

Chapter 9

Broader implications of corporate avoidance of the *Fair Work Act*

9.1 It stands to reason that increases in gross domestic product (GDP) should be reflected in wage growth—workers should benefit from the economic growth their labour helps create. In Australia, this is increasingly not the case. Instead, latest statistics reveal that the proportion of economic output paid to workers in Australia has fallen to an all-time, record low.¹

9.2 Wage stagnation must be seen in the context of this inquiry. In previous chapters, the committee looked at corporate avoidance strategies individually. Each of the subjects covered in the chapters of this report are, however, linked, and together they paint a picture of blithe disregard for the spirit, and at times the letter, of the *Fair Work Act 2009* (FWA) in some sections of corporate Australia. The use of labour hire, sham contracting, avoidance of collective enterprise bargaining, downright wage theft—each of these examples represents a scramble by some employers to identify weaknesses or loopholes in the legislation which allow them to drive down wages and strip workers of conditions to the greatest extent possible, in the interests of boosting profit margins. Profit margins achieved through undermining the regulatory floor on wage reduction become eroded across industries and the economy as businesses adhering to the FWA core tenets of good faith bargaining lose business or are induced to compete on the same terms, to remove the relative advantage and margins of unethical competitors.

9.3 Wage stagnation is not only problematic in the context of fairness, however; it impedes economic growth and is stirring increasing concerns among economists and budget forecasters alike.

9.4 This chapter looks at the broader implications of corporate avoidance of industrial law.

Wage stagnation

9.5 GDP is the overall measure of a country's production—the total market value of goods and services produced. Producing goods and services is impossible without labour—workers. A report from the Australia Institute, *Labour Share of Australian GDP Hits All-Time Record Low*, provides valuable context and is outlined below.

9.6 While wage growth continues to slow, total quarterly nominal GDP grew by over \$31 billion in the year ending March 2017. Only 9.9 per cent of new GDP was

1 The Australia Institute, *Labour Share of Australian GDP Hits All-Time Record Low*, 13 June 2017, www.tai.org.au/sites/default/files/Labour_Share_Hits_Record_Low.pdf (accessed 28 July 2017).

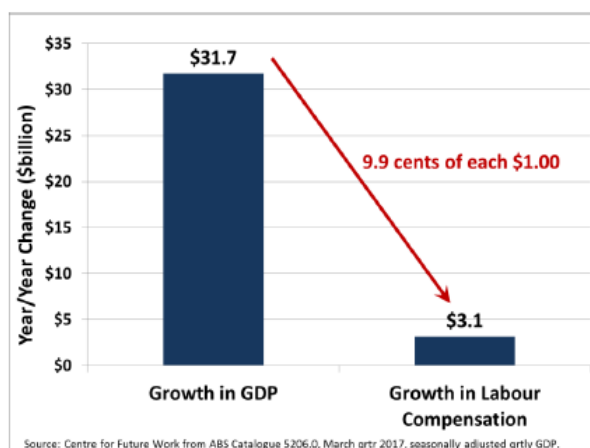
reflected in higher labour compensation and overall labour compensation as a share of nominal GDP fell to 46.2 per cent.² The graphs below, based on data released by the Australian Bureau of Statistics (ABS), illustrate the disparity in wages versus GDP growth rates:

Figure 9.1—Labour compensation as a share of nominal GDP³



9.7 In other words, the Australia Institute concluded, less than 10 cents of each dollar in new GDP produced in the past year resulted in increased labour compensation. As seen by the graph below, 'the link between GDP expansion and workers' incomes has never been weaker.'

