

Submission to the South Australian
Industrial Relations Commission Inquiry
into the WorkChoices legislation

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ABBREVIATIONS..... iii

1 INTRODUCTION..... 1

2 COVERAGE 3

3 AUSTRALIAN WORKPLACE AGREEMENTS AND CONDITIONS OF
EMPLOYMENT 14

4 EMPLOYER GREENFIELDS AGREEMENTS AND CONDITIONS OF EMPLOYMENT
24

5 WAGE RATES UNDER INDIVIDUAL AND COLLECTIVE AGREEMENTS 27

6 WAGE INCREASES UNDER AUSTRALIAN WORKPLACE AGREEMENTS AND THE
AUSTRALIAN FAIR PAY COMMISSION..... 38

7 EMPLOYMENT 44

8 PRODUCTIVITY 54

9 SOME CONCLUSIONS..... 62

10 REFERENCES..... 64

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 full-time adult employees
AWTE	average weekly total earnings for full-time 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
RULC	real unit labour costs
UDL	unfair dismissal laws
WC	WorkChoices
WA	Western Australia
WRA	Workplace Rights Advocate, Victoria
WRIL	Workplace Rights Information Line, Victoria

1 INTRODUCTION

This submission builds upon a report, *Assessing the Impact of WorkChoices – One Year On*, that I wrote for Industrial Relations Victoria in March 2007.¹ I have included in this submission areas of that report which I have been able to update in the time available to me. Those aspects of the Victorian report which I have not had the opportunity to update are not included here.

I understand the Commission already has that report available to it, so I have not attached it to this submission. Areas covered by this submission, that represent a significant modification of the Victorian report, include, but are not restricted to:

- coverage:
 - incidence of awards, collective agreements and registered individual contracts by industry
 - the relationship between labour turnover and AWA density estimates
- AWAs and conditions of employment:
 - unreleased OEA data on ‘protected’ award conditions excluded *or modified* by AWAs
 - the fairness test
- non-union CAs, EGAs and conditions of employment
 - Gahan study on loss of conditions under EGAs
- wage rates under registered individual contracts and CAs
 - the impact of earnings inequality on the representativeness of average earnings data
- wage increases under agreement types and the AFPC
 - impact of AFPC decision and flat rate/tapered wage increases on award-reliant workers and equity
 - forms of wage increases in AWAs
- employment
 - updated employment data
 - South Australian data
- productivity
 - updated productivity data
 - impact of unskilled employment growth on productivity growth

There is one point I wish to reiterate from the Victorian report. Despite the willingness of its advocates to claim success, it being little more than 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, though some of this has been recently obtained and is included in here. Only a small minority of employees are covered by WC agreements to date and employer surveys indicate that the majority of businesses have decided against taking advantage of the ‘opportunities’ WC presents. This is a factor limiting the effects of WorkChoices so far. However, the Western Australian experience from the 1990s² suggests that more employers may

¹ D. Peetz, *Assessing the Impact of WorkChoices - One Year On*, Industrial Relations Victoria, Department of Innovation, Industry and Regional Development, Melbourne, March 2007.

² *ibid.* section 3.

be forced to change strategy as a result of WC, but it may take some time for this to happen and may affect employers who had not originally intended to change strategy. The effects of some provisions will probably not be felt until 2009 or 2010. The full effects of WC will probably only be seen when the boom slows and economic conditions deteriorate, leading a larger number of employers to make use of WC 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.

2 COVERAGE

The number of employees covered by the WorkChoices legislation is no clearer now than before WC 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, WC 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 WC,³ but Queensland estimates based on 2004 ABS data were that only 75 percent would be covered nationally, with the figure falling to around 60 per cent in the four smaller states.⁴

The only authoritative data on coverage of *agreements* under WC comes from the ABS. Unfortunately, the most recent ABS data,⁵ issued in February 2007, only relate to May 2006, when WC 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 South Australia was about half the national level, at 1.4 percent, a drop on the 3.2 per cent recorded in 2004 (Table 2.1).

Drawing also on ABS labour force data,⁶ we can estimate that AWAs covered 258,000 employees in May 2006 (Table 2.2).⁷ 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.

³ K. Andrews, WorkChoices 7, Speech to Australian Business Limited, Sydney, 11 October, 2005.

⁴ 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.

⁵ Australian Bureau of Statistics, 6306.0.

⁶ Australian Bureau of Statistics, *Labour Force, Australia, Detailed - Electronic Delivery*, Canberra, 6291.0.55.001.

⁷ 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.

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 2.2). 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.⁸ Claims of the growing importance of self-employment amongst workers are oft exaggerated.

Most states experienced an increase in AWA coverage. The exceptions, however, were South Australia and Western Australia (Table 2.1). 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.

⁸ Australian Bureau of Statistics, *6291.0.55.001*.

Table 2.1 Coverage by different methods of pay setting, States and Australia, May 2004 and May 2006.

	Collective			Individual		
	2004 (%)	2006 (%)	Change	2004 (%)	2006 (%)	Change
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			
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			
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...)

	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.

Table 2.2 Coverage of the Australian workforce by type of instrument, Australia, May 2004 and May 2006

	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	5.4	5.1	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 s170LK/non-union collective agreements, plus state collective agreements.

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:⁹ 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 percent of casual employees were dependent on the award for their terms and conditions. Coverage by registered individual contracts was also higher for permanent full-timers (2.8 per cent) and permanent part-timers (2.6 per cent) than it was for casuals (1.7 per cent).

Table 2.3 shows the incidence of pay setting instruments by industry, using unpublished data from the EEH survey (the published data do not distinguish between registered and unregistered contracts). It reveals that the industries with the highest proportions of registered individual contracts are mining and communications services, each having 16 per cent of employees on AWAs. Other industries with above-average density of AWAs are transport and storage (6 per cent), retail trade (5 per cent) and hospitality (4 per cent), while finance, manufacturing, government administration and property and business services all have around 3 per cent of employees on AWAs.

⁹ 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.

Table 2.3 Incidence of awards, CAs and AWAs by industry, May 2006

	Award Only	Collective agreement(a)	Individual arrangements			All methods of setting pay
			Registered individual contract	Unregistered individual arrangement	Working Proprietor of incorporated business	
Mining	* 2.4	29.8	16.2	50.5	* 1.1	100.0
Manufacturing	10.6	37.7	* 3.3	44.0	4.3	100.0
Electricity, Gas and Water Supply	* 0.9	84.4	**0.6	13.8	* 0.3	100.0
Construction	12.0	27.7	* 1.0	42.5	16.8	100.0
Wholesale Trade	12.8	9.5	* 2.1	69.0	6.6	100.0
Retail Trade	28.7	34.8	5.4	26.7	4.4	100.0
Accommodation, Cafes and Restaurants	57.2	8.8	* 4.3	26.3	3.5	100.0
Transport and Storage	12.4	40.4	**6.2	34.7	6.3	100.0
Communication Services	**0.9	61.3	15.6	15.1	7.1	100.0
Finance and Insurance	5.1	42.6	2.8	43.0	6.4	100.0
Property and Business Services	23.2	15.5	3.1	49.2	8.9	100.0
Government Administration and Defence	* 0.6	91.8	3.1	* 4.4	-	100.0
Education	11.9	81.5	* 0.4	6.1	* 0.2	100.0
Health and Community Services	25.4	58.4	* 0.3	13.7	2.2	100.0
Cultural and Recreational Services	19.2	40.7	* 0.9	36.3	* 2.9	100.0
Personal and Other Services	23.4	46.4	**1.0	25.8	3.4	100.0
All Industries	19.0	41.2	3.1	31.7	5.1	100.0

(a) includes registered and unregistered collective agreements

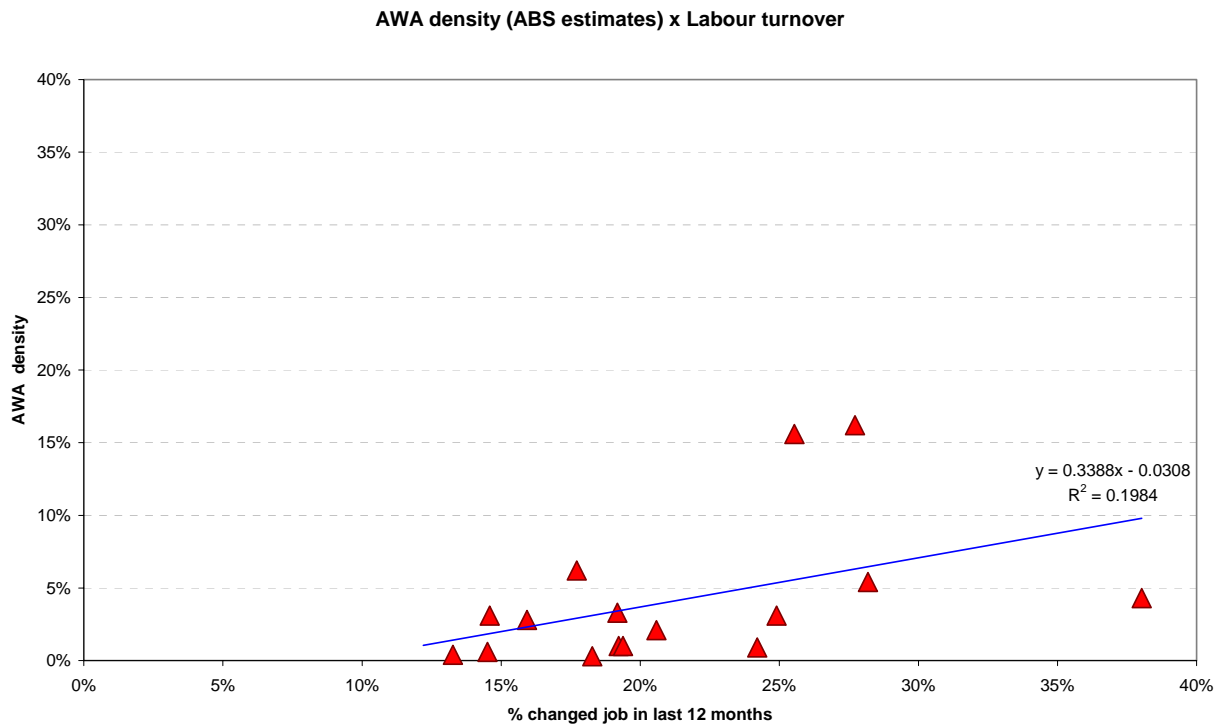
* estimate has a relative standard error of 25% to 50% and should be used with caution

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

Source: unpublished data from ABS 6306.0

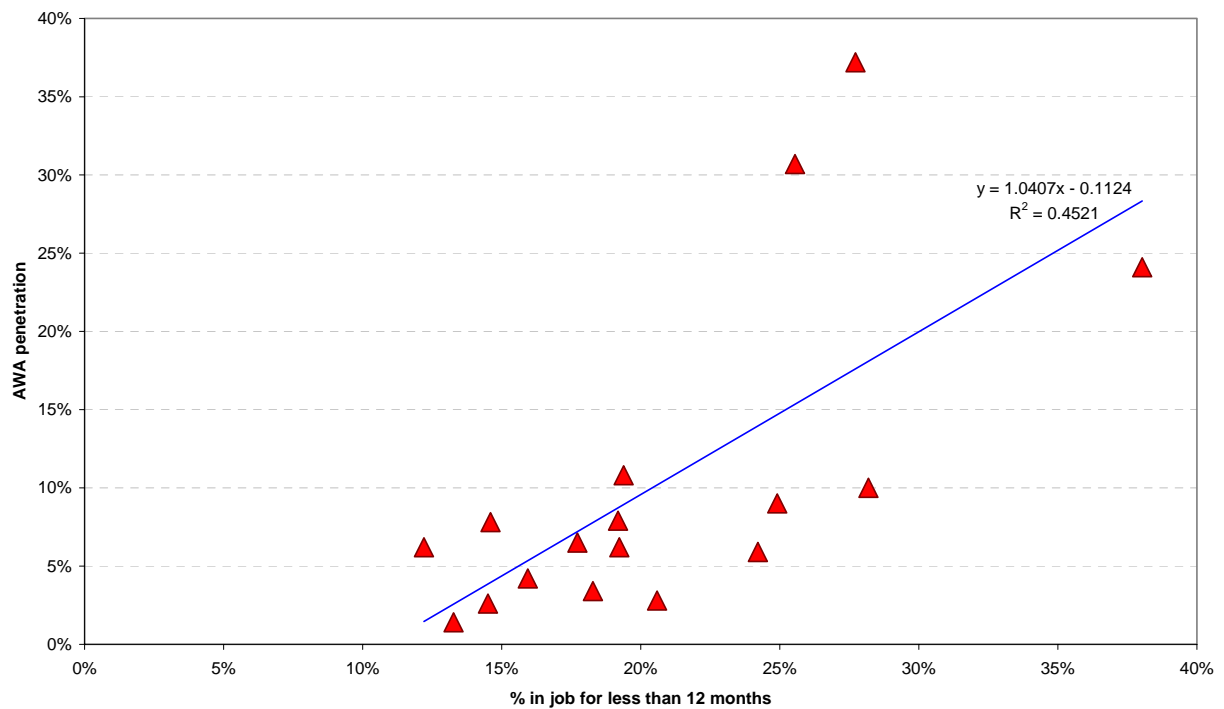
AWA coverage appears positively associated at the industry level with labour turnover. This is illustrated in chart 2.1 which shows the proportion of employees in an industry on AWAs and the proportion who have been in their job for less than 12 months. There is a positive relationship – a one per cent increase in labour turnover is associated with a 0.3 per cent increase in AWA coverage – though the relationship it is only significant at the 10 per cent level. This probably reflects the fact that it is labour turnover provides the opportunity to require new employees to sign AWAs as a condition of employment. Existing employees may not wish to sign AWAs, and it is technically illegal to coerce them to do so, but there are no such inhibitions on requiring new employees to sign AWAs.

Chart 2.1 AWA density (ABS estimates) x Labour turnover



Source: ABS 6209.0 and 6306.0.

Chart 2.2 AWA penetration (OEA estimates) x Labour turnover



Source: OEA 2007 and ABS 6209.0

A much stronger, and more significant relationship can be found between labour turnover and the OEA's estimates of AWA penetration. This is shown in Chart 2.2. A one per cent increase in labour turnover is associated with a 1 per cent increase in AWA penetration as estimated by OEA.

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 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.¹⁰

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. This problem increases, the higher the rate of labour turnover in an industry. That is why the relationship between OEA coverage and labour turnover is so high, as shown in Chart 2.2. The more people change jobs in an industry, the more double counting of AWAs occurs. Nearly 60 per cent of the variance in the gap between OEA and ABS estimates of AWA coverage can be explained simply by variations in the level of labour turnover.

