees agree.

Overall, WorkChoices has potentially devastating political effects, principally because it is not an economic reform, it is a policy aimed at shifting power from employees to employers. Hence it is capable of leading to losses in pay and conditions for many workers, and if not for them directly than for their wives, husbands, friends, sons or daughters. Some of these losses are already happening amongst the small minority of

⁵⁴ D. Peetz, 'Sympathy for the devil? Attitudes to Australian unions', *Australian Journal of Political Science*, vol. 37, no. 1, March 2002.

⁵⁵ *ibid.*

⁵⁶ S. Bearfield, *Australian employees' attitudes towards unions*, Working Paper no 82, ACIRRT, University of Sydney, Sydney, March 2003; J. Robertson, 'State of the Union', *Workers Online*, April 2005, http://workers.labor.net.au/features/200504/b_tradeunion_auspoll.html.

⁵⁷ D. Aitkin, *Stability and Change in Australian Politics*, Australian National University Press, Canberra, 1982; Australian Election Study, Australian election study 2004, computer file, Australian National University, Canberra, 2004; I. McAllister, R. Jones and D. Gow, Australian election study 1990, computer file and codebook, Australian National University, Canberra, 1990.

workers who have signed AWAs to date, though the extent of this is disguised. Voters do not see it as having economic benefits, quite possibly because it does not have economic benefits. The “fairness test” is an attempt to change these perceptions but, as the government argues, it does not alter the fundamentals of WorkChoices. It also places the government in an exquisite dilemma. If the “test”, which on the information we have is just a pale shadow of the no-disadvantage test, is administered tightly then the number of AWAs will plummet and the government will be faced with the embarrassment of failing to meet its targets on AWA coverage. But if the test is administered laxly, the stories of “outrageous misfortune” under AWAs will continue to feature in the media, and destroy the pretence of fairness. Either way, unless the government reverses its refusal to disclose the content of AWAs, the inverse of the number of AWAs approved each quarter will be the only quantitative indicator of the quality of AWAs.

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