Figure 9.2—GDP growth and labour compensation⁴



2 The Australia Institute, *Labour Share of Australian GDP Hits All-Time Record Low*, 13 June 2017, p. 1.

3 The Australia Institute, *Labour Share of Australian GDP Hits All-Time Record Low*, 13 June 2017, p. 1.

4 The Australia Institute, *Labour Share of Australian GDP Hits All-Time Record Low*, 13 June 2017, p. 2.

9.8 Furthermore, it should be noted that the measure of labour compensation used by the ABS includes salaries paid to executives and senior managers. The true degree to which labour compensation for typical workers is dropping is in all likelihood even more pronounced, as a breakdown of the share of national income going to executive and non-executive workers is not available.⁵

The law is skewed against collective bargaining

9.9 The increase in precarious work is only part of the picture. In the view of some of Australia's leading labour law experts, the problem stems from the fact that the past thirty years of policy-making have diminished workers' ability to negotiate higher wages.⁶ Rules imposed on unions have been so draconian, and the pendulum swung so far in employers' favour, that collective bargaining—the primary vehicle for growth and maintenance of wages and conditions—is under attack, even under the FWA. Previously of concern only to workers whose wages dwindled while costs of living rose, the effects are spreading across the economy, as growth has now slowed so that it threatens economic stability:

We have an industrial environment that was designed to disempower workers and disempower unions... We are now seeing that it has shifted the power balance way too much in favour of employers and workers aren't getting the share that is needed for economic stability.⁷

9.10 The reason for this is that reducing wages reduces consumer spending, thereby reducing public financing through taxation—from the goods and services tax, income tax and tax on profits. This equates to decreasing public spending and investment, further reductions in consumer spending, slowing employment and falling productivity in the longer term.⁸ This is the view of the Organisation for Economic Co-operation and Development (OECD), which reports that rising wage differentials and inequality will only serve to inhibit economic growth.⁹

9.11 Furthermore, considering that the FWA was designed to foster enterprise agreement it is concerning that rates of enterprise agreement making appear to be declining.¹⁰ Therefore the FWA is not successfully fulfilling this function, and as a result Australia's industrial system is falling behind international standards.

9.12 Evidence before this committee suggests that our industrial system is in need of an overhaul.

5 The Australia Institute, *Labour Share of Australian GDP Hits All-Time Record Low*, 13 June 2017.

6 *Reserve Bank boss Philip Lowe urges workers to push for pay rises*, ABC news, 19 June 2017.

7 Emeritus Professor Dick Bryan, quoted in *Reserve Bank boss Philip Lowe urges workers to push for pay rises*, ABC news, 19 June 2017.

8 ACTU, *Submission 182*, p. 27.

9 OECD, *In It Together: Why Less Inequality Benefits All*, May 2015, www.oecd.org/social/in-it-together-why-less-inequality-benefits-all-9789264235120-en.htm (accessed 30 July 2017).

10 'Fall in collective agreements blamed on union coverage', *The Australian*, 1 June 2017.

Committee view and conclusion

9.13 Slowing wage growth despite growing GDP is highly pertinent in the context of this inquiry. Increasing income polarisation and a falling share of labour compensation are inescapably tied to the growing trend in parts of corporate Australia of avoiding provisions of the FWA—provisions which are intended to bolster enterprise agreement-making and ensure that workers get a fair share of the economic growth their labour plays a critical role in generating.

9.14 The FWA was intended to bury the inequities of the Coalition's WorkChoices legislation. Initially at least, the Act did so, preventing employers from placing workers on new individual agreements and instead fostering collective enterprise bargaining. Nearly a decade on, however, growing corporate disregard for the objectives of the FWA is evident as loopholes in the Act are being exploited.

9.15 The committee agrees that casual employees, whether directly engaged or through labour hire firms, who work regular, systematic hours for a single employer over lengthy periods, are in fact engaged in ongoing jobs—but denied the 'security or peace of mind that comes with a permanent job.'¹¹ The committee is also firmly of the view that many 'independent contractors', including those engaged through online portals, are instead 'dependent contractors who work at the behest and under the control of the host employer.'¹²

9.16 The committee concludes, however, that Australia's industrial system is failing to achieve one of the fundamental objectives at the heart of the FWA—promoting enterprise bargaining as the optimal vehicle for protecting workers' rights.