The inadequacies of the Commonwealth methodology have increased over time, with the extent of over-estimation increasing from 60 percent 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 first year after WorkChoices came into force, there had been 306,393 AWAs lodged with the OEA by the end of March 2007. Applying a 16 per cent loss rate to the quarterly figures would imply that around 252,000 of these AWAs were still 'live' at the end of March 2007. A 12 per cent loss rate to WC AWAs would imply that around 265,000 were still in operation. This

¹⁰ 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.).

would bring the number of operating AWAs at the end of March 2007 to between 372,000 and 385,000, of which 68 to 69 per cent were WC AWAs.¹¹ This is equivalent to between 4.0 and 4.2 per cent of employees. This is well short of the ‘almost a million today’ that has been claimed,¹² and it is very unlikely that such a target will be even approached by the end of 2007.¹³ It appears that the government aspires to having 20 per cent of employees on AWAs by an unspecified date.¹⁴

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 March 2007 around 493,000 employees, representing around 6 per cent of employees, were covered by new union CAs signed under WorkChoices, while 124,000 (over 1 per cent of employees) were covered by non-union CAs (‘employee collective agreements’) under WorkChoices.¹⁵ (These numbers compare with the 252-265,000 employees covered by WC AWAs at the end of March 2007.) WorkChoices also allows for a new form of ‘agreement’, the employer greenfields ‘agreement’ (EGA), discussed later. By March 2007, 24,000 employees were covered by EGAs, and a further 7,000 were covered by union greenfields agreements. In total, then, approximately 900,000 workers (10 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.¹⁶

Overall, at the end of March 2007 employees under new union CAs represented the majority (54 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 29 per cent, was higher than AWAs’ share in May 2004 (9 per cent). The share of

¹¹ There would be 120,000 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 252,000 (16 per cent decay rate) to 265,000 (12 per cent decay rate) WC AWAs in operation.

¹² J. Howard, *Building Prosperity: The Challenge of Economic Management*, Address to the Menzies Research Centre, Parliament House, Canberra, 27 February, 2007.

¹³ 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 830,000 by the end of 2007, but only 430,000 to 480,000 of those would be ‘live’, with 380,000 to 420,000 of those being live WC AWAs.

¹⁴ Department of Employment and Workplace Relations, request for tender, Measure the economic benefits of building upon recent workplace relations reforms, confidential unpublished document, May 2007.

¹⁵ Australian Bureau of Statistics, *Labour Force, Australia*, Canberra, 6202.0; Office of the Employment Advocate, *Workplace agreement statistics*, Sydney, 5 October 2006.

¹⁶ Office of the Employment Advocate, *Workplace agreements quarterly fact sheet October-December 2006*, Sydney, 2007.

non-union collective agreements was relatively stable, rising from 10 per cent in 2004 to 14 per cent under WorkChoices.¹⁷ 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 below 400,000 employees on AWAs at the end of March 2007.

¹⁷ 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..

3 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.¹⁸ For example, workers at a Melbourne call centre operated for Lufthansa were told to sign AWAs cutting their base pay by between three and ten per cent, reduced penalty rates and loadings, and to allegedly offset this, provided a complex bonus scheme in which, to get the targets and not take more than one day of sick or carer's leave. 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.'¹⁹ 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 undertaken in April 2006 and released in May 2006,²⁰ 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'.²¹ 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 which had been used to generate data for the OEA's last major official report to parliament on AWAs, covering the years 2002 and 2003.²² The federal government's justification for suppressing government-held data has been that it is not possible to 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.²³ However, the new 'fairness test' (discussed below) does exactly that.

¹⁸ 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%2021.pdf>.

¹⁹ 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.

²⁰ P. McIlwain, evidence to May Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 29 May, 2006.

²¹ P. McIlwain, evidence to November Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 2 November, 2006.

²² 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.

²³ J. Hockey in ABC Radio National, 'Figures point to less worker protection under AWAs', *The World Today*, 17 April 2007.

In April 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 3.1. Several observations stand out.

There was a strong focus in AWAs on reducing protected award entitlements. The rate at which conditions were being removed was 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 rate at which penalty rates have been removed went up by 17 per cent, the same increase applies to the 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 WC.

Table 3.1: Reductions or losses of protected award conditions under AWAs, 2002-2003 and April 2006 (%)

	2002-03		April 2006			2002-03 to April 2006
	Absorbed (abolished)	'excluded' (abolished)	'modified' (mostly reduced but not abolished) ⁱ	total 'modified' ⁱ or abolished	Un- changed	increase in rate of abolition
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

ⁱ It is possible that some of the provisions that 'modify' 'protected' award conditions represent an improvement on the award standard. However analysis of EGAs (see section 7) shows that this is rarely the case, and that most or all 'modifications' to 'protected' award conditions represent a lessening of the award standard.

Overtime and penalty rates are particular targets for removal. Over three fifths of AWAs abolished penalty rates altogether. Over four fifths of AWAs abolished or reduce overtime pay.

Over three fifths abolish penalty rates. We did not know how many AWAs reduced 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.

In April 2007 suppressed OEA data on the content of AWAs lodged from May to September 2006 were published by Mark Davis in the *Sydney Morning Herald*.²⁴ These data, and further data from that source analysed and passed on to this author by Davis, are shown in Table 3.2. This table mirrors the structure of Table 3.1. The data obtained by Davis are based on a much larger sample than that released by the OEA (998, rather than 250) and as a result of that, and also because they are more recent, should be taken as being a better indication of what has been happening with AWAs.

Table 3.2: Reductions or losses of protected award conditions under AWAs, 2002-2003 and May-October 2006 (%)

	2002-03		May-September 2006			2002-03 to May- Sept 2006
	Absorbed (abolished)	'excluded' (abolished)	'modified' (mostly reduced but not abolished) ⁱ	total 'modified' ⁱ or abolished	Un- changed	increase in rate of abolition
overtime loading	25	52	36	88	12	107%
penalty rates	54	68	21	90	10	26%
annual leave loading	41	71	3	74	26	73%
shiftwork loading	18	76	13	89	11	323%
rest breaks	na	30	53	83	17	Na
public holiday payments	na	53	29	82	18	Na
substitute days for public holidays	na	67	3	70	30	Na
declared public holidays	na	23	3	25	75	Na
incentive payments	na	70	15	85	15	Na
monetary allowances	41	57	34	91	9	40%

na = not available.

Sources : Davis 2007 and unpublished OEA data obtained by Davis; Department of Employment and Workplace Relations and Office of the Employment Advocate, 2004

ⁱ It is possible that some of the provisions that 'modify' 'protected' award conditions represent an improvement on the award standard. However analysis of EGAs (see section 7) shows that this is rarely the case, and that most or all 'modifications' to 'protected' award conditions represent a lessening of the award standard.

It shows that the rate of abolition of conditions accelerated between the two periods. This was most obviously the case for shiftwork loading. In May-September 2006, some 76 per cent of

²⁴ M. Davis, 'Revealed: how AWAs strip work rights', *Sydney Morning Herald*, 17 April 2007.

AWAs excluded (abolished) shiftwork loading (up from 52 per cent in April 2006), a 323 per cent increase on the 18 per cent of AWAs that abolished shiftwork loading in 2002-03.

The number of AWAs that excluded award provisions on days substituted for public holidays also increased significantly, from 44 per cent in April 2006 to 67 per cent in May-October 2006. Although AWAs are often touted as a means of increasing incentives for rewarding staff, the number of AWAs that excluded award incentive payments increased from 46 per cent in April 2006 to 70 per cent in May-September 2006.

The unpublished data also revealed that 68 per cent of AWAs abolished penalty rates (up 8 per cent on April 2006 and up 26 per cent on 2002-03), 52 per cent abolished overtime pay (up 2 per cent on April 2006 and up 107 per cent on 2002-03), 46 per cent abolished public holiday payments, 64 per cent abolished annual leave loading and 48 per cent abolished monetary allowances. The only conditions for which the rate of withdrawal eased after April 2006 were rest breaks and declared public holidays.

Many of the gaps in Table 3.1 are also filled in by these unpublished data. In particular, for the first time they give an indication of the extent to which each condition is 'modified' – almost always, reduced, without being abolished – through AWAs.²⁵ These data were not originally published by the *Herald* but have been provided by Davis. They show that, for most 'protected' award conditions, even amongst those AWAs that do not abolish that condition, the majority will 'modify', that is reduce it.

For example, as mentioned 68 per cent of AWAs abolished penalty rates. But among the remaining 32 per cent that did not abolish penalty rates, two thirds – that is, 21 per cent of all AWAs – 'modified' penalty rates, that is they mostly reduced them without abolishing them. In total, then, *around 90 per cent of AWAs either abolished or reduced penalty rates.*

Similarly, most AWAs that did not abolish overtime rates nonetheless modified them. In total, 88 per cent of AWAs abolished or 'modified' overtime rates.

The story was no better for shiftwork loading: 89 per cent of AWAs either abolished or 'modified' it.

Ninety-one per cent abolished or 'modified' monetary allowances. Eighty-five per cent abolished or 'modified' incentive payments. Eighty-two per cent abolished or 'modified' public holiday payments. And 83 per cent abolished or 'modified' rest breaks.

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:

²⁵ For a discussion of how 'protected' award provisions are 'modified' – reduced or, very rarely, improved – in EGAs, see section 7.

Jean²⁶ 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.²⁷

An AWA for employees at Australian Sweets, a company recently created by a private equity-funded 'management buy in' of two confectionery manufacturers,²⁸ 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.²⁹

The covering letter describes the AWA as offering 'a significant increase in your terms and conditions of employment'.³⁰ The management buy in was advised by one of the legal firms whose lawyers assisted in the drafting of WorkChoices.³¹

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'.³² They cited several examples including this one:

²⁶ Fictitious names have been used to preserve anonymity.

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

²⁸ Australian Sweets, ANZ Capital facilitates private equity acquisition of Ric's Confectionery and Prydes Sweets, news page, Australian Sweets website, 2006,

²⁹ Australian Sweets, Australian Workplace Agreement ("AWA"), Sydney, 20 September, 2006.

³⁰ *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.

³¹ Australian Sweets, ANZ Capital facilitates acquisition, ; M. Priest, 'Employers' advocates help draft IR Bill', *Australian Financial Review*, 19 August 2005, p. 57.

³² 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.

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).³³

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 AWAs.³⁴ Pre-WorkChoices research showed that there were different types of AWAs that focused on different issues,³⁵ 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'.³⁶ 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

³³ *ibid.*

³⁴ 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*.

³⁵ 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.

³⁶ E. Abetz, Additional Estimates hearing, Senate Employment, Workplace Relations and Education committee, Canberra, 15 February, 2007 66.

rates means even longer hours at work and fewer hours for family and social engagement.³⁷

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).³⁸

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.

The ‘fairness test’

In the face of widespread public concern about the loss of conditions under WorkChoices, the federal government on 4 May 2007 announced amendments to WorkChoices. Most importantly these took the form of a ‘fairness test’ to be applied to new agreements lodged after 6 May 2007. The details of this new obligation on employers were not made known until the legislation was introduced on 28 May 2007 and were applied retrospectively.

The day after the ‘fairness test’ was announced, government advertisements appeared in major newspapers promoting the changes. The advertisements said in part 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’.³⁹

This, in effect, concedes that it had ‘become the norm for penalty rates and other conditions to be traded off without proper compensation’, that it was ‘never the intention’ that this would happen, and ‘therefore’ the government ‘proposes to change the law’. There seems no other sensible way of interpreting these words. If this had not become the norm, the federal government need not have ‘therefore’ changed the law.

³⁷ Masterman-Smith and Elton, ‘Cheap labour - the Australian Way’.

³⁸ *ibid.*

³⁹ Australian Government, A Stronger Safety Net for Working Australians newspaper advertisement in all major newspapers, Canberra, 4 May, 2007.

It is difficult to understate how much confusion was created by the hurried nature of the introduction of the ‘fairness test’. The wording of the test was not clarified in time for its commencement and indeed it was not clarified until the legislation was introduced into Parliament three and a half weeks later. For several weeks employers were bound by a law which has not been passed or even tabled and liable for compensation if they got it wrong. The Prime Minister 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’,⁴⁰ but if employers had followed this advice then AWA lodgements would have ceased. As mentioned, the official data had 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 no WorkChoices AWA would be lodged. The Minister described the test as a ‘work in progress’ and, when asked to provide details on the obligations employers now face, he refused to ‘speculate’ on them.⁴¹ A Minister using the term ‘speculation’, to describe an official explanation the legal obligations currently facing employers, is certainly unusual in industrial relations. The rationale 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’⁴² only made sense if there had been substantial exploitation under WorkChoices AWAs, but it was also inconsistent with how all other changes to the law regarding agreement-making have been handled.

Under the ‘fairness test’, the agency formerly known as the Office of the Employment Advocate, now renamed the ‘Workplace Authority’, is to check all AWAs to see if any ‘protected’ award conditions have been removed or modified and, if this has happened, to consider whether employees have been ‘fairly compensated’ for the loss of their entitlements. This compensation can be monetary or non-monetary. The discretion rests with the Workplace Authority bureaucrats to determine what is meant by ‘fairly compensated’. If an employee has not been ‘fairly compensated’, the Workplace Authority is to request a variation of the agreement and if this is not forthcoming within 14 days the agreement lapses.

The ‘fairness test’ has some similarities to the former ‘no disadvantage’ test but it is weaker. The ‘fairness test’ only relates to seven ‘protected award conditions’. Hence it requires no compensation if an AWA removes or reduces entitlements to redundancy pay, notice of termination, superannuation or long service leave. In addition, the subjective nature of the test (Parliament explicitly rejected an amendment that the test ensure that employees be *fully* compensated for loss of entitlements)⁴³ allows considerable scope for variations over time in the strictness with which the test is applied.

An illustration of the significance of this can be seen in the way in which the same agency 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

⁴⁰ J. Howard in ABC TV, ‘John Howard on the challenges ahead’, *Insiders*, Australian Broadcasting Corporation, 13 May 200y.

⁴¹ AAP, ‘Labor claims IR policy has flexibility’, *Brisbane Times*, 13 May 2007.

⁴² J. Howard in ABC TV, ‘John Howard on the challenges ahead’.

⁴³ Senate Journals, Workplace Relations Amendment (A Stronger Safety Net) Bill 2007, 19 June, 2007.

have passed' the test.⁴⁴ Before WorkChoices there were growing indications the OEA 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.⁴⁵ For example, following a change in administrative procedures,⁴⁶ the OEA 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.⁴⁷ In 2005 workers from a Penrith donut outlet calculated that their AWAs paid at least 8 per cent below the award.⁴⁸ 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 OEA had approved.⁴⁹

Such difficulties are likely to arise whenever a body is given the task of both policing and promoting AWAs. Under the amended legislation one of the functions of the Workplace Authority is 'to promote the making of workplace agreements',⁵⁰ and the OEA's Annual Report states that 'objective 1.1' of the agency is to have 'one million wage and salary earners covered by AWAs by 30 June 2008'.⁵¹ 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.

The government has likened the 'fairness test' 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 be major policy reversal. But it insists the new test 'doesn't undermine in any way the fundamentals of the legislation of WorkChoices',⁵² and on this I have to agree.

Until the government allows independent researchers and the public to see what is happening under AWAs, 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

⁴⁴ 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 Victoria, 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.

⁴⁵ 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.

⁴⁶ G. Haycroft, Discussion paper: "Fairness Test" consequences, Briefing paper presented to Minister for Employment and Workplace Relations, reprinted by Workplace Express, Canberra, June 2007 10.

⁴⁷ OEA, No Disadvantage Test and Voluntary Non Standard Hours, mimeo distributed by OEA to WA employers, Perth, 2003.

⁴⁸ 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.

⁴⁹ *Yurong v Renella* [2005] SAIRC 50.

50 new s150B(c) as amended by Workplace Relations Amendment (A Stronger Safety Net) Act 2007.

⁵¹ Office of the Employment Advocate, *Annual Report 2005-2006*, OEA, Sydney, 2006.

⁵² J. Howard in M. Grattan, 'Battle for the battlers', *Age*, 5 May 2007.

around 95,000 per quarter over the past six months.⁵³ The fairness test, if administered properly, would bring this number down. After all, as one of the more prolific advocates of AWAs has said:

under the present rules almost none of the existing AWAs would technically pass the Fairness Test. We then have the situation where a government agency is telling the workers that their boss has ripped them off. **It is not a good look.**⁵⁴

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 previously mentioned, was administered laxly anyway). Unless there is a large drop in the number of AWAs approved, we will know that the test has had little impact on the content of AWAs.

⁵³ Office of the Employment Advocate, *Workplace agreement statistics*, Sydney, 2007.

⁵⁴ emphasis in original. Haycroft, Discussion paper: "Fairness Test", 2.

4 EMPLOYER GREENFIELDS AGREEMENTS AND CONDITIONS OF EMPLOYMENT

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.

The Workplace Research Centre (WRC, formerly ACIRRT), analysed a sample of 64 collective agreements – 25 union CAs and 39 non-union CAs, comprising 17 employee collective agreements and 22 EGAs.⁵⁵ Although not statistically representative, the results, summarised in table 4.1, 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 significant number of EGAs 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.

Table 4.1: 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
<i>N</i>	25	17	22	39

Source: WRC, *ADAM Report 50*.

⁵⁵ 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.

WRC subsequently looked at a larger sample of 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).⁵⁶

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’.⁵⁷

Newsletter *Workplace Express* analysed the content of 34 EGAs in November 2006.⁵⁸ 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 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.

The most substantial investigation of EGAs published to date was undertaken by Peter Gahan of Monash University.⁵⁹ As part of a larger project, he analysed 55 Victorian EGAs, which were mostly in retail, hospitality and manufacturing. (In Queensland, NSW and WA EGAs were also used in construction or mining.) Preliminary findings were released in June 2007. He found that:

- 78 per cent of Victorian EGAs excluded all ‘protected’ award conditions; a further 4 per cent excluded some but not all ‘protected’ conditions;
- 79 per cent of EGAs excluded or reduced the award entitlement to overtime pay;
- around 75 per cent of EGAs excluded or reduced penalty rates for working weekends or public holidays;
- many EGAs were silent on shift allowances, but of those which mentioned them 79 per cent excluded or reduced shift allowances;
- 67 per cent of EGAs excluded or reduced the entitlement to annual leave loading;
- 56 per cent of EGAs excluded or reduced award meal break entitlements.⁶⁰

⁵⁶ Workplace Research Centre, ‘Employer greenfield agreements’, *ADAM Report*, vol. 51, December 2006.

⁵⁷ M. Davis, ‘Firms rush to non-union wage deals’, *Australian Financial Review*, 30 October 2006, p. 1, 60-61.

⁵⁸ Workplace Express, ‘Greenfields agreements true to predictions’, *Workplace Express*, 13 November 2006.

⁵⁹ P. Gahan, *Employer Greenfields Agreements under Work Choices: Interim Report*, Report to the Office of the Workplace Rights Advocate, Melbourne, 2007.

⁶⁰ *ibid.* pp. 5-7.

The Gahan study also gave an indication of what happens when ‘protected’ conditions are varied but not abolished. Of the 17 EGAs that modified but did not abolish overtime premiums, only two represented an improvement on the award standard. Of the 17 that modified without abolishing public holiday pay penalty premiums, all were weaker than the award standard. Of the 14 that modified without abolishing weekend penalty rates, 13 were weaker than the award standard. Of the 7 that modified without abolishing shift allowances, all were weaker than the award standard. Of the 20 that modified without abolishing meal break provisions, 19 were weaker than the award standard. Similarly, no variations to annual leave loading represented an improvement on the award standard.⁶¹ Almost unanimously, when EGAs vary protected award conditions, they weaken or abolish them. Improvements on award conditions are rare.

Stories about EGAs are emerging.⁶² 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.⁶³

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.⁶⁴ 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.⁶⁵ 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).⁶⁶ 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.⁶⁷

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.

⁶¹ *ibid.* pp. 33,35,41.

⁶² A. Horin, 'Young workers warned to spot pay rip-offs', *Sydney Morning Herald*, 28 December 2006.

⁶³ 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.

⁶⁴ Workplace Research Centre, 'Employer greenfield agreements'.

⁶⁵ Department of Employment and Workplace Relations, *Wage Trends in Enterprise Bargaining*, DEWR, Canberra, September quarter and previous editions 2006.

⁶⁶ Workplace Research Centre, 'Employer greenfield agreements'.

⁶⁷ Department of Employment and Workplace Relations, *Wage Trends in Enterprise Bargaining*.

5 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 2006.⁶⁸ 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’.⁶⁹ 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’.⁷⁰ 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 WC, a majority of agreement-covered employees will have been on agreements signed before WC 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 WC. Although the no-disadvantage test was not always properly applied,⁷¹ it still meant that employees signing AWAs were subject to higher minimum standards before WC took effect. Thus the figures here will provide an overly positive picture of earnings for employees under WC 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 full-time workers on AWAs have longer hours than full-timers on collective agreements—employees on registered individual contracts 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, registered individual contract workers receive 26 per cent less overtime pay than workers on registered

⁶⁸ Australian Bureau of Statistics, *6306.0*.

⁶⁹ McIlwain, evidence to November Estimates hearing, 7.

⁷⁰ Australian Government, *More Jobs, Higher Wages, A Stronger Economy*, advertisement, various newspapers, July 2005.

⁷¹ Peetz, *Brave New Workplace*.

collective agreements.)⁷² Fortunately, these two data problems can be dealt with by using hourly earnings of non-managerial employees as our benchmark.

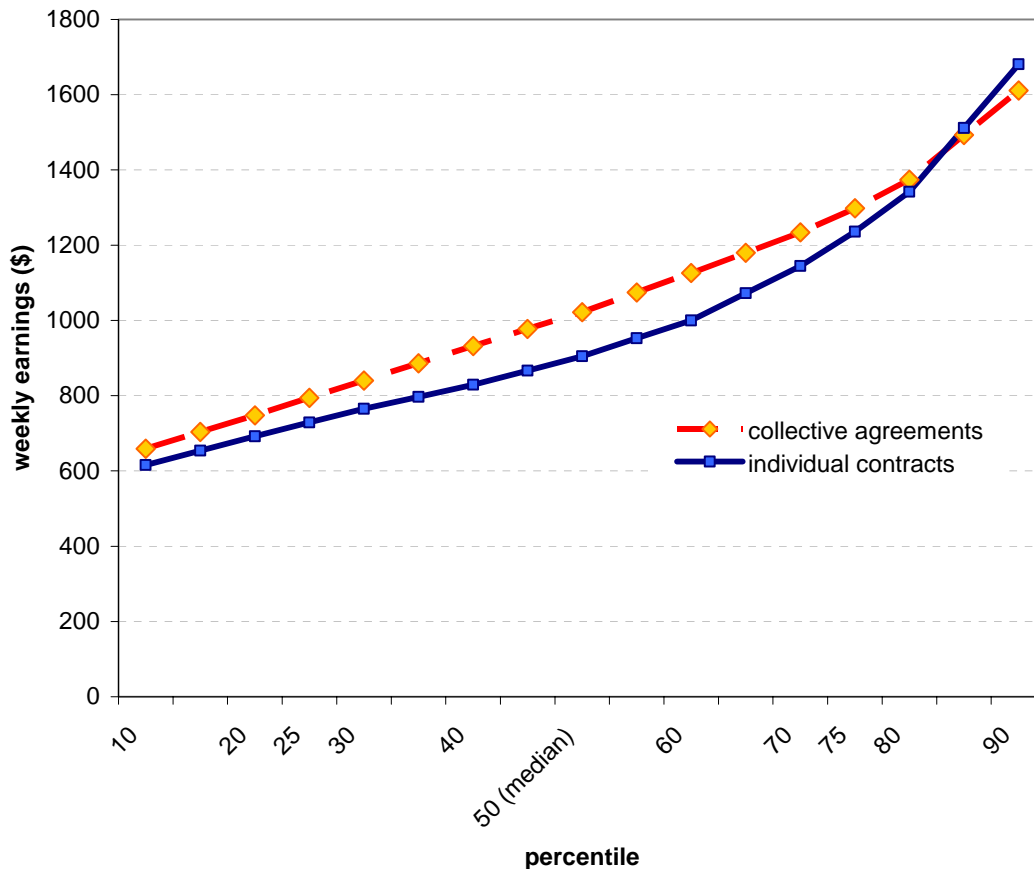
That said, there are some other problems in the data that cannot be easily avoided. For one, the average earnings of employees on AWAs are exaggerated by their being disproportionately concentrated in two industries with high average earnings: mining and communications, where coverage of registered individual contracts was 16 per cent in 2006, compared to the then national average of 3 per cent. 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.

Earnings of workers on individual contracts are distributed more unequally than earnings of workers on collective agreements. The ABS has not published data on the earnings distribution of workers on AWAs, but it has published data on the weekly earnings distribution of workers on all individual arrangements, which includes both registered and unregistered individual contracts. (Unfortunately, data on the distribution of hourly earnings are not published, so to illustrate the point we are forced to use weekly earnings.) The greater inequality of weekly earnings among employees on collective agreements can be seen in chart 6.1, which shows weekly earnings at each percentile and quartile of the two groups. It indicates that throughout the lower and middle percentiles, employees on individual contracts earn less than employees on collective agreements. However, those in the top decile of individual contracts received more than those on the top decile of collective agreements. Looked at another way, a collective agreement employee on the 90th percentile received 58 per cent more per week than the median collective agreements employee, but an individual arrangement employee on the 90th percentile received 86 per cent more per week than the median individual arrangements employee.

The greater the inequality in an earnings distribution, the more that average earnings will distort the experience of the typical employee. Hence, 58 per cent of collective agreement employees earned less than average weekly earnings of collective agreements employees, but 65 per cent of individual arrangement employees earned less than average weekly earnings of individual arrangement employees.

⁷² Australian Bureau of Statistics, 6306.0.

Chart 5.1 Weekly earnings distribution of workers on collective agreements and individual arrangements, May 2006



The greater inequality of individual contract earnings, and 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.

A better indicator of the experience of ordinary employees would be given by median earnings. The median earnings employee is the ‘person in the middle’ – the employee who is earning more than half of all employees, and less than the other half of employees. The median employee is best thought of as the ‘typical’ employee.

One indication of by how much reliance on the average can distort our understanding of workers earnings is through a comparison of median and average earnings gaps. The average weekly earnings of employees on individual arrangements was 3.8 per cent below the average earnings of employees on collective agreement. However, the median employee on individual arrangements was earning 11.4 per cent less than the median employee on collective agreements. Thus we can see that the reliance on averages can significantly overstate the relative position of the typical AWA worker. Unfortunately, data on median hourly earnings are not published by ABS.

Another consideration is that 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).⁷³ Moreover, some two-fifths of workers on collective agreements are not union members but free riders on the gains achieved by unionists.⁷⁴ 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). As state individual contracts (reserved mostly for high income employees) paid, on average, 87 per cent more than AWAs, the registered individual contract figures exaggerate actual earnings under AWAs by several percentage points.⁷⁵

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 registered individual contract 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.⁷⁶

Note also that these data are based on averages, and averages can be distorted by the effects of a small number of high income earners. A truer indication of outcomes for ‘typical employees on AWAs or collective agreements would be obtained by comparing median, rather than average, earnings, as these are not distorted by high-wage

⁷³ Peetz, *Brave New Workplace*.

⁷⁴ Australian Bureau of Statistics, 6306.0; Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership, Australia*, Canberra, various years 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).

⁷⁵ The equivalent section to this in the Victorian report used, for simplicity of presentation, the term ‘“AWA workers”’ to refer to employees on registered individual contracts. However, as pointed out there and here, average earnings of workers on AWAs are actually less per hour than those of workers on registered individual contracts. The data therefore overstated the earnings of people on AWAs. We avoid that here by using the term ‘registered individual contracts’.

⁷⁶ These points are made in Peetz, *Brave New Workplace*, pp. 98-99.

Table 5.1: 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 Females Persons			Average Hourly Cash Earnings		
	Males \$	Females \$	Persons \$	Males Hours	Females hours	Persons hours	Males \$	Females \$	Persons \$
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%
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%
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%

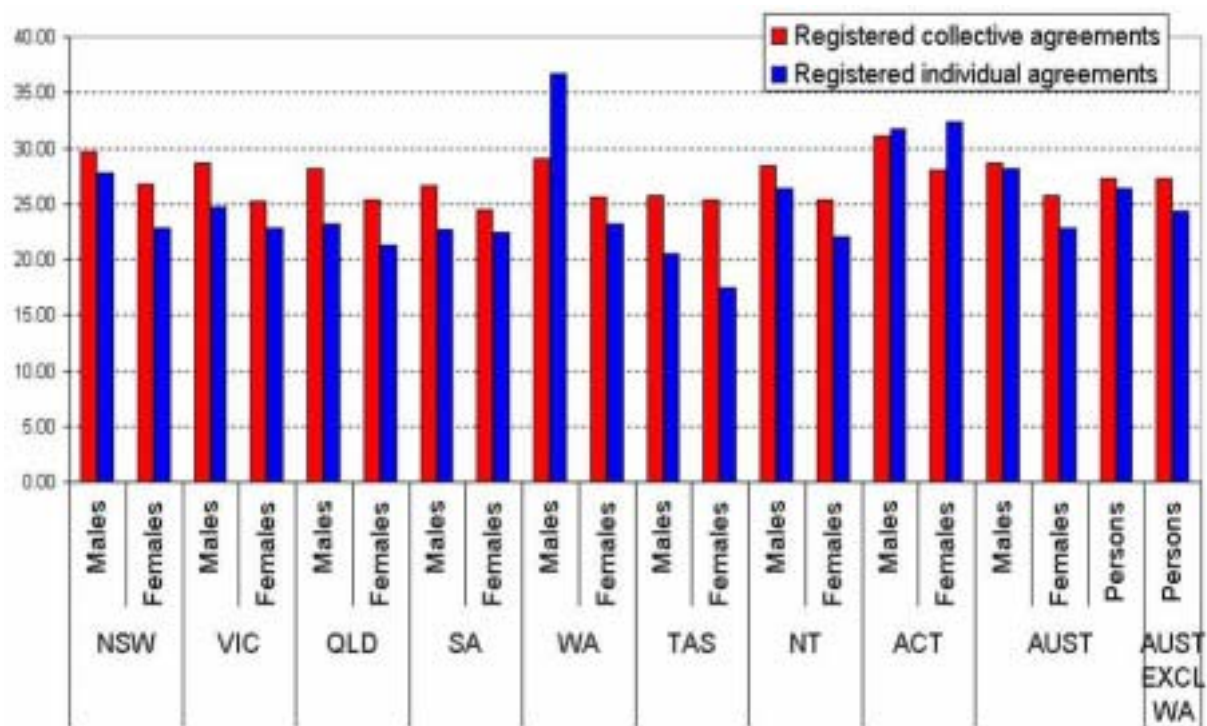
Source: ABS Cat No 6306.0, May 2006, data cube table 10.