9.17 It is difficult, noting the sheer weight of evidence presented to this committee on corporate avoidance and at times even malfeasance, to conclude anything other than that the system is being exploited by employers seeking to avoid their obligations to workers. Given examples of avoidance and even underpayment seen in evidence before the committee, it is also difficult to conclude anything other than that some employers pay wages almost grudgingly, at the lowest possible rates, looking for ways to manipulate the industrial system wherever possible.

9.18 The committee notes that there have been calls, from no less than the Reserve Bank of Australia, for workers to demand higher wages.¹³ This inquiry has shown, however, a concerning trend of workers being unable to hold onto existing conditions under the current industrial system, let alone being in a position to seek higher wages in their own interests or that of the national economy.

9.19 The committee has seen how de-unionisation, the removal of organising rights for workers and a lack of rights for workers representatives to engage with underpayments and breaches of employment conditions has created a free for all in

11 National Union of Workers, *Submission 198*, p. 3.

12 National Union of Workers, *Submission 198*, p. 3.

13 Quoted in 'Tough rules on unions have stifled Australian wages', *Sydney Morning Herald*, 5 July 2017.

some parts of the economy where the FWO has little interest or ability to prevent employer abuses.

9.20 Often the committee has heard evidence of a lack of knowledge on what the appropriate wage rate or condition a worker should receive for a particular job. There is a clear need to provide additional information and easier access to justice with many workers being denied their rights by employers making cold calculations about likelihood of detection, potential for punishment, scale of penalty and making a determination that avoidance of the law and exploitation of workers is a profitable path.

9.21 The committee has seen clear evidence of a system that has become unbalanced with substantial power vested in employers who are able to make use of multiple vehicles to further diminish workers power to negotiate higher wages and better conditions at the enterprise level. The definitions which categorise employer and employee are too restrictive and these definitions must be reviewed to ensure they are adequate to protect the interest of workers. This should include examination of application of the provisions of WHS legislation that places responsibility with the controller of the business. It should also encourage workers to join their union and allow workers to collectively negotiate at the point of economic power.

9.22 Technological advancements are not in of themselves imbued with positive or negative attributes. The committee has seen how the use of technology with little regard for the social and economic context in which it operates can recreate problems that policy makers thought were adequately addressed. The gig economy, appropriately regulated to conform with social standards on labour rights, can provide additional flexibility and opportunity for many people. A gig economy that is not appropriately regulated and only conforms to the free market theory of "clearing prices" results in underpaid workers, undermined labour markets and the personal and social problems associated with uncompensated injured workers.

9.23 In many cases it appeared that the avoidance of the FWA was accompanied by an equal desire to minimise or avoid tax obligations on the part of the employer, or controlling economic entity, which speaks to a broader cultural concern in some parts of the Australian business community. This has negative knock on impacts for commonwealth revenue, market competition (where those complying are at a disadvantage) and overall aggregate demand which in turn will lead to lower government investments, less wage growth and, an increase in inequality.

9.19 Unless the law is amended to close loopholes which are being exploited and protect workers in an increasingly fragmented workforce, a further erosion of wages growth and the industrial system is inevitable. It is an inescapable fact that the world the FWA was designed to regulate is rapidly changing. Policymakers have not kept pace with this change. Noting the need for considerable improvements to our industrial system, the committee urges policymakers to bear in mind that labour, economic growth and national prosperity have one goal: ensuring a decent standard of living for all Australians. As put by the National Union of Workers:

We all need work that allows us to make not just a decent living, but a decent life. Time to be with and care for our families, time to be part of our

communities. We need the ability to plan ahead, save for a rainy day and take a holiday. These are what we should all expect in exchange for our work.¹⁴

9.20 The committee calls on policymakers to consider and implement its recommendations, and put into place a modern and fair industrial system.

Senator Gavin Marshall

Chair

Senator Chris Ketter

14 National Union of Workers, *Submission 198*, p. 1.