Table 5.1 shows average weekly and hourly earnings of non-managerial employees under registered individual contracts and registered individual contracts in the states and across Australia. For ease of exposition, the key data are also shown in graphic form in chart 5.2. We can see that, in South Australia, average weekly earnings of registered individual contract

employees were 7 per cent above average weekly earnings of registered collective agreement employees. However, registered individual contract employees worked 21 per cent more hours than registered collective agreement employees. Consequently the average hourly earnings of non-managerial employees were 11 per cent lower under registered individual contracts than under registered collective agreements.

South Australian women on registered individual contracts earned 6 per cent less per week than women on registered collective agreements, but they worked for 3 per cent more hours. So their hourly earnings were 9 per cent less than the hourly earnings of their counterparts on collective agreements.

Chart 5.2 Average hourly earnings of non-managerial employees, by state/territory and gender, 2006.



Source: ABS 6306.0

Across Australia as a whole, registered individual contract 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 registered individual contracts were 3.3 percent lower than the earnings of their counterparts on registered collective agreements. (This is before account is taken of the various factors, discussed on p29, that lead to an apparent overstatement of relative registered individual contract earnings.)

For men, the shortfall⁷⁷ under registered individual contracts is 2 per cent, but for women it is 11 per cent. It has been argued that the poor performance of women on registered individual contracts is an illusion created by the high employment of women on registered individual contracts in the low-wage hospitality and retail industries.⁷⁸ 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 registered individual contract 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 registered individual contracts 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),⁷⁹ and this AWA advantage is an exclusively male phenomenon: for women in WA, registered individual contract earnings are 9 per cent below collective agreement earnings. Across the other states, registered individual contract employees have a shortfall in pay ranging from 8 per cent to 24 per cent. Even in Queensland, the other mining boom state, registered individual contract 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.⁸⁰ Thus in Western Australia the mining boom is raising the wages of workers on registered individual contracts 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 5.2). There, average hourly earnings of employees on registered individual contracts are around 10 per cent less than average earnings of employees on registered collective agreements.⁸¹

We cannot precisely estimate the average hourly earnings of men and women across the states excluding WA, as gender data on the incidence of registered individual contracts by state are not published, but if the incidence was the same between men and women then our estimates suggest

⁷⁷ The term 'shortfall' refers to the gap between pay under registered individual contracts and pay under registered collective agreements.

⁷⁸ J. Hockey, Gillard Fails to Grasp the Bigger Picture, media release, Department of Employment and Workplace Relations, Canberra, 28 February, 2007.

⁷⁹ Australian Bureau of Statistics, *6310.0*.

⁸⁰ *ibid.*

⁸¹ Interestingly, removing the distorting effects of WA from the national average hourly earnings of employees on registered individual contracts (which raises the gap with registered collective agreements from 3.3 per cent to 10.7 per cent) has a similar effect to shifting from average to median earnings in comparing weekly earnings of employees on all individual and collective arrangements (which raises the gap from 3.8 to 11.4 per cent).

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 registered individual contracts than under collective agreements; in all other states men on registered individual contracts 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 registered individual contracts (rather than understate the welfare of women).

Table 5.2: 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 5.1 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.⁸² 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.⁸³ 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.⁸⁴

Table 5.3 shows weekly earnings, hours worked and hourly earnings for non-managerial employees who are permanent full-time workers, permanent part-timers and casuals. Again, the key data are shown in graphic form in Chart 5.3. The only group in this table for whom average hourly earnings are as high under registered individual contracts as under collective agreements are male permanent-full-timers, the group most likely to be employed in the mining sector. In all other groups registered individual contract workers are disadvantaged compared to workers on collective agreements. Female permanent full-timers were disadvantaged by 8.5 per cent if they were on a registered individual contract. They received 5 per cent less per week on a registered

⁸² 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.

⁸³ Australian Bureau of Statistics, 6306.0.

⁸⁴ 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.

individual contract 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 registered individual contracts than registered collective agreements, and casual employees were also 17 per cent worse off.

Table 5.3: 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 full-time 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%

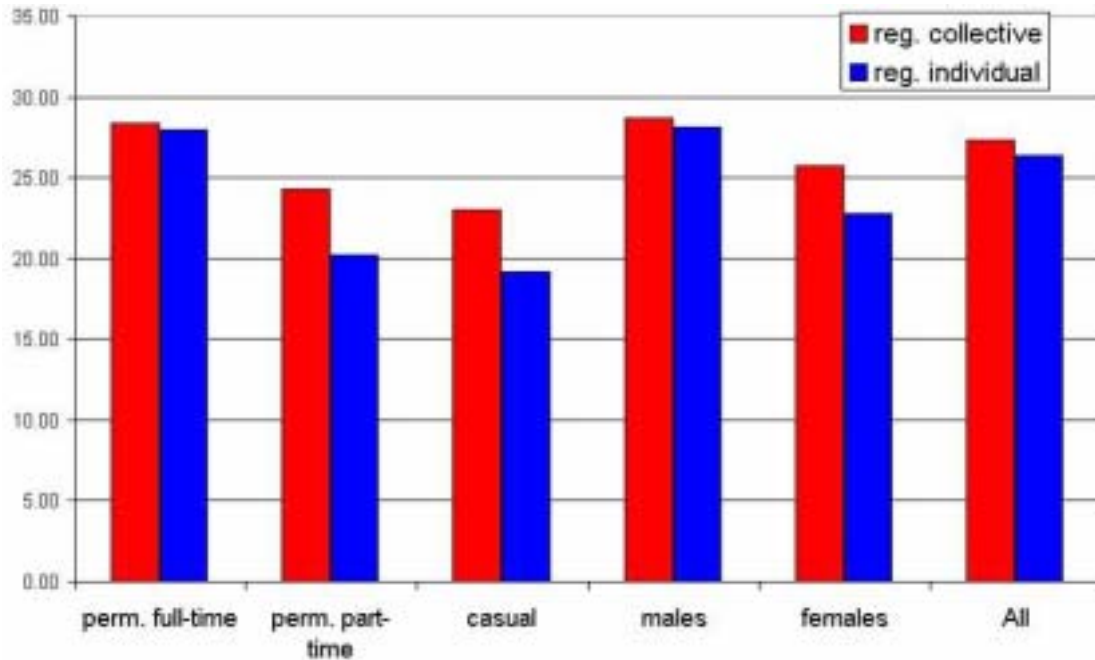
Source: ABS Cat No 6306.0, Table 20.

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).⁸⁵ 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.

⁸⁵ Australian Bureau of Statistics, 6310.0.

Chart 5.3 Average hourly earnings of non-managerial employees, by employment status and gender, 2006.



Source: ABS 6306.0

Table 5.4 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 full-time 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 5.3 shows, casual women on registered individual contracts are also 21 per cent worse off than casual women on collective agreements. (Casual men on registered individual contracts 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 5.4: 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%

Source: ABS 6306.0

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 conclusion is reinforced by the fact that women are worse off under AWAs no matter what their employment status – women’s hourly pay on registered individual contracts is 9 per cent lower for permanent full-timers, and 15 per cent lower on registered individual contracts 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 registered individual contracts 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 full-time jobs do relatively poorly under AWAs compared to collective agreements. Moreover, although men do not appear to do as badly out of AWAs as women, this is in no small part a result of the male domination of mining. In South Australia, where the mining industry is not significant, men are 14 per cent worse off under registered individual contracts 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 has been significantly weakened, first through its abolition, the effects of which have only been only partially offset by the recent introduction of the ‘fairness’ test.

6 WAGE INCREASES UNDER AUSTRALIAN WORKPLACE AGREEMENTS 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 October 2006, the AFPC set out its first decision under the WorkChoices legislation. It decided in favour of:

- an increase of \$27.36 per week in the standard Federal Minimum Wage;
- an increase of \$27.36 per week in all Pay Scales up to and including \$700 per week; and
- an increase of \$22.04 per week in all Pay Scales above \$700 per week.⁸⁶

In relation to junior wages the AFPC decided that

The general pay increase will be pro-rated on the basis of formulas applying in the relevant pre-reform wage instruments... For example, if the dollar value of a junior rate represented 70 per cent of the relevant adult preserved Pay Scale prior to the general wage increase being applied to the adult Pay Scale, then the junior rate should be adjusted so that it remains as 70 per cent of the relevant adult preserved Pay Scale after the general increase has been applied to the adult rate.⁸⁷

Table 6.1 shows the impact that the 2006 APFC Minimum wage decision had on earnings of award-reliant employees. The figures are based on unpublished data from the EEH survey on hourly earnings of non-managerial employees. The table is ordered by deciles of hourly earnings of award-reliant employees. (A decile indicates a ranking of employees: an employee on the 10th decile is earning more than the lowest paid 10 per cent of employees, and less than the highest paid 90 per cent of employees.) The increase, payable approximately 18 months after the last safety net decision by the AIRC, is compared with inflation over the period from June quarter 2005 to December quarter 2006 (4.8%) to obtain an estimate of the real value of the wage increase.

⁸⁶ Australian Fair Pay Commission, *Wage-Setting Decision and Reasons for Decision*, AFPC, Melbourne, October 2006, p. 6.

⁸⁷ *ibid.* p. 13.

Table 6.1 Impact of fair pay commission decision on earnings of award-reliant workers, non-managerial employees, Australia

Decile	Hourly wage prior to decision	Weekly equivalent	Weekly wage increase	Percentage increase (nominal)	Percentage increase (real)
10	11.40	433.20	na	na	na
adult minimum wage	12.75	484.50	27.36	5.6%	0.8%
20	14.30	543.40	27.36	5.0%	0.2%
25	14.80	562.40	27.36	4.9%	0.1%
30	15.50	589.00	27.36	4.6%	-0.1%
40	16.50	627.00	27.36	4.4%	-0.4%
50	17.60	668.80	27.36	4.1%	-0.7%
60	18.50	703.00	22.04	3.1%	-1.6%
70	19.70	748.60	22.04	2.9%	-1.8%
75	20.30	771.40	22.04	2.9%	-1.8%
80	21.20	805.60	22.04	2.7%	-2.0%
90	24.80	942.40	22.04	2.3%	-2.3%
average employee on average award earnings	18.30	695.40	25.23	3.6%	-1.1%
employee on average earnings of all non-managerial employees	18.30	695.40	27.36	3.9%	-0.8%
	24.90	946.20	22.04	2.3%	-2.3%

na: not able to be estimated

Source: ABS 6306.0, unpublished data

Several observations can be made from the data. First, just under sixty per cent of award-reliant employees received the maximum \$27.36 per week increase (equivalent to 72 cents per hour), which was payable to employees earning up to \$700 per week. The remaining 40 per cent received \$22.04 per week (equivalent to 58 cents per hour).

Second, more than 10 per cent of award-reliant employees were receiving less than the minimum adult wage prior to the AFPC decision. In some cases this will be because they were on junior or supporting wages, in which case they will receive less than the maximum 72 cents per hour increase. In other cases, they may be being paid illegally less than the minimum wage, in which case they are unlikely to receive the full value of the AFPC decision anyway. We cannot tell from the data in what proportions these two groups exist in this lowest paid category, nor can we estimate what wage increase they would have received.

Third, for at least about three quarters of award-reliant employees the AFPC decision has led to a reduction in real wages. For the median award-reliant worker, the AFPC decision represents a decline of 0.7 per cent in real terms over 18 months.

The average real wage reduction, across all award-reliant employees, is 1.1 per cent.⁸⁸ For the worker on the average award wage, the real decline is 0.8 per cent. These last two figures are slightly different, because the employee on the average award wage received a nominal wage increase of \$27.36 per week, but the average wage increase across all award-reliant workers is lower than this, because some workers received \$22.76 per week and others received \$22.04 per week.

Fourth, while the real earnings declines worsened as earnings increased, it was nonetheless the case that the vast majority of award-reliant workers who suffered a real wage decline were earning less than average hourly earnings of all employees. This is a simple result of the fact that over 90 per cent of award-reliant employees earn below-average wages, precisely because they do not have the bargaining power to obtain wages above the award. In justifying its decision, the AFPC said:

the increase is higher for lower-paid workers than for higher-paid workers. This difference recognises that lower-paid workers are more reliant on minimum wages than higher-paid workers.⁸⁹

However, this statement misconceives the role of the award wages for workers reliant on the AFPC decision, as revealed by the above data. All award-reliant workers are, by definition, equally reliant on the minimum wages set by the AFPC. And very few of them – less than 10 percent – are higher-paid workers. But a third of award-reliant workers earning below-average wages⁹⁰ suffered real wages cuts of 1.5 per cent or more because the minimum wage increase was reduced for workers on award rates above \$700 per week, and another third suffered real wage cuts of less than 1 per cent because the flat rate of \$22.76 was not enough to offset rising prices. None of them had the bargaining power to negotiate individual contracts above the award.

Table 6.2 shows the impact of the 2006 AFPC decision on earnings of the average award-reliant employee in each industry. Industries are ranked by their dependence on awards. In no industry is the average award-reliant worker better off in real terms after the decision. This is the case even in industries where a substantial proportion of the workforce is reliant on awards. By far, the industry with the greatest award reliance is hospitality (accommodation, cafes and restaurants), in which 57 per cent of employees are award-reliant, three times the national average. The average award-reliant hospitality worker suffered a 0.8 per cent reduction in real earnings as a result of the AFPC decision. In retail, average award wages are lower in part due to the low wages that generally prevail in the sector but also to the way in which retail awards typically create a class of ‘exempt employees’ not bound by the award if they are paid above a

⁸⁸ This estimate is conservative because the average as calculated here assumes that all employees receiving below the legal minimum wage receive the full \$27.36 per week increase. However, a slightly more realistic (though still cautious) assumption, that this lowest paid group receives an increase equivalent to 5.6% (the increase in the minimum wage) – in effect, assuming that they are all on the lowest youth or supporting wage – raises the average decline only slightly to 1.2 per cent.

⁸⁹ Australian Fair Pay Commission, *Wage-Setting Decision and Reasons for Decision*, p. 7.

⁹⁰ Of the 40 per cent of award workers who earned above \$700 per week, and therefore suffered real wage cuts of over 1.5 per cent, three quarters (30 per cent of all award workers) were receiving less than average hourly earnings for all non-managerial employees. This 30 per cent in turn represented one third of the 90 per cent of award-reliant workers who received less than average hourly earnings for all non-managerial employees.

certain rate which is not especially high. The average award-reliant worker in retailing experienced a drop of 0.1 per cent in real earnings due to the AFPC decision.

In some industries with the highest real drops in award wages (government administration; mining; finance and insurance; electricity, gas and water supply), the impact was very limited because few workers in those industries are award-reliant. However, in the third most award-reliant industry, health and community services (in which one quarter of employees are award-reliant), the drop in real wages for the average award-reliant employee was as high as 2 per cent. There were also significant proportions of workers in cultural and recreational services and, to a lesser extent, transport and storage and education who were award-reliant, and in those industries the decline for the average award-reliant worker was between 1.6 and 2.5 per cent.

Table 6.2 Impact of fair pay commission decision on earnings of average award-reliant worker in each industry, non-managerial employees, Australia

Industry	Hourly wage prior to decision	Weekly wage equivalent	Weekly wage increase	Percentage increase (nominal)	Percentage increase (real)	award dependence ratio ^a
Accommodation, cafes and restaurants	18.40	699.20	27.36	3.9%	-0.8%	57.2%
Retail trade	15.50	589.00	27.36	4.6%	-0.1%	28.7%
Health and community services	21.20	805.60	22.04	2.7%	-2.0%	25.4%
Personal and other services	16.40	623.20	27.36	4.4%	-0.4%	23.4%
Property and business services	17.70	672.60	27.36	4.1%	-0.7%	23.2%
Cultural and recreational services	18.90	718.20	22.04	3.1%	-1.6%	19.2%
Wholesale trade	16.40	623.20	27.36	4.4%	-0.4%	12.8%
Transport and storage	20.30	771.40	22.04	2.9%	-1.8%	12.4%
Construction	16.00	608.00	27.36	4.5%	-0.3%	12.0%
Education	26.20	995.60	22.04	2.2%	-2.5%	11.9%
Manufacturing	17.70	672.60	27.36	4.1%	-0.7%	10.6%
Finance and insurance	21.20	805.60	22.04	2.7%	-2.0%	5.1%
Mining	20.20	767.60	22.04	2.9%	-1.8%	2.4%
Communication services	16.60	630.80	27.36	4.3%	-0.4%	0.9%
Electricity, gas and water supply	20.30	771.40	22.04	2.9%	-1.8%	0.9%
Government administration and defence	24.90	946.20	22.04	2.3%	-2.3%	0.6%
all industries	18.30	695.40	27.36	3.9%	-0.8%	19.0%

^a ratio of award-reliant employees to all employees

Source: ABS 6306.0, unpublished data

Wage increases under AWAs

Prior to WorkChoices, average wage increases under AWAs had been in the range of 2 – 2½ per cent per annum,⁹¹ 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’.⁹² We do know that 22 per cent of AWAs in April 2006 contained no provision for a wage increase during the life of the agreement, and this figure rose to 34 per cent in April-September 2006.⁹³ These numbers are well down on the rate prior to WorkChoices (when 73 per cent contained no mention of a wage increase),⁹⁴ 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 containing a reasonable wage increase up front but little or nothing afterwards.

The fact that 34 per cent contained no wage increase should not be taken as indicating that 76 per cent of AWAs contained a definite wage increase. In fact, only 14 per cent of AWAs in May-September 2006 contained a guaranteed wage increase during the period of the AWA. The majority contained wage increases that were either not quantifiable or not guaranteed, as shown in Table 6.3.⁹⁵

Table 6.3 Forms of wage increases in AWAs, April-September 2006.

Type of wage increase	proportion
Quantifiable wage increase – guaranteed	14%
Non-quantifiable or non-guaranteed	52%
comprising :	
- Quantifiable wage increase - not guaranteed	3%
- Non-quantifiable wage increase - guaranteed	10%
- Non-quantifiable wage increase - not guaranteed	39%
No wage rise	34%
Total	100%

Sources : Davis 2007 and unpublished OEA data obtained by Davis

⁹¹ ACIRRT, 'Wage trends in AWAs and certified agreements', *ADAM Report*, vol. 31, December 2001; ACIRRT, 'AWAs in Focus', *ADAM Report*, vol. 47, December 2005.

⁹² 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.

⁹³ M. Davis, analysis of unreleased OEA data on AWAs May-September 2006, unpublished, Sydney, 2007. ; Davis, 'Revealed: how AWAs strip work rights'.

⁹⁴ ACIRRT, 'Wage trends in AWAs and certified agreements'.

⁹⁵ Davis, analysis of unreleased OEA data.

There is little 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 registered individual contract 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 registered individual contract employees in 2004. This, too, indicates that earnings growth for AWA employees has fallen behind earnings growth for collective agreement employees.

7 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 7.1. In trend terms (panel 1), over the fourteen months from March 2006 to May 2007, employment grew by 344,500 or 3.4 per cent. But over the same fourteen months after the unfair dismissal laws were introduced in 1994, employment grew by 404,600 or 5.2 per cent.⁹⁶ 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 3.0 per cent over the year to March 2007 was above the average over similar periods since 1993-94 (2.2 per cent), but it was not as high as the growth rate achieved just two years previously, over the year to March 2005 (3.3 per cent), nor much higher than the year to March 2003 (2.8 per cent). Employment has recently been at a record level, with 'more Australians...now in work than ever before',⁹⁷ but this is not unusual in a growing population; it was the 267th occasion in the last 351 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 7.1 does this, using trend data (as do the other charts here). This shows that 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 3.6 per cent in the initial 14 months of WorkChoices, but 4.2 per cent in the initial 14 months of the unfair dismissal laws. Female employment grew by 3.2 per cent in the initial 14 months of WorkChoices, but by twice as much – 6.4 per cent – in the initial 14 months of the unfair dismissal laws.

While the trend unemployment rate has dropped by 1.1 percentage points for men (from 5.0 per cent to 3.9 per cent), it has fallen only slightly for women (from 5.1 per cent to 4.8 per cent) and indeed was at the same level in May 2007 as it was ten months earlier in July 2006. By contrast, in the equivalent period after the unfair dismissal laws were introduced, the unemployment rate dropped by 1.9 percentage points for men and by 1.7 percentage points for women.

For South Australia (Chart 7.2) the picture is less impressive still. Total employment grew by just 1.3 per cent under the first 14 months of WorkChoices, but by 2.0 per cent in the initial 14 months of the unfair dismissal laws. Indeed, trend employment in South Australia has been falling since November 2006 and is now 0.8 per cent below its level then. Male employment grew by 1.4 per cent in the initial WorkChoices period, greater than the 0.7 per cent in the initial unfair dismissal period. Female employment grew by only 1.1 per cent in the initial

⁹⁶ Australian Bureau of Statistics, *6202.0*.

⁹⁷ J. Hockey, Employment numbers at record high, media release, Department of Employment and Workplace Relations, Canberra, 15 March, 2007.

WorkChoices period, little more than a quarter of the growth of 4.3 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.

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’.⁹⁸ 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 – 2.7 per cent in the first 14 months of WorkChoices, compared to 3.1 per cent in the first 14 months of the unfair dismissal laws.⁹⁹ The similarity in growth rates of labour supply – much closer than the growth rates of employment – is principally because of faster growth in the working age population in the later period.¹⁰⁰ 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 WC period. We can gain some idea of how much labour supply problems are understating the magnitude of the gains under WC 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 2006 and May 2007 (the latest quarter for which data are available), the number of unfilled vacancies grew by 22,500. By contrast, between February 1994 and May 1995, the number of unfilled vacancies grew by 16,400.¹⁰¹ Thus over the first three quarters of the WC period, ‘potential employment’ grew by 389,900 or 3.8 per cent whereas in the first three quarters of the unfair dismissal laws, ‘potential employment’ grew by 435,100 or 5.5 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.

⁹⁸ ACCI, Peetz and ACTU wrong on Workchoices, media release MR 013/07, Australian Chamber of Commerce and Industry, Melbourne, 13 February, 2007.

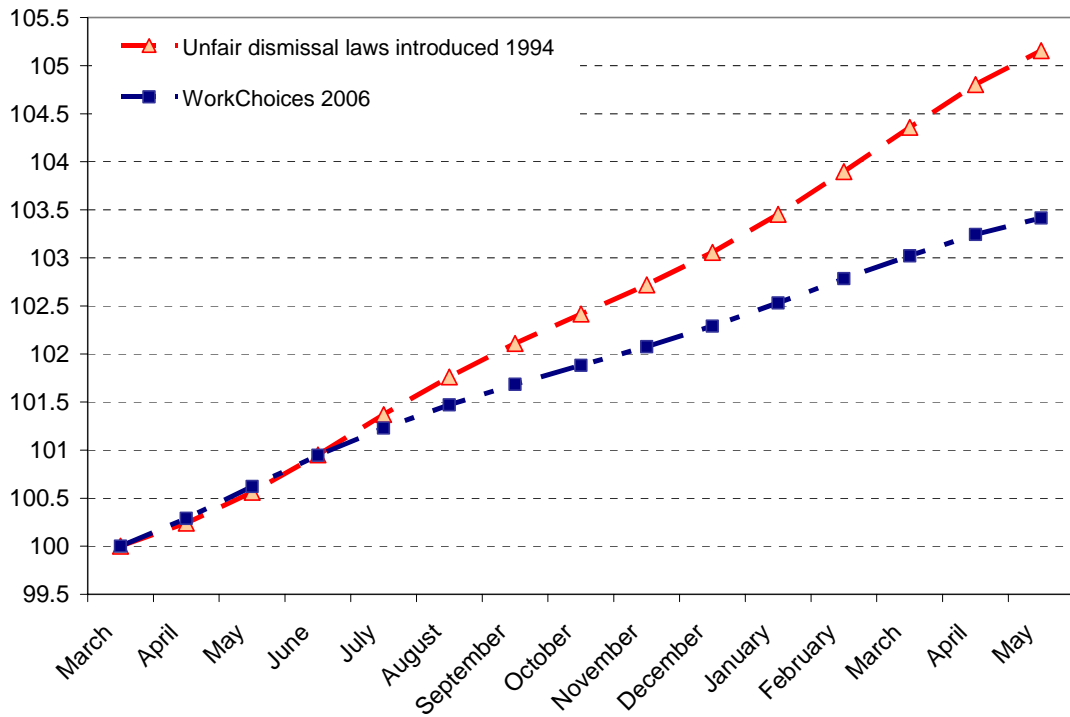
; Editorial, ‘A good place, badly painted’, *Australian Financial Review*, 15 February 2007.

⁹⁹ Australian Bureau of Statistics, *Labour Force, Australia, Spreadsheets*, Canberra, 6202.0.55.001

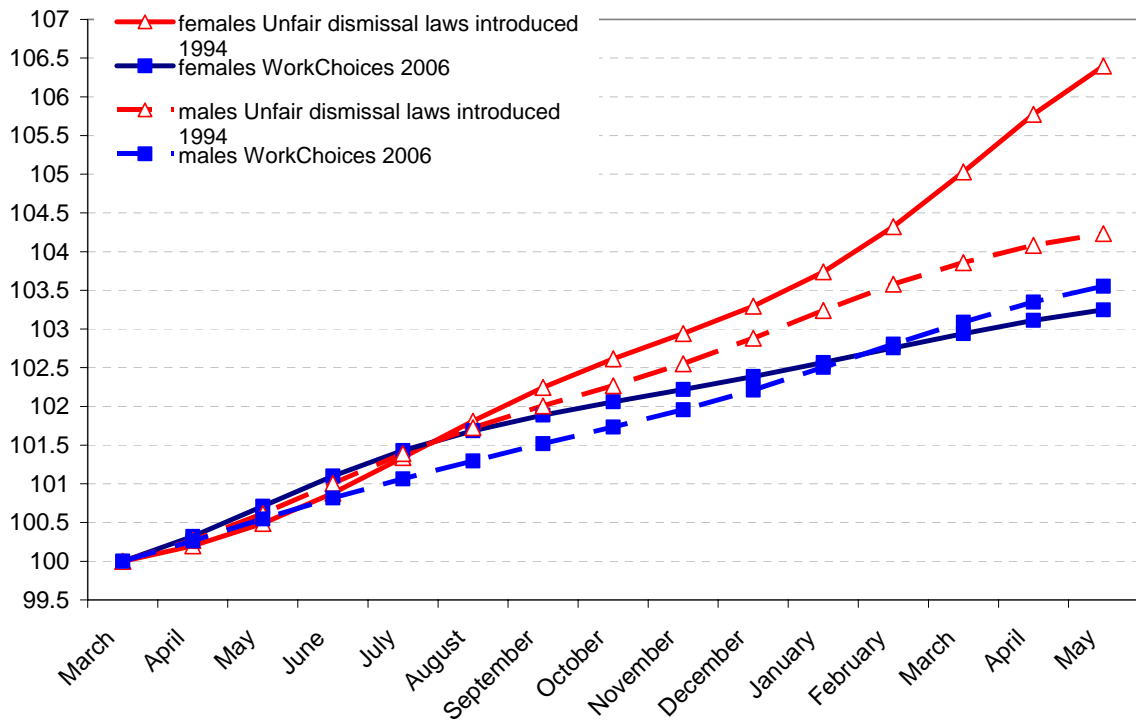
¹⁰⁰ In both periods, the labour participation rate grew as well, and by a faster amount in the UDL period than in the WC period. But this faster growth in the participation rate in the UDL period was almost offset by the faster growth in the civilian working-age population in the WC period. *ibid.*

¹⁰¹ Australian Bureau of Statistics, *Job Vacancies, Australia*, Canberra, 6354.0.

Chart 7.1: Employment growth over 14 months from March 1994 (introduction of unfair dismissal laws) and from March 2006 (partial abolition of unfair dismissal laws), Australia
Panel 1 – overall



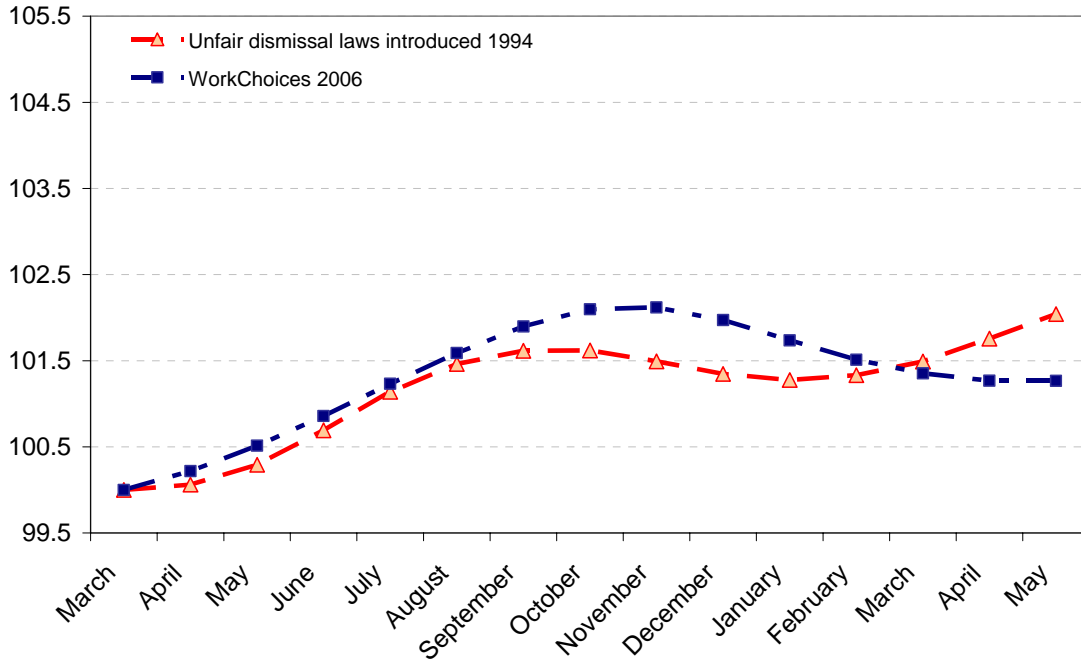
Panel 2 - gender



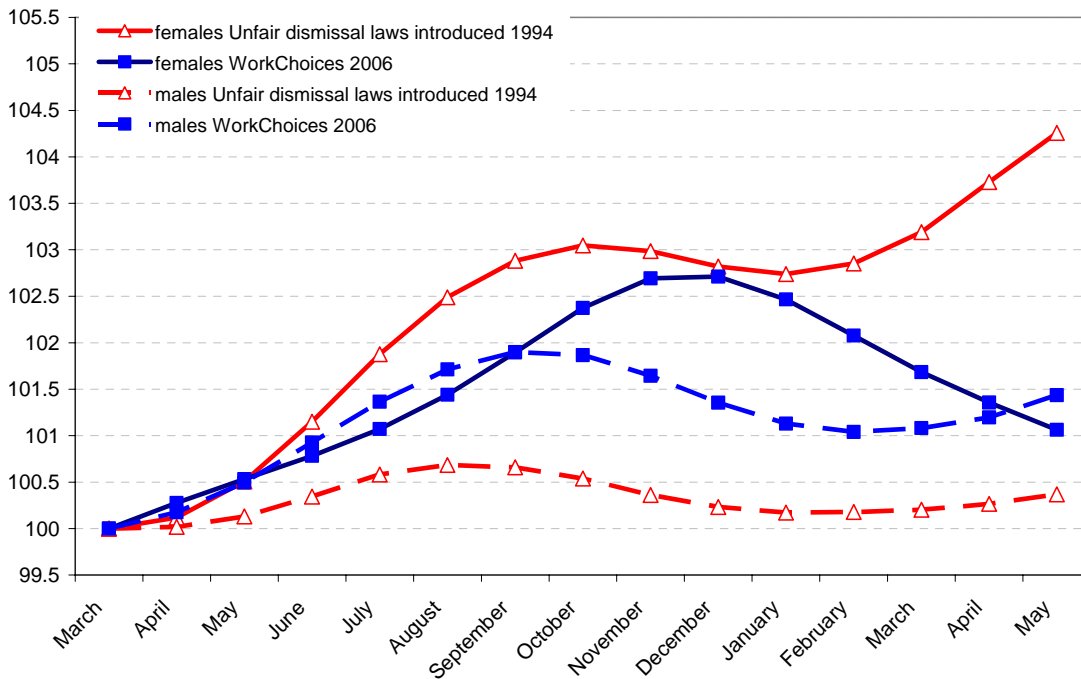
Note: index, March = 100. Source: ABS Cat No 6202.0.55.001

Chart 7.2: Employment growth over 14 months from March 1994 (introduction of unfair dismissal laws) and from March 2006 (partial abolition of unfair dismissal laws), South Australia

Panel 1 – overall



Panel 2 - gender



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

Another issue of interest is the extent to which employment growth has been in full-time and part-time jobs. Chart 7.3 compares, for both men (panel 1) and women (panel 2), full-time and part-time employment growth in the initial WorkChoices period and the initial unfair dismissal period at the national level. Amongst men, full-time employment grew by slightly less in the initial WorkChoices period (3.6 per cent) than in the initial unfair dismissal period (3.8 per cent), but there was a much larger gap for part-time jobs (3.4 per cent compared to 7.9 per cent).

For females, the situation was similar: full-time female employment grew by slightly less in the initial WorkChoices period (5.2 per cent) than in the initial unfair dismissal period (5.4 per cent), but there was a very large gap for part-time jobs (1.0 per cent compared to 7.7 per cent). different, however.

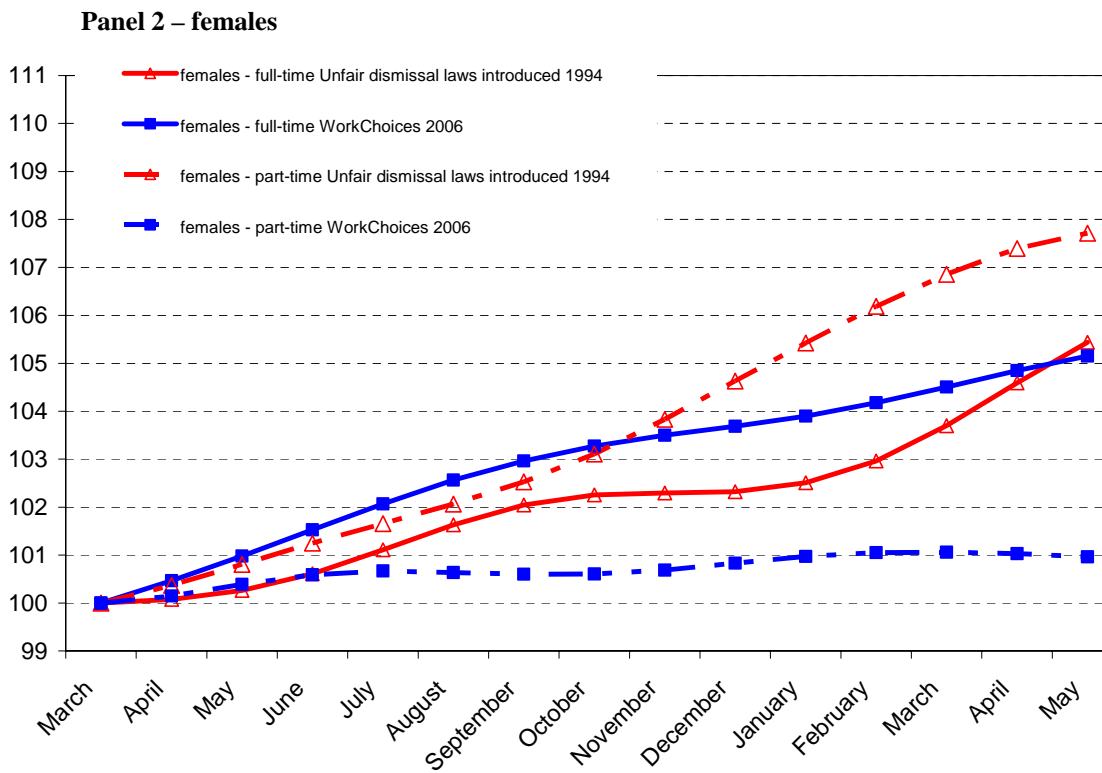
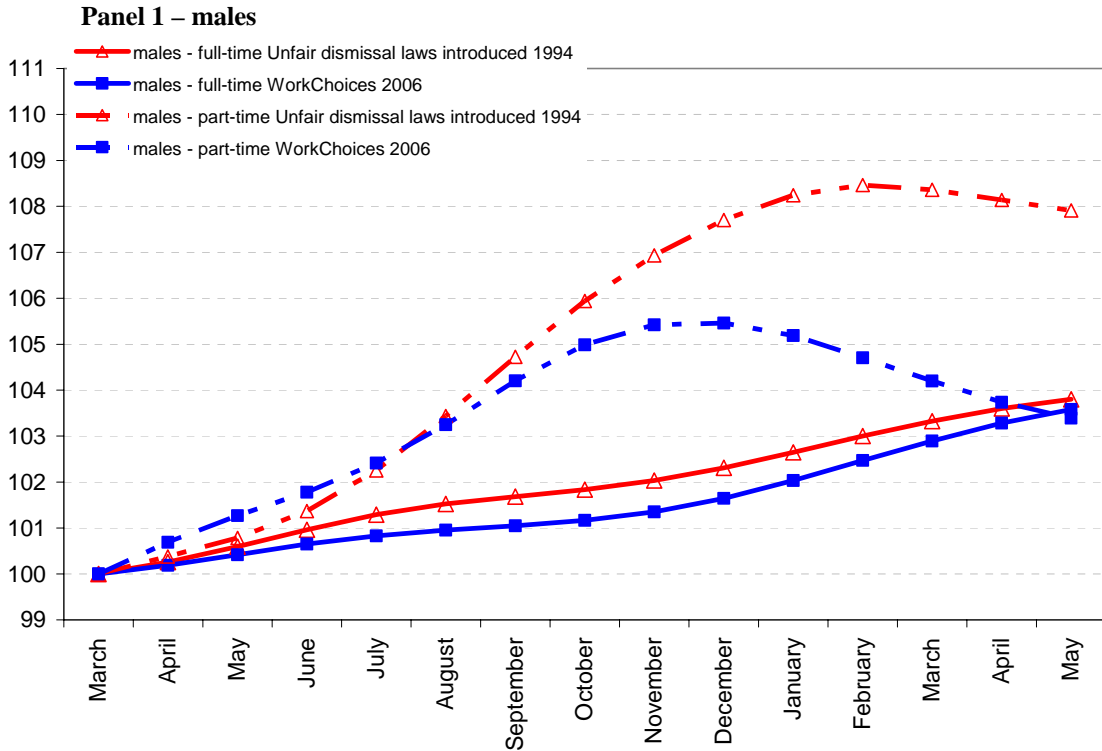
Combining men and women, there was a small gap in the growth rates for full-time employment – 4.1 per cent in the initial WorkChoices period, 4.3 per cent in the initial unfair dismissal laws period. But a much higher rate of growth in part-time employment was achieved in the initial unfair dismissal laws (UDL) period (7.8 per cent) than in the initial WorkChoices period (1.7 per cent). The growth of ‘full-time 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 full-time employment, but relatively poorly on part-time employment. We can test possible demand and supply side explanations. A possible demand-side explanation is that WC has in some way made it more attractive to hire full-time 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 full-time work.

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

Panel 2 of chart 7.4 shows the data. They support the supply side explanation. Despite similarly strong growth in employment, unemployment amongst people looking for full-time work fell by only 11.7 per cent in the initial WC period, well below the fall of 18.2 per cent in full-time unemployment achieved in the initial UDL period. On the other hand, unemployment amongst people looking for part-time work fell by 8.0 per cent in the initial WC period, whereas it fell by only 2.0 per cent in the initial UDL period. In other words, the concentration of employment growth in full-time work during the initial WC period is a result of supply side factors – the vast majority of employees who are offering themselves for work are wanting full-time work and are not available for part-time work, so employers are having to offer full-time jobs in order to fill positions.

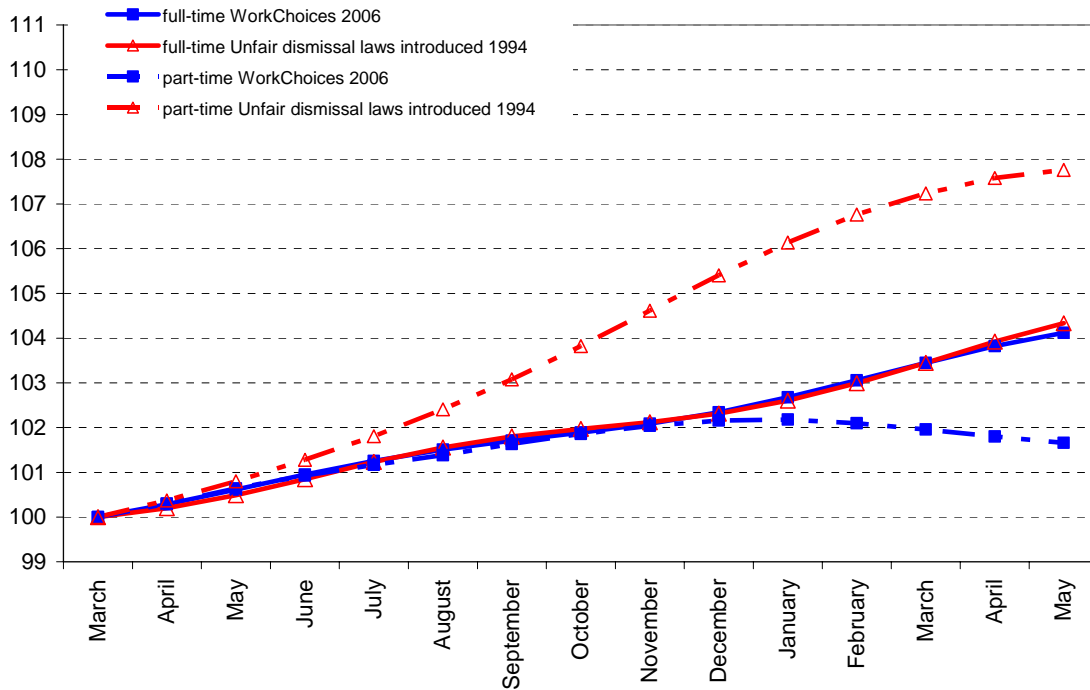
Chart 7.3: Employment growth over 14 months from March 1994 and March 2006, by gender and full-time/part-time hours, Australia



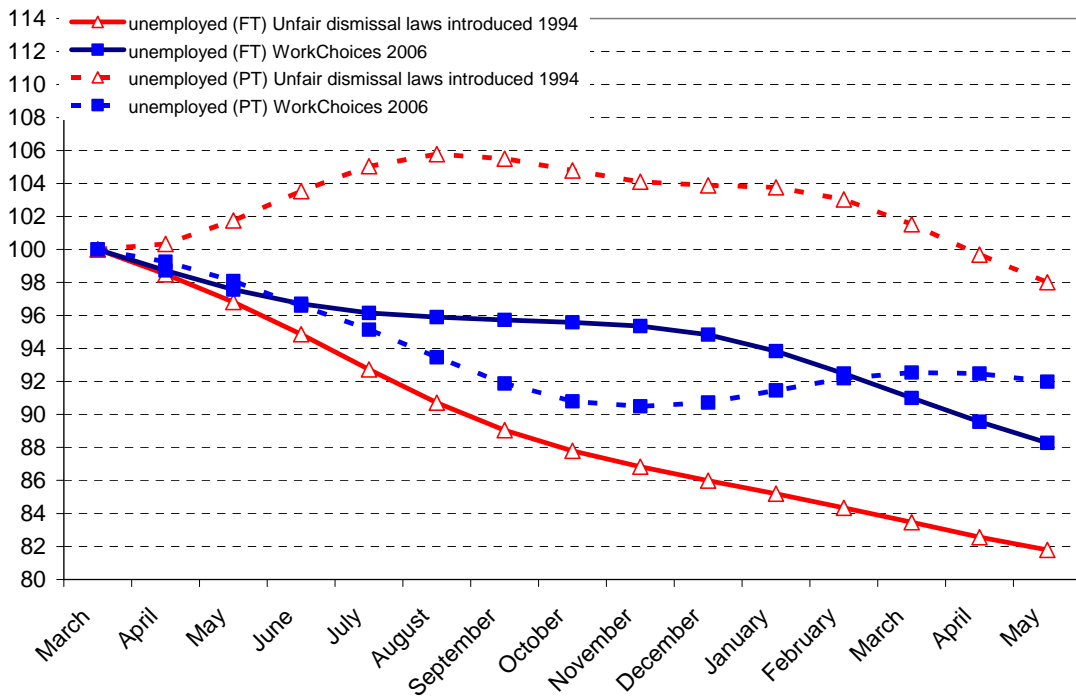
Note: index, March = 100. Source: ABS Cat No 6202.0.55.001

Chart 7.4: Employment growth by full-time/part-time hours and unemployment by full-time/part-time preferences over 11 months from March 1994 and March 2006, Australia

Panel 1 – employment



Panel 2 - unemployment



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

Not

This can also be seen in the patterns of labour supply growth. The full-time labour supply (labour force) grew by 1.9 per cent in the initial UDL period, but 3.3 per cent in the initial WC period. The part-time labour supply grew by 7.1 per cent in the initial UDL period, but by just 1.2 per cent in the initial WC period. Amongst women, the growth in the supply of part-time labour dropped from 6.9 per cent (UDL) to just 0.9 per cent (WC), whereas the growth in the supply of full-time labour grew from 2.8 per cent (UDL) to 4.6 per cent (WC).¹⁰² The directions of change were comparable for men and women.¹⁰³ 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 full-time 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.¹⁰⁴

To what extent do the data bear out anecdotes¹⁰⁵ that AWAs promote permanent employment rather than casual employment? Here we have some hard data directly related to WorkChoices. Chart 7.5 shows the changing shares of casual and permanent employment by agreement type in 2004 and 2006.¹⁰⁶ 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.

¹⁰² Full-time labour supply = full-time employees plus unemployed persons looking for full-time 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

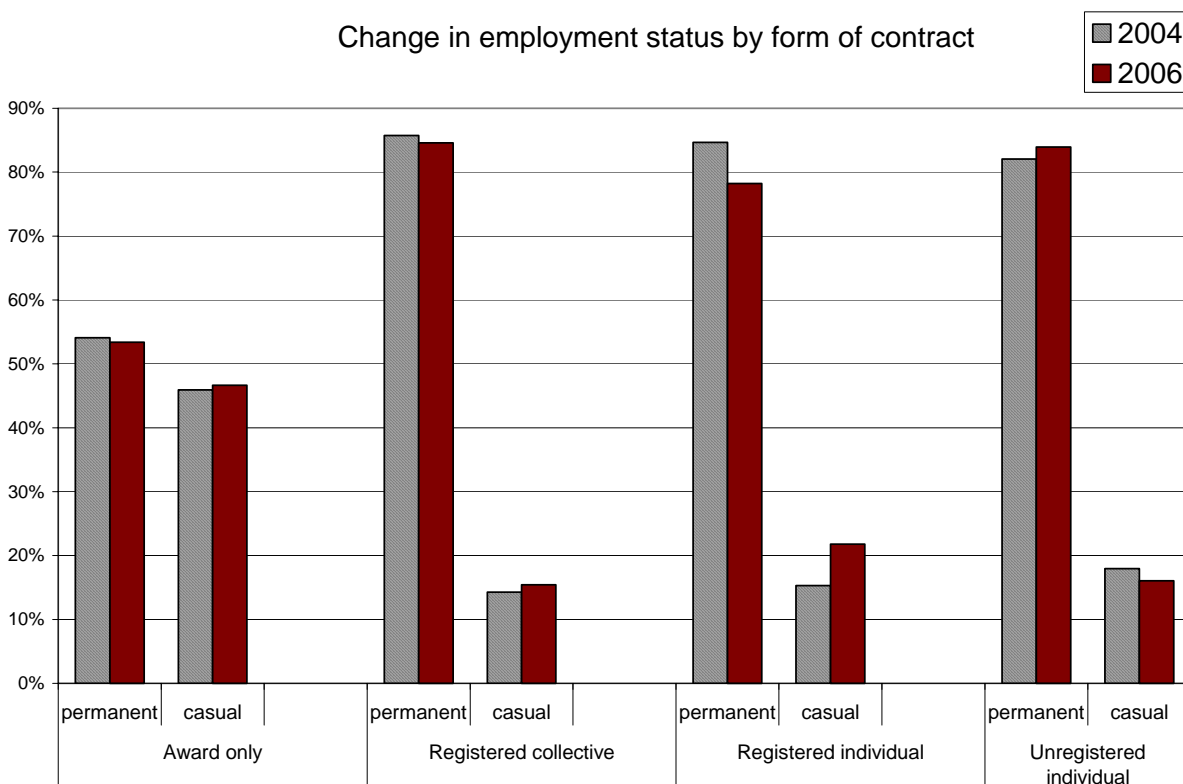
¹⁰³ Male full-time labour supply growth increased from 1.4 per cent (UDL) to 2.7 per cent (WC), while male part-time labour supply growth slipped from 7.8 per cent (UDL) to 1.8 per cent (WC).

¹⁰⁴ J. Hockey, Jobs, speech to National Press Club, Canberra, 28 February, 2007.

¹⁰⁵ eg E. Gosch, 'AWAs a win-win for seafood processor', *Australian*, 6 January 2007.

¹⁰⁶ Australian Bureau of Statistics, 6306.0.

Chart 7.5 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 WC as a result of the fall in real wages, or slow real wages growth, in certain sectors under the new laws. This path to employment growth under WorkChoices has been consistently denied by the Commonwealth Government,¹⁰⁷ though it was hinted at by the Prime Minister when he defended the Spotlight offer of new jobs at lower wages.¹⁰⁸

Has employment growth been driven by the drop in real wages growth 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 wages have grown more slowly than anywhere else (at just 2.8 and 2.9 per cent respectively, compared to an all-industry average of 4.1 per cent). Employment growth there should be well above the national average. Trend employment in the first five quarters of WorkChoices in retailing fell by 0.6 per cent, while in hospitality it grew by 13.1 per cent, a total growth of 3.7 per cent across the two industries. This was below national trend employment growth of 3.5 per cent during the same period. These growth rates are equivalent to annualised rates of 3.0 per cent and 2.8 per cent respectively. 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 slightly faster employment growth in the retailing and hospitality sector is simply a reflection of long term structural trends. These figures

¹⁰⁷ eg 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.

¹⁰⁸ B. Norington, 'Pay cuts 'good for economy'', *Australian*, 26 May 2006.

suggest that slow real wage growth in retailing and hospitality is not promoting stronger employment growth in those industries, let alone in national employment growth.¹⁰⁹

Another way of addressing this question is to consider the occupational groups with low wages growth. The occupations with the lowest average wages were also two of the three occupations with the lowest wages growth: elementary clerical, sales and service workers (earnings growth of just 1.0 per cent over the year to March quarter 2007) and labourers and related workers (growth of 1.4 per cent). The other occupation with low earnings growth was, surprisingly, tradespersons and related workers (1.3 per cent). Over the 15 months to May 2007, during which time total original employment rose by 4.2 per cent,¹¹⁰ employment of labourers and related workers grew by only 1.4 per cent, while employment of elementary clerical, sales and service workers fell by 1.7 per cent.¹¹¹ Total employment amongst the two lowest paid occupational groups fell by 0.2 per cent. (Employment of tradespersons grew by 4.9 per cent. Adding them in, the three occupational groups with the lowest earnings growth had employment growth of just 1.9 per cent, compared to the national average of 4.2 per cent.) 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 full-time employment compared to part-time employment, but AWAs have been associated with the casualisation of jobs at the expense of permanent part-time work.

¹⁰⁹ Australian Bureau of Statistics, *Labour Force, Australia, Detailed, Quarterly* Canberra, 6291.0.55.003.

¹¹⁰ The ABS does not publish trend or seasonally adjusted estimates for this series.

¹¹¹ 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 May 2007, a period which removes seasonal factors, during which total original employment grew by 3.0 per cent, employment of labourers and related workers grew by only 2.1 per cent and employment of elementary clerical, sales and service workers fell by 1.5 per cent, a combined employment growth of 0.2 per cent. Over the 12 months to February 2007, a period which more closely matches that for the earnings figures, seasonal factors, during which total original employment grew by 3.0 per cent, employment of labourers and related workers grew by 5.1 per cent but employment of elementary clerical, sales and service workers fell by 2.4 per cent, a combined employment growth of just 1.1 per cent.

8 PRODUCTIVITY

A useful reference point for productivity is the 2.5 per cent annual growth in productivity achieved under the traditional award system of the 1960s and 1970s,¹¹² 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 2002.¹¹³

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.¹¹⁴ 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 2006.¹¹⁵

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 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 7.1, 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 8.1 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.

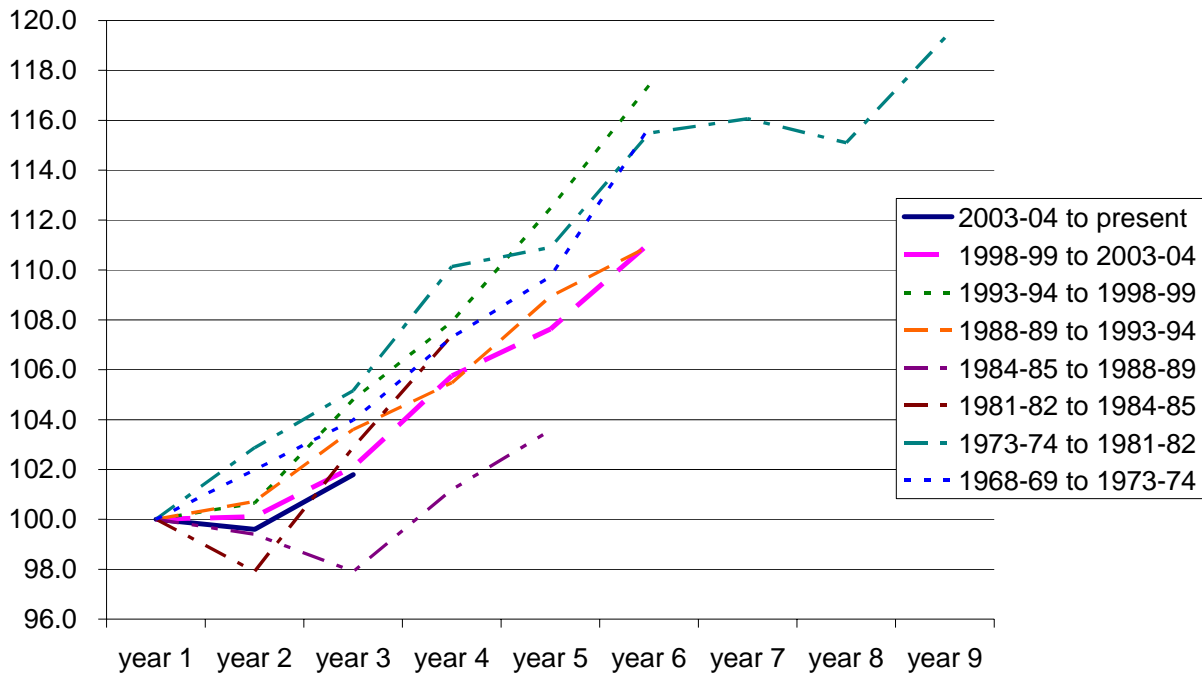
¹¹² Australian Bureau of Statistics, *Australian System of National Accounts*, Canberra, 5204.0; D. Peetz, 'Hollow shells: The alleged link between individual contracting and productivity', *Journal of Australian Political Economy*, vol. 56, 2005.

¹¹³ Organisation for Economic Cooperation and Development, Annex Table 12, OECD Economic Outlook 80 database, Paris, 2007.

¹¹⁴ Australian Bureau of Statistics, *National Income, Expenditure and Product*, Canberra, 5206.0.

¹¹⁵ Organisation for Economic Cooperation and Development, Annex Table 12, OECD Economic Outlook 80 database.

Chart 8.1 Productivity during last eight growth cycles, 1968-69 to 2005-06



Source: ABS Cat No 5204.0

The weakness with chart 8.1, however, is that it only includes the influence of one quarter of WC in the data, as it finishes in 2005-06, and of course the post-WC period accounts for just one quarter of that year. To address this, chart 8.2 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 1984-85 cycle, as quarterly market sector data for earlier cycles are not published by ABS).

Chart 8.2 Trend productivity in the market sector during growth cycles, by quarter (from June quarter at end of previous cycle), 1981 to 2007

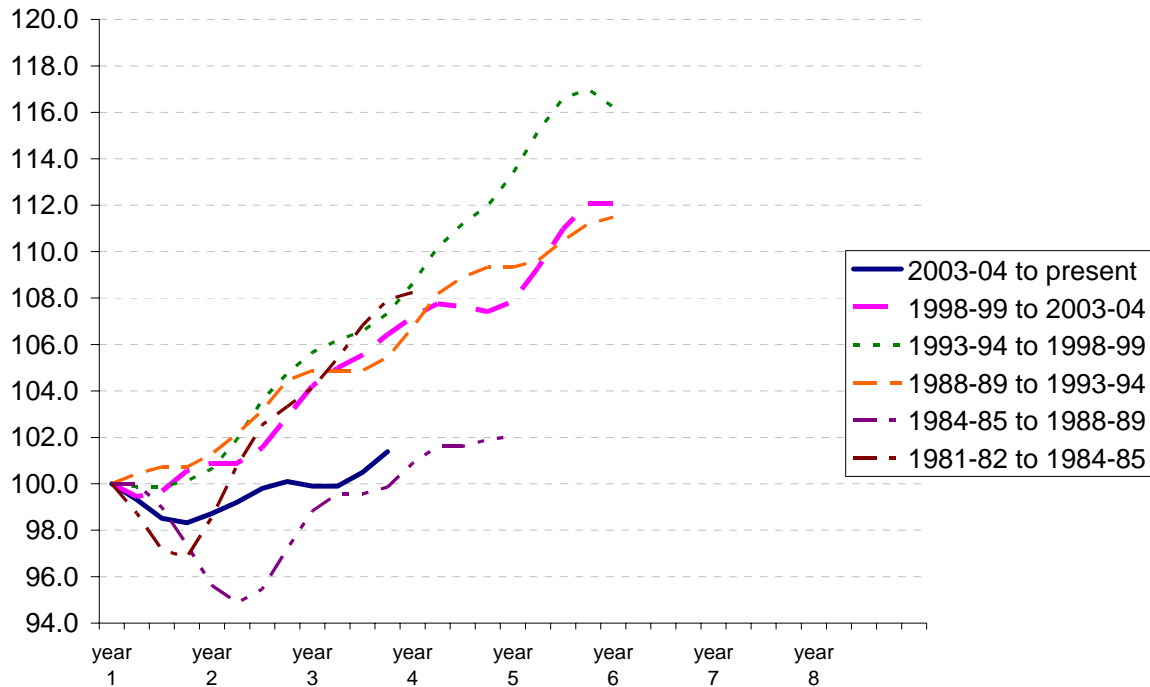
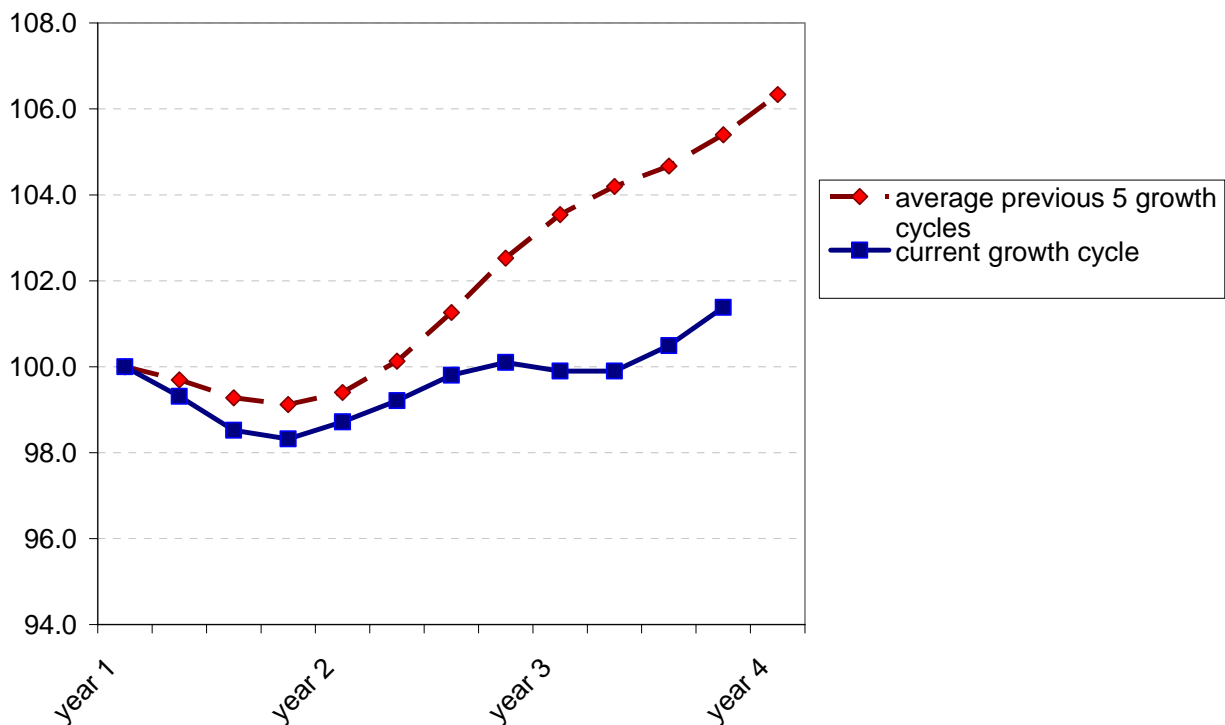


Chart 8.2 shows that including the most recent two quarters of productivity data highlights the widening gap in productivity between the current growth cycle and most other cycles. Chart 8.3 simplifies the depiction by averaging the patterns of the first few years of the preceding five growth cycles (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. Overall, trend labour productivity in the market sector is only 1.4 per cent higher than it was at the start of the growth cycle, in June quarter 2004. In the previous five growth cycles, labour productivity by this stage of the growth cycle has averaged 5.4 per cent higher than at the start of the cycle. That is, labour productivity growth in the current growth cycle has, so far, only averaged one quarter of the growth rate achieved in previous growth cycles. 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.

Chart 8.3 Comparison of trend productivity growth, current cycle and average previous five cycles



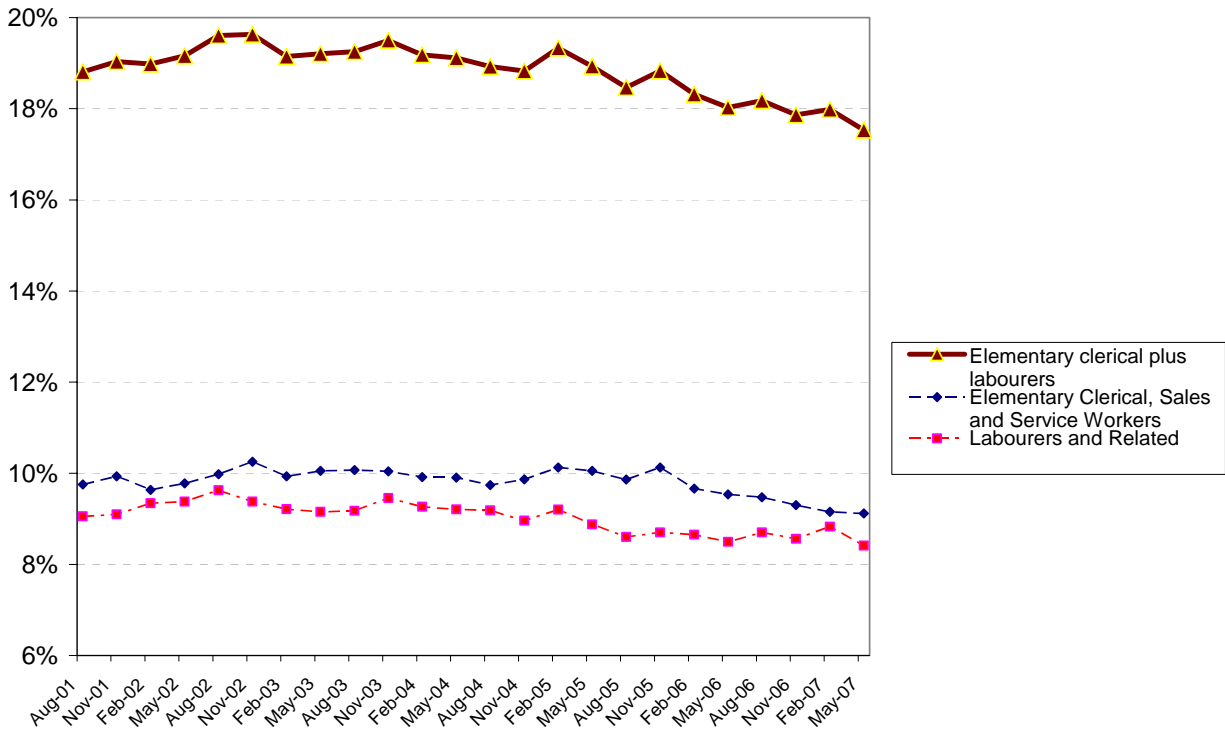
Some have suggested that this poor productivity performance is simply due to high employment growth, arising from the entry into the workforce of semi-skilled and unskilled workers, who themselves have low productivity, as a result of WorkChoices.¹¹⁶ This explanation does not hold. The two lowest paid occupational groups, commonly thought of as ‘unskilled’ workers, are labourers and elementary clerical sales and service workers (with an average hourly wage of \$17.70 in May 2006, compared to an all-occupations average of \$24.90) and labourers and related workers (average wage \$19.60 per hour).¹¹⁷ As shown in Chart 8.4, at only 17.53 per cent in May 2007, the share of these ‘unskilled’ workers in the workforce is at its lowest level on record, and well below the 18.32 per cent share in February 2006. In the year to February 2007 (the period of the national accounts), the total employment of elementary clerical sales and service workers and labourers and related workers grew by only 1.1 per cent, while the all-occupations average was 3.0 per cent.¹¹⁸

¹¹⁶ C. Pearson, 'Pie-in-the-sky productivity', *Weekend Australian*, 27 January 2007.

¹¹⁷ Australian Bureau of Statistics, *Employee Earnings and Hours, Australia, unpublished data*, Canberra, 6306.0.

¹¹⁸ Australian Bureau of Statistics, 6291.0.55.001.

Chart 8.4 Employment share of ‘unskilled’ occupations

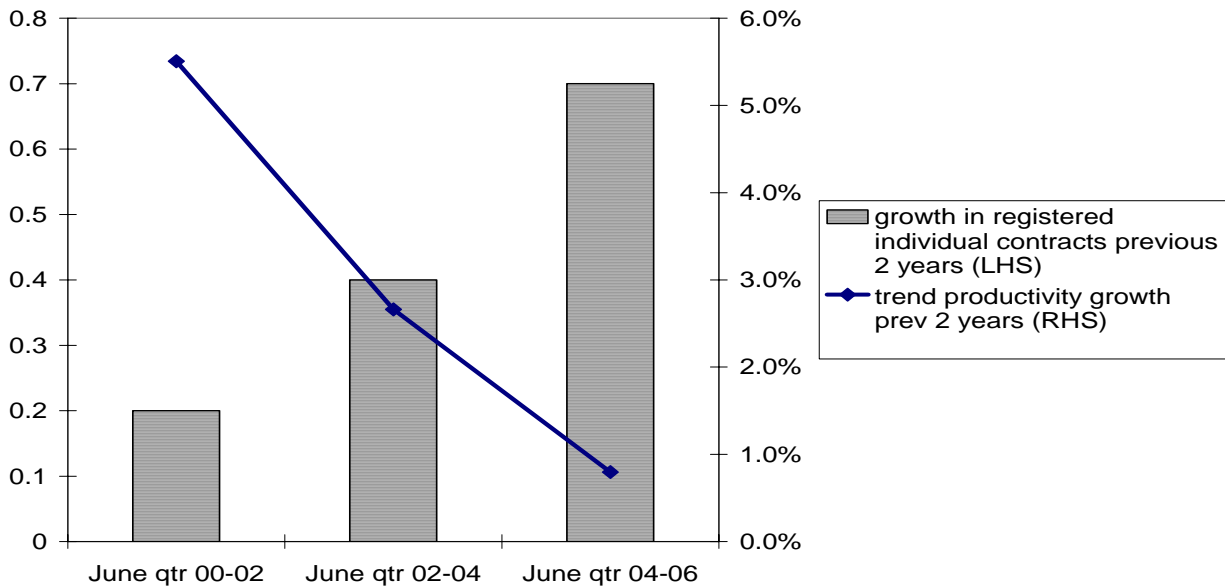


WorkChoices has only been in place little over a year but AWAs have been around for a decade. The main changes in the treatment of AWAs under WC have been designed to increase their usage, for example by removing the no-disadvantage test, enabling AWAs to override awards at any time, and discouraging 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 WC 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 8.4 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 (chart 8.5).¹¹⁹ It does not mean that the growth of registered individual contracts has caused the decline in productivity growth, but again suggests that there is little reason to believe that a further expansion of them under WC will boost productivity growth.

¹¹⁹ 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 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.

Chart 8.5 Changes in use of registered individual contracts and trend growth in market sector productivity, Australia, 2000-2006.



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 7.1, 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 WC. 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 Australia¹²⁰ or New Zealand.¹²¹ 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 whole relative to Australia's growth.¹²² 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

¹²⁰ 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.

¹²¹ 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.

¹²² P. Dalziel, 'New Zealand's economic reforms: An assessment', *Review of Political Economy*, vol. 14, no. 1, January 2002.

Zealand was seeing a rapid growth in individual contracting.¹²³ Although L J Perry has sought to critique the data on which previous analyses have been undertaken,¹²⁴ 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.¹²⁵

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 WC 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’.¹²⁶ Since the start of this growth cycle, productivity in mining has fallen by over 11 per cent a year,¹²⁷ 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’.¹²⁸

From these data, and the evidence elsewhere,¹²⁹ 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.

¹²³ Statistics New Zealand, *Productivity statistics: 1988-2005*, Wellington, 2006.

¹²⁴ 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.

¹²⁵ Perry argues: (1) critics of WC looked mainly to the NZ experience under the Employment Contracts Act (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 fifteen 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.

¹²⁶ Business Council of Australia, *Workplace relations action plan: For future prosperity*, BCA, Melbourne, November 2005.

¹²⁷ Australian Bureau of Statistics, *5204.0*.

¹²⁸ S. Knott, Individual engagement and workplace flexibility, speech to IFPC conference, Australian Mines and Metals Association, November, 2006.

¹²⁹ Dalziel, 'New Zealand's economic reforms: An assessment'; Peetz, 'Hollow shells: The alleged link between individual contracting and productivity'.

Business surveys provide some insight into the problem. The D&B National Business Expectations Survey in February 2006 found only 11 per cent expected WC to assist them to grow their business (down from 16 per cent two months earlier).¹³⁰ 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.¹³¹

A survey of 300 middle and senior managers undertaken in February 2007 helped expand on this view. Only 17 per cent expected that WC would make things better for their organisation, while 26 per cent expected it would make things worse.¹³²

Presumably part of the reason is the negative views many managers have of the impact of WC on employees and fairness, as discussed in section 10.¹³³ 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.¹³⁴ One corporate lobbyist likened WC 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'.¹³⁵

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.

¹³⁰ D&B, *D&B National Business Expectations*, Melbourne, March 2006, p. 15.

¹³¹ AMR Interactive, *MYOB Australian Small Business Survey*, MYOB, Melbourne July 2006, p. 19.

¹³² UMR Pty Ltd, *Gold Coast Tourism Globalisation Labour Impact Barometer*, Burson Marsteller / Gold Coast Tourism, Gold Coast, February 2007, pp. 35-36.

¹³³ AMR Interactive, *MYOB Australian Small Business Survey*, p. 19; 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; UMR Pty Ltd, *Gold Coast Tourism Globalisation Labour Impact Barometer*.

¹³⁴ eg E. Wynhausen, 'Managing to do not very much', *Australian*, 11 November 2006.

¹³⁵ Age, 'IR laws like 'Soviet-style command'', *The Age*, 26 March 2006.

9 SOME CONCLUSIONS

Under WorkChoices, AWAs, it appears, other non-union agreements such as EGAs 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.

The impact of WC on national economic aggregates is limited by several things. Only a small minority of employees are covered by WC agreements to date. Importantly, many organisations have decided against taking advantage of the 'opportunities' WC presents. In the end, more employers may be forced to change strategy as a result of WC, but it may take some time for this to happen and may affect employers who had not originally intended to change strategy. Moreover, the WC 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 WC will probably only be seen when the boom slows and economic conditions deteriorate, leading a larger number of employers to make use of WC 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.

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. 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.

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).

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 full-time employment compared to part-time employment, due to labour supply factors rather than WorkChoices effects, 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.